

Dyna Tuytel &
Margot Venton
390-425 Carrall Street
Vancouver, BC V6B 6E3
Telephone: (604) 685-5618
Fax: (604) 685-7813
E-Mail: dtuytel@ecojustice.ca,
mventon@ecojustice.ca
File No: 512

October 5, 2018

Sent via E-mail to Panel.RBT2@ceaa.gc.ca

Cindy Parker
Panel Manager, Roberts Bank Terminal 2 Project
160 Elgin Street, 22nd floor
Ottawa, ON K1A 0H3

Dear Ms. Parker:

Re: Comments on Sufficiency of Information and Draft Public Hearing Procedures for Roberts Bank Terminal 2 Project

We represent the David Suzuki Foundation, Georgia Strait Alliance, Raincoast Conservation Foundation, and the Wilderness Committee (the “Conservation Groups”) in the Canadian Environmental Assessment Agency environmental assessment of the Roberts Bank Terminal 2 Project (the “Project”). We write in response to the Panel’s July 6, 2018 request for comments on information request responses and on the draft Public Hearing Procedures.

We have written to the Panel separately today concerning the Terms of Reference and the scope of the Project for the purpose of the environmental assessment.

General comments

As a general observation, the draft Public Hearing Procedures is not clear as to the order of steps. A chart, timeline, or other document that presents this information in a clear manner would be of assistance.

It is not clear how evidence fits into the process. Do “written submissions” refer to evidence, or to argument? The participants assume that these are two separate things, but the draft Public Hearing Procedures only refer to submissions and do not distinguish between evidence and arguments. Presumably intervenors are permitted to file evidence, including expert evidence, and to rely on their filed evidence in their written and oral submissions. It is not clear how the written submissions can rely on the evidence if they are due before evidence is filed. It is also not clear when evidence can be filed and what the process is for filing expert evidence. It is important for

the participants to have clarify on this matter so that they can retain and instruct experts, who will need to know their deadlines.

It is not clear how experts fit into the suggested 20 minutes for oral submissions. Are experts expected to make presentations, or simply to be present to answer questions? It is also not clear how participants are to put forward their experts in the oral portion of the hearing.

It is not clear when the oral submissions happen in relation to the written submissions. It appears that oral submissions and the topic-specific sessions are the same, but this is not clear.

It is unclear how participants are to decide how to participate before seeing the list of topics. It is important that participants be provided with a list in advance. They should also have an opportunity to comment on the list of topics.

Comments on specific paragraphs

6. Participation in the Public Hearing

Paragraph 6.4 states that “[t]he Proponent will have the opportunity to make closing statements during the public hearing”, at the close of each hearing session.

Paragraph 6.5 states that “[t]he Panel may, at its discretion, allow the Proponent or a Participant who has provided a written or oral submissions to provide factual information in rebuttal to information provided by others to the Panel.” The Conservation Groups submit that the Panel should explain the principled basis upon which it will exercise this discretion and what justification there could be for excluding factual information that rebuts the information provided by others.

Paragraphs 6.10 and 6.13 state that Participants must provide their written submission no later than 30 days before the start of the hearing. First, this appears that this refers to the entire hearing, as opposed to topic-specific sessions, but this is unclear. Second, assuming that it refers to the entire hearing, given that paragraph 8.2 states that only 60 days’ notice will be given before the start of the hearing, the Conservation Groups submit that either more notice should be given of the start of the hearing or more time should be allowed to provide written submissions, as a timeline of only 30 days from notification to the written submission deadline is unlikely to be adequate for the preparation of submissions, particularly that participants can all be expected to have other, pre-existing commitments when they get the notification. Third, participants will want to rely on the evidence they file in their submissions, and it is not clear how they could do this on 30 days’ notice. This concern about relying on evidence assumes that the submissions will follow the evidence, which, as noted above, is not clear from the draft Public Hearing Procedures.

10. Conduct of the Public Hearing

Paragraph 10.2 states that “No demonstrations of approval or disapproval, either of the Project or of the opinions expressed during the public hearing, will be permitted inside the public hearing

venue.” The Conservation Groups assume that this is an admonition not to interject verbally while others are presenting but would appreciate confirmation.

Paragraph 10.10 states that, in addition to limiting or excluding questions that are repetitive, the Panel Chair “may also limit questions if, in the opinion of the Panel, sufficient information on a specific topic has been received.” The Conservation Groups submit that the Panel should explain the principled basis upon which it will exercise this discretion and what justification there could be for excluding relevant questions that have not already been asked.

Paragraph 10.20 states that “Presenters should bring four paper copies of any additional documentation they refer to in their presentation.” The Conservation Groups anticipate that reference could be made to a great number of documents, which documents could be lengthy, in presentations. They suggest an alternative approach that will not require the printing of huge quantities of material, such as providing electronic copies in advance that Review Panel members can view on laptops.

Sincerely,



Dyna Tuytel
Barrister & Solicitor



Margot Venton
Barrister & Solicitor

c. David Suzuki Foundation
Georgia Strait Alliance
Raincoast Conservation Foundation
Wilderness Committee