

BY E-MAIL ONLY

October 6, 2015

Caroline O'Driscoll
O'Driscoll and Company

**RE: Application by Alexander First Nation for Submission of Expert Report after
September 29, 2015
Pembina Pipeline Corporation
Applications No. 1806873, etc. (Project)**

Dear Ms. O'Driscoll:

Decision

Further to the September 28, 2015 request from legal counsel for Alexander First Nation (Alexander) for an extension of time to complete and file a quantitative risk assessment expert report (expert report), the panel has reviewed those submissions in addition to Pembina Pipeline Corporation's (Pembina) October 1, 2015 response and Alexander's October 2, 2015 final reply.

The panel will grant an extension to Alexander for the filing of its expert report to 4 p.m. on October 13, 2015. Pembina will have until 4 p.m. on October 23, 2015 to file its reply to the expert report.

Background

On September 28, 2015 Alexander requested further time to file an expert report in connection with a quantitative risk assessment which it indicated would not be completed in time for the filing deadline of September 29, 2015. Alexander indicated that they did have discussions with Pembina's legal counsel and attempted to agree to an accommodation for filing. Alexander confirmed that it does not want to delay the hearing process or create any unfairness to the applicant or any other party. However, it stated that the nature of the expert evidence is significant with respect to the AER's ability to evaluate the potential cumulative effects of this Project. Alexander further referenced information requests made to determine if Pembina had additional information that addressed cumulative effects. It indicated that on August 25, 2015 Pembina provided a Project update which included a Fox Creek to Namao expansion project threat assessment and on August 31, 2015 it provided information confirming that the Project does not

consider the implications of the Alliance and Northern Gateway pipelines in its analysis. Alexander stated that based on the scope of the threat assessment filed on August 25, 2015 and lack of additional information on September 1, 2015, it immediately began to seek out an expert who could complete a risk assessment.

In Pembina's response, it indicated that the requested extension severely prejudices Pembina as it eliminates the opportunity for Pembina to review the late evidence and file written reply evidence. Pembina notes that the request by Alexander to file late evidence was only after Pembina filed its responses to information requests on August 31, 2015 and more specifically the filing of the threat assessment on August 25, 2015. Pembina asserts that issues of routing, including proximity of the project to the Alliance pipeline, have been available since September 2014. In addition, Pembina's May 2015 notification that it was preparing a threat assessment in reply to an information request was provided to all participants, including Alexander. In May 2015 during the AER prehearing meeting, Alexander indicated that a high degree of expertise from highly qualified experts would be needed to provide information regarding scientific and engineering aspects of the Project, as well as cumulative impact implications. In addition, the identification in June of 2015 by the AER of pipeline design, integrity, routing and emergency response plans as well as impacts on reserve lands were identified as issues to be considered.

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Pembina states that the issues to be addressed by the expert report have been in play since the Project was applied for and that Alexander has been alive to them since at least as early as May 2015, and certainly no later than August 2015. Pembina submits allowing Alexander to file late evidence will result in severe prejudice to it as it will be faced with either foregoing its right to file written evidence in reply or adjourning the hearing. Notwithstanding the above, Pembina confirms that it does not object to Alexander filing late evidence provided it is filed all at once and not in pieces. However, it does object strongly to the proposed timing of the filing. To accommodate Alexander while attempting to mitigate prejudice to Pembina it submits that the AER direct the late evidence to be filed no later than October 9th and that Pembina be provided until October 26th to file any reply evidence. Pembina further submits that it reserves its right to challenge the relevance of the late evidence and that it expects a representative of Alexander to appear and adopt the late evidence as evidence of Alexander in addition to the appearance of the individual who authored the late evidence.

