

Enbridge Northern Gateway Project Joint Review Panel

File Of-Fac-Oil-N304-2010-01 021
13 December 2013

Mr. Barry Robinson
Staff Lawyer
Ecojustice
<contact information removed>

Concerns Regarding Intelligence Gathering, Northern Gateway Project Hearings

In your letter of 27 November 2013, you express concern about media reports that the National Energy Board gathered information and intelligence regarding safety and security during the Northern Gateway Project hearings.

The National Energy Board has the duty to see that its public hearings are safe for the public, participants, NEB staff and the presiding members.

In order to help fulfill this duty, open source information and social media scans are conducted and information is sought from local police, the RCMP and other organizations that may help to identify and evaluate risks. The position of, and the passion expressed by, a party is not a factor in determining whether a party poses a risk. Any threats of criminal action, disobedience or disturbance to the process, however, are taken seriously so that appropriate security measures can be put in place before incidents occur to ensure the safety of the public, participants, NEB staff and presiding members.

Rallies and meetings planned near to, and to coincide with, our hearings are identified in this regard. Even when the organizers of these events are not a safety risk, the events themselves may attract individuals or groups who are. Events that are meant to be peaceful can turn violent despite the intentions of the organizers.

Within this context I will provide answers to some of your questions and explain why other questions will not be answered.

.../2



National Energy Board
Office national de l'énergie

Canada



Canadian Environmental
Assessment Agency

Agence canadienne
d'évaluation environnementale

The National Energy Board did not collect information on your clients, their employees, contractors, or Board members other than what you have already seen. The National Energy Board did not collect information on your firm and no communications of a privileged nature were sought or obtained. Accordingly your questions about what was collected, when it was collected, to whom it was given or disclosed are not applicable.

For safety and security reasons, the Panel was briefed about information obtained through open sources about planned events coinciding with the hearing. These briefings did not identify any individuals or parties or provide any background of any individuals or parties. No other information gathered was provided to the Panel.

We will not, because of privacy concerns, respond to your questions about information from other registered intervenors.

Yours truly,

<original signed by>

Sheri Young
Secretary of the Joint Review Panel

Attachments

Cc: Gaétan Caron, CEO and Chair, National Energy Board
Devon Page, Executive Director, Ecojustice Canada
Karen Campbell, Ecojustice Canada
Nikki Skuce, ForestEthics Advocacy
Karen Wristen, Executive Director, Living Oceans Society
Chris Genovali, Executive Director, Raincoast Conservation Foundation
All parties to proceeding OH-4-2011

November 27, 2013

Andrew Hudson, Counsel
National Energy Board
<contact information removed>

Via e-mail

Dear Sir:

Re: Concerns Regarding Intelligence Gathering, Northern Gateway Project Hearings

Recent media reports indicate that the National Energy Board (the “Board”), in conjunction with the Royal Canadian Mounted Police (“RCMP”) and the Canadian Security and Intelligence Service (“CSIS”), gathered information and intelligence on certain organizations prior to and during the Northern Gateway Project hearings with respect to alleged safety and security risks posed by those organizations.

As you are aware, we are legal counsel for ForestEthics Advocacy, the Living Oceans Society and the Raincoast Conservation Foundation with respect to the Northern Gateway Project hearings.

We have had an opportunity to review the Access to Information Request results upon which the above referenced media reports were based. Of particular concern to our clients is an email written by Mr. Tim O’Neill of the Critical Infrastructure Intelligence Team (“CIIT”) of the RCMP to Mr. Richard Garber, Group Leader, Security for the Board and others dated April 19, 2013. I have attached a copy of that email for your reference as Attachment A to this letter. In that email, Mr. O’Neill discusses in general terms the risk of interference with the Board hearings and the risk to Board staff posed by groups opposed to oil sands and pipeline development. Mr. O’Neill states, “CIIT will continue to monitor all aspects of the anti-petroleum industry movement to identify criminal activity, and will ensure you are apprized [sic] accordingly”. Mr. O’Neill states that this information is also being shared with CSIS.

The Access to Information Request results also include a document referring to a community meeting organized by ForestEthics Advocacy on January 31, 2013 dealing with the Northern Gateway Project. I have attached a copy of that document for your reference as Attachment B to this letter. This document appears to have been obtained by the Board Security Team as part of an open source intelligence and social media scan conducted by the Security Team.

Our clients are understandably concerned that the Board may have been gathering intelligence information on their organizations prior to and while they were appearing as intervenors before the Board. This raises significant concerns with respect to procedural fairness, bias and breach of solicitor-client privilege.

