

BY E-MAIL ONLY

October 19, 2015

Grassroots Alberta Landowners Association
Debbie Bishop
Paul Barrette
Prowse Chowne LLP
Email:

RE: Written Submissions of Grassroots Alberta Landowners Association
(Grassroots)
Pembina Pipeline Corporation (Pembina)
Applications No. 1806873, etc.

Dear Counsel:

Decision

The panel denies Grassroots' Motion and directs that counsel for Grassroots:

1. Delete the reference to Tab 44 from paragraph 20 of the Grassroots submissions and reword paragraph 20 as follows:

"The Landowners understand that some of the requests for conditions that they request have already been agreed to by Pembina with other landowners."

2. Delete Tab 44 in its entirety; and

3. Delete from Tab 36 the two copies of the draft sketch as identified by Pembina in its October 6, 2015 correspondence.

The panel also confirms that no party may reference any of these deleted materials or the attachments to the Grassroots October 19, 2015 final reply during the entirety of the hearing.

Grassroots counsel is directed to make the above changes to its written submissions and refile same by 1:00 pm Tuesday October 20, 2015.

The panel asks Pembina to provide any final reply as soon as possible, by 4:00 pm Friday October 23, 2015 at the latest.

Background

Further to the AER's October 5, 2015 correspondence which indicates that the Grassroots written submissions were removed from the record given that they contained confidential materials, the panel confirms that it has received submissions concerning this issue from Grassroots and Pembina.

inquiry 1-855-297-8311
24-hr
emergence 1-800-222-6514

Pembina advised in its October 6, 2015 correspondence that documents included in the written submissions and marked as Tab 44 were provided by Pembina to Grassroots on a without prejudice basis and subject to confidentiality agreements in the context of an Alberta Energy Regulator (AER) Alternative Dispute Resolution (ADR) process. Pembina submits that as a result, these documents and any reference to them during this proceeding would be inappropriate. Pembina suggests that the hearing panel require the re-filing of the Grassroots written submission as follows:

- I. Delete reference to Tab 44 from paragraph 20 such that the paragraph would read as follows:
"20. The Landowners understand that some of the requests for conditions that they request have already been agreed to by Pembina with other landowners."
2. Delete Tab 44 in its entirety.
3. Delete from Tab 36 two copies of the draft sketch entitled "Fox Creek to Namao Expansion Project Typical Construction Right of Way Profile- White Zone 3m/35m/7m Foreign Pipeline or no Paralleling Feature."

On October 9, 2015 Grassroots provided correspondence stating that its written submissions do not contain confidential information at Tab 44 as the documents located therein were unsigned. They further argue that the signed copies of the documents at Tab 44 were not provided because Pembina has not returned those documents to their office. Grassroots counsel confirmed that with respect to Tab 36, they do not object to Pembina counsel's request for the removal of those documents from their written submissions.

On October 13, 2015 counsel for Grassroots filed a motion for an order that Pembina provide the final signed copies of the documents in concern. In the alternative, they maintained their position that the panel confirm the filing of the unsigned documents at Tab 44. Grassroots counsel indicated that it intends to use the documents at Tab 44 as an aid to cross-examination in the hearing. In addition, they submit that the documents are relevant, available, and not confidential and as such pursuant to section 14 of the *Alberta Energy Regulator Rules of Practice* (the Rules), these documents must be produced.

In response to the motion, on October 15, 2015 Pembina requested that the Grassroots motion be denied and stated that Grassroots seems to be arguing that they should be permitted to request the documents pursuant to section 12 of the Rules as an information request. Pembina argued that the time limits for such a request have long since passed. In addition, Pembina submitted that the confirmation by Grassroots that it would use

settlement documents as an aid to cross-examination would have a chilling effect on the AER's ADR initiatives.

On October 19, 2015 counsel for Grassroots provided its final reply correspondence with numerous attached documents which counsel requests be substituted for those behind Tab 44 of the Landowners' submissions. Grassroots counsel submits that agreements between Pembina and the Landowners should be filed in the proceeding as transparency in the dealings between companies and landowners should be encouraged.

inquiries 1-855-297-8311
24-110
ererge 1-800-222-6514

Reasons

The panel confirms that with respect to this motion it has not reviewed any of the attached documents in Grassroots' final reply or the written submissions of Grassroots as those are not in evidence yet.

With respect to confidentiality in regards to the AER ADR process, section 7.7 of the Rules applies. Section 7.7 states as follows:

Confidentiality

7.7 (1) A dispute resolution meeting may not be recorded, transcribed or form part of the record of a hearing or other proceeding.

(2) All persons attending a dispute resolution meeting shall treat admissions, concessions, offers to settle and related discussions as confidential and without prejudice.

(3) Admissions, concessions, offers to settle and related discussions in a dispute resolution meeting are not admissible in a hearing or other proceeding without the consent of all persons participating in the dispute resolution meeting.

The panel finds section 7.7 of the Rules to be unequivocal. Section 7.7 of the Rules makes it clear that a dispute resolution meeting may not form part of the record of a hearing and that discussions within the ADR process are confidential and without prejudice. The panel finds any distinctions made between signed and unsigned documents created in the ADR process as going to the confidentiality of the documents to be artificial and without merit.

The panel confirms that all discussions and documents that form part of the ADR process are to be kept confidential by the parties to the ADR in accordance with the Rules. In addition, the panel confirms that in the case of some of the documents, they may also be subject to confidentiality agreements which remain in effect and do not permit disclosure in this proceeding or otherwise. This also applies to any signed versions of these documents.

The panel confirms that any materials arising out of or exchanged in the course of the ADR process are confidential and without prejudice and not admissible in a hearing or other proceeding without the consent of all persons participating in the particular dispute resolution meeting.

Counsel are expected to respect the integrity of the AER's ADR process.

If you have any questions with respect to this matter, please contact Robert Mueller by phone at 403-xxxxxxx.

<Signed by Robert J. Mueller>
Legal Counsel

inquiries 1-855-297-8311
24-hour
emergency 1-800-222-6514

cc: Ashley Karg, AER
Greg McLean, AER
Rachel Ruddell, AER
Pembina Pipeline Corporation, Douglas Crowther
Driftpile First Nation, Keltie Lambert
Gunn Metis Local 55, Mitchell Couling
Alexander First Nation, Caroline O'Driscoll
Derek Nielsen, Jack N. Agrios