In its final reply, Alexander notes that although the proposed project and the AER's review of it are governed by statutes, regulations, directives and policies, there appears to be no express provision to ensure the Project incorporates any components of the environment that exist on federal lands or that have aspects that do not fall exclusively within the jurisdiction of Alberta. Alexander submits that it can understand why Pembina may not have contemplated the community of Alexander and all of its unique land rights and interests as they are not expressly listed as components to be considered in an application under Alberta's existing regulatory framework. However, Alexander notes that it is important to recognize that section 15 of the *Responsible Energy Development Act* provides that the Regulator must "...consider any factor prescribed by the regulations, including the interests of landowners." Alexander submits that as early as

March 2014 it advised Pembina of its unique land interests but Pembina still proceeded with the route selection and a proposed project which does not account for potential impacts on the community of Alexander or its rights and interests.

Alexander submits that the AER has requested that evidence be provided for its consideration to mitigate the possibility of the proposed project being evaluated in a vacuum. Alexander submits that expert evidence will not remedy all of the flaws that are reflected in the proposed project, but it may provide significant evidence to inform the AER's assessment of its merits.

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Reasons

Requests for the filing of late evidence in a proceeding are governed by section 53 of the *Alberta Energy Regulator Rules of Practice* (the Rules). This section makes it clear that the filing and serving of documentary evidence must take place in accordance with any time limits set out by the Regulator. Subsection 53(1) of the Rules provides:

(1) Unless the Regulator otherwise directs, if a party intends to present documentary evidence at an oral hearing or electronic hearing, or is directed to do so by the Regulator, the party shall file the documentary evidence and serve a copy of it on the other parties before the hearing takes place and in accordance with any time limits set out by the Regulator.

In this proceeding, by way of correspondence dated the September 4, 2015, the parties to the proceeding were advised that all written evidence of the participants would be required to be filed and served on September 29, 2015. The panel confirms that section 53 of the Rules must be followed, subject only to a request to file late evidence if that request can be accommodated in a manner such that there is no prejudice to the party required to respond to the late evidence. In addition, if a request is granted regarding the late filing of evidence the panel confirms that there may be cost implications associated with the difficulties required to accommodate the late evidence.

The panel notes Alexander's confirmation that it does not want to delay the hearing process or create any unfairness to the applicant or any other party. However, given the nature of the expert report, it asserts that more time is required. The panel finds the arguments of Pembina to be compelling in regards to the difficulties associated with the filing of late evidence. In reviewing Pembina's response regarding Alexander's request, the panel agrees with Pembina that issues of routing and the proximity of the project to the Alliance pipeline have been present since the filing of the Project applications in September 2014. The panel also confirms that in May 2015, Pembina indicated that it was preparing and conducting a threat assessment in its reply to an information request and that this reply was given to Alexander. The panel notes that cumulative impact implications were discussed at the prehearing meeting in May 2015; and, in June 2015 pipeline design and integrity, routing and emergency response planning as well as impacts on reserve lands were identified as issues to be considered during the public hearing.

Given the above, the panel finds that Alexander should have been aware of the issues at least as early as May 2015 and that it could have made efforts to retain an expert at that

time and meet the established filing deadline. The panel is disappointed that, given the available information, the expert required by Alexander was not obtained earlier.

The panel is prepared to allow a reasonable extension for the filing and serving of the expert report all at once by Alexander to 4 p.m. on October 13, 2015. Pembina will have until 4 p.m. on October 23, 2015 to file and serve its reply evidence. This will afford Pembina the same amount of time for reply as was agreed upon by the parties for previous submissions. The panel also notes Pembina's submissions regarding relevance of the late evidence and the appearance of witnesses at the hearing and confirms that this decision to allow the late filing of evidence does not prevent Pembina from making arguments on those issues.

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If you have any questions with respect to this matter, please contact Robert Mueller by phone at or email to .

Sincerely,

<original signed by>

Robert Mueller
Legal Counsel

cc: Ashley Karg, AER
Greg McLean, AER
Rachel Ruddell, AER
Pembina Pipeline Corporation, Douglas Crowther
Pembina Pipeline Corporation, Dennis Langen,
Driftpile First Nation, Keltie Lambert
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