In order to fully understand the nature of these investigations and to assess the serious issues arising out of such investigations, our clients require responses from the Board to the questions posed below.

1. Did the Board, its employees or agents collect information at any time on ForestEthics Advocacy, the Living Oceans Society, the Raincoast Conservation Foundation or Ecojustice (the “Coalition Organizations”) or any of their employees, contractors or board members with respect to safety or security risks posed by or related in any way to those organizations or individuals other than the document referenced in Attachment B to this letter? If so, please provide copies of all such information.
2. Did the Board, its employees or agents collect information at any time on any other registered intervenors in the Northern Gateway hearings or their legal counsel with respect to safety or security concerns posed by or related in any way to those organizations or individuals? If so, please provide the names of those organizations and individuals?
3. Can the Board confirm that in the course of the collection of information with respect to safety or security concerns posed by or related in any way to any of the Coalition Organizations or related individuals that no information or communications of any kind between a lawyer or lawyers and their client(s) or information or communications which could be considered privileged were collected or otherwise intercepted?
4. When did the collection of information with respect to safety or security concerns posed by or related in any way to any of the Coalition Organizations or related individuals begin and when did the collection of such information end?
5. Who directed that the collection of information with respect to safety or security concerns posed by or related in any way to any of the Coalition Organizations or related individuals be undertaken?
6. At any time prior to, during or after the collection of information with respect to safety or security concerns posed by or related in any way to any of the Coalition Organizations and related individuals did the Board advise any of the Coalition Organizations or individuals that the Board was collecting such information and the purpose of collecting such information?
7. Prior to commencing the collection of information with respect to safety or security concerns posed by or related in any way to any of the Coalition

Organizations or related individuals, did the Board have any information that any of the Coalition Organizations or related individuals had been involved in criminal activities or acts of violence?

8. Please identify all sources of information and all means of collection that the Board Security Team used in the open source intelligence and social media scan to collect information on the Coalition Organizations and related individuals.
9. Were any members of the Panel (Sheila Leggett, Kenneth Bateman or Hans Matthew) made aware that the Board was collecting or had collected information on the Coalition Organizations or related individuals with respect to safety or security concerns posed by or related in any way to those organizations or individuals?
10. Was the document found in Attachment B to this letter communicated to any members of the Panel in any way?
11. Was any other information on the Coalition Organizations or related individuals with respect to safety or security concerns posed by or related in any way to those organizations or individuals communicated to the Panel members?
12. Were any other Board staff, contractors or agents, including security officers, who were assisting the Panel during the Northern Gateway hearing process made aware that the Board was collecting or had collected information on the Coalition Organizations or related individuals with respect to safety or security concerns posed by or related in any way to those organizations or individuals? If so, please provide the names of such Board staff, contractors or agents and the information that was communicated to each person.
13. Were any Board legal counsel who were assisting the Panel during the Northern Gateway hearing process made aware that the Board was collecting or had collected information on the Coalition Organizations or related individuals with respect to safety or security concerns posed by or related in any way to those organizations or individuals? If so, please provide the names of such legal counsel and the information that was communicated to such legal counsel.
14. Was any information collected by the Board on the Coalition Organizations or related individuals with respect to safety or security concerns posed by or related in any way to those organizations or individuals communicated in any way to employees, consultants, contractors or legal counsel of Northern Gateway Pipeline Inc. or Enbridge Inc.? If so, please provide the names of such persons and the information that was communicated to these individuals.
15. Was any information collected by the Board on the Coalition Organizations or related individuals with respect to safety or security concerns posed by or related in any way to those organizations or individuals communicated in any

way to other parties outside of the Board including the RCMP or CSIS? If so, please identify those parties and provide the information that was communicated to those parties.

Our clients are understandably concerned that organizations or individuals expressing opposition to oil, gas or pipeline developments in processes before the Board may result in the Board undertaking an investigation of such organizations or individuals in cooperation and consultation with the RCMP and CSIS. Knowledge that this is occurring is sure to have a chilling effect on participation in Board proceedings and would be contrary to the Board's mandate to encourage participation in Board proceedings and to consider the public interest in its decision making processes.

Further, we intend to represent ForestEthics Advocacy, the Living Oceans Society and the Raincoast Conservation Foundation, if those organizations are accepted as intervenors, in the anticipated hearings into the Kinder Morgan TransMountain Pipeline Expansion Project. Our clients seek the Board's assurance that their participation in those hearings will not trigger further unwarranted investigations into these organizations and related individuals.

We expect a timely and thorough response to these questions in order to fully assess the nature and impact of these matters as soon as possible.

Sincerely,

<original signed by>

Barry Robinson
Staff Lawyer

Attachments (2)

Cc: Gaétan Caron, CEO and Chair, National Energy Board
Devon Page, Executive Director, Ecojustice Canada
Karen Campbell, Ecojustice Canada
Nikki Skuce, ForestEthics Advocacy
Karen Wristen, Executive Director, Living Oceans Society
Chris Genovali, Executive Director, Raincoast Conservation Foundation

Rick Garber

From: Timothy O'Neil <tim.oneil@rcmp-grc.gc.ca>
Sent: April 19, 2013 6:51 AM
To: Rick Garber; Roberta Alder; Manon Tessier
Cc: Wes Elliott; Barbara WEGRZYCKA; Bill Kalkat; Brittany McBain; Chris Pallister; Dan BOND; Irene Lemaire; Jim (Edmonton) STEWART; Kyle Melnychyn; Laurie MACDONELL; Nicole Bristow; Nicole Murphy; Noel FLATTERS; Robert Zawerbny; Scott Foster; Sofia MANOLIAS; Steve CORCORAN; Ted Broadhurst; Timothy O'Neil; Wendy Nicol; Thomas LANZER
Subject: Security Concerns - National Energy Board
Attachments: O'Neil, Timothy.vcf

Roberta

Please open a SPROS/SIR file for this.

Rick: I reviewed the noted websites and agree there is some questionable rhetoric by the participants. However, I could not detect a direct or specific criminal threat.

CIIT currently has no intelligence indicating a criminal threat to the NEB or its members.

However, there continues to be sustained opposition to the Canadian petroleum and petroleum pipeline industry with most of it directed at the Alberta Oil Sands. To date, opposition to the Canadian petroleum industry has included both lawful and unlawful actions. Unlawful actions have ranged from acts of civil disobedience to acts of vandalism, sabotage and threats to property and persons.

Opponents to the Oil Sands have used a variety of protest actions to draw attention to the Oil Sands' negative environmental impact, with the ultimate goal of forcing the shut down of the Canadian petroleum industry. These same groups have broadened their protests to include the pipelines and more recently, the railroad industry, who the opposing groups claim are facilitating the continued development of the Oil Sands.

Opposition is most notable in the British Columbia, with protest focused on the: Enbridge Northern Gateway; Kinder Morgan Trans Mountain Pipeline expansion; the increasing use of hydraulic fracturing, and proposed LNG facilities.

More recently, Enbridge's Line 9 reversal proposal, which will move Oil Sands' oil through the heart of Ontario, has moved to the front of the anti-Oil Sands movement.

The anti-petroleum and anti-nuclear movement has attempted to interfere within the federal regulatory hearings (NEB and CNSC), and have used coordinated/mass interventions, that have at times, bogged down the regulatory hearings. In response, the federal government has instituted new regulatory procedures that will limit who may make formal presentations at the NEB's public hearings.

These new hearing procedures have re-focused protest activity from the content of the hearings, to the conduct of the hearings.

As such, protest rhetoric is being directed at the NEB and its members.

As the NEB is the federal regulator for many aspects of the Oil Sands, it is the focus of attention by many anti-Oil Sands, anti-Canadian petroleum, and anti-petroleum pipeline operations, and it is highly likely that the NEB may expect to receive threats to its hearings and its board members.

As always, prior to conducting its hearings, I encourage NEB to discuss its security concerns with the police of jurisdiction.

CIIT will continue to monitor all aspects of the anti-petroleum industry movement to identify criminal activity, and will ensure you are apprized accordingly.

I have included the RCMP's CIIT Divisional analysts and Ms. Manon Tessier and Mr. Tom Larizer (CSIS) within this message.

If you are planning to attend the NRCan May 23rd Classified Briefing, you may wish to discuss your concerns with the security officials who will be in the briefing room.

You are welcome to contact me directly to discuss your concerns in more detail.

Regards.....Tim

Tim O'Neil
Senior Criminal Intelligence Research Specialist
Critical Infrastructure Intelligence Team
Federal Policing Criminal Operations
M3, 4th Floor, Rm 616-96,
Mailstop #148
73 Leikin Drive,
Ottawa, Ontario
K1A0R2

613-843-5129

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613-825-7030 (f)

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>>> Rick Garber <Richard.Garber@neb-one.gc.ca> 2013-04-18 14:45 >>>

Tim, enclosed please find the link to a recent YouTube item wherein threats to energy CI (pumping stations) and possibly to government officials ("targeting" the NEB panel members) is featured, Your assistance is sought in establishing whether this represents a credible threat to the NEB panel members from the RCMP perspective.

Thanks in advance!

Rick

Richard S. Garber, CD, MA, MBA
Group Leader, Security | Chef de groupe, sûreté
Corporate and Information Solutions
National Energy Board | Office national de l'énergie
<contact information removed>

s.19(1)

From: Whitney Punchak
Sent: April 17, 2013 11:53 AM
To: John Pinsent; Rick Garber
Cc: Paul Lackhoff
Subject: FW: You Tube anti Line 9 video



Oil Spill Stories : Vancouver

As the community hearings on Enbridge's proposed Northern Gateway Pipeline and Tanker project wrap up, join us for an evening of powerful stories that highlight the need for all of us to take a stand to protect our water from oil spills.

When Jan 31, 2013
from 07:00 PM to 09:00 PM

Where Heritage Hall (3102 Main Street, Vancouver, Coast Salish Territories)

Contact Name <email address removed>

Add event to calendar  

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WHEN: 7PM, Thursday, January 31st.

WHERE: Heritage Hall (3102 Main Street, Vancouver, Coast Salish Territories)

Speakers:

Michelle Barlund-Smith will share her first-hand experience from Enbridge's catastrophic oil spill into the Kalamazoo river.

Melina Laboucan-Massimo will speak about the impacts on her community of the 28,000 barrel Plains Midstream Pipeline spill in Lubicon Cree territory.

Ta'Kaiya Blaney will raise her powerful young voice to protect our coast from oil spills.

Free Admission

contact <email address removed> for more info.

November 27, 2013

Andrew Hudson, Counsel
National Energy Board
444 – 7th Avenue SW
Calgary, Alberta T2P 0X8

Via e-mail

Dear Sir:

Re: Concerns Regarding Intelligence Gathering, Northern Gateway Project Hearings

Recent media reports indicate that the National Energy Board (the “Board”), in conjunction with the Royal Canadian Mounted Police (“RCMP”) and the Canadian Security and Intelligence Service (“CSIS”), gathered information and intelligence on certain organizations prior to and during the Northern Gateway Project hearings with respect to alleged safety and security risks posed by those organizations.

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Staff Lawyer

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Rick Garber

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Cc: Wes Elliott; Barbara WEGRZYCKA; Bill Kalkat; Brittany McBain; Chris Pallister; Dan BOND; Irene Lemaire; Jim (Edmonton) STEWART; Kyle Melnychyn; Laurie MACDONELL; Nicole Bristow; Nicole Murphy; Noel FLATTERS; Robert Zawerbny; Scott Foster; Sofia MANOLIAS; Steve CORCORAN; Ted Broadhurst; Timothy O'Neil; Wendy Nicol; Thomas LANZER
Subject: Security Concerns - National Energy Board
Attachments: O'Neil, Timothy.vcf

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If you are planning to attend the NRCan May 23rd Classified Briefing, you may wish to discuss your concerns with the security officials who will be in the briefing room.

You are welcome to contact me directly to discuss your concerns in more detail.

Regards.....Tim

Tim O'Neil
Senior Criminal Intelligence Research Specialist
Critical Infrastructure Intelligence Team
Federal Policing Criminal Operations
M3, 4th Floor, Rm 616-96,
Mailstop #148
73 Leikin Drive,
Ottawa, Ontario
K1A0R2

613-843-5129

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613-825-7030 (f)

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Rick

Richard S. Garber, CD, MA, MBA
Group Leader, Security | Chef de groupe, sûreté
Corporate and Information Solutions
National Energy Board | Office national de l'énergie
444 - Seventh Avenue SW | 444, Septième Avenue S.-O.
Calgary, Alberta T2P 0X8 | Calgary (Alberta) T2P 0X8
Mobile | Cellulaire [REDACTED]
Fax | Télécopieur : 403-292-5503
Richard.Garber@neb-one.gc.ca

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From: Whitney Punchak
Sent: April 17, 2013 11:53 AM
To: John Pinsent; Rick Garber
Cc: Paul Lackhoff
Subject: FW: You Tube anti Line 9 video



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When Jan 31, 2013
from 07:00 PM to 09:00 PM

Where Heritage Hall (3102 Main Street, Vancouver, Coast Salish Territories)

Contact Name jojan@foresthicsadvocacy.org

Add event to calendar  

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