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Special Report by Patrick Brown

## **The GSX report: half a job**

A 229-page report on the gas pipeline proposed to cross the Georgia Strait was produced by the National Energy Board/Canadian Environmental Assessment Agency Joint Review Panel on July 31st. At best, it represents only half the job they set out to do, and may be even less than that. This after over a year of hearings, submissions, and written evidence, and untold hours of work by intervenors.

As has been widely reported, the Panel concluded that the proposed GSX pipeline would result in 'no significant environmental damage.' It must be understood that this means damage only from the construction and operation of the pipeline itself. The panel rejects environmentalists' arguments, and recommends that various planning and mitigation measures proposed by GSX-PL (a joint venture of BC Hydro and Williams Pipelines) are carried out.

This first report concentrates on the direct environmental impacts of the proposal, basically the CEAA part of the Panel's terms of reference. It does not deal with alternatives, particularly with alternative means of providing Vancouver Island with adequate future electricity. It does not say that the GSX is the most environmentally benign option.

And the Panel has clearly indicated that will it run many miles to avoid dealing with Hydro's strategy of gas-fired generation for additional power on Vancouver Island. But for many, this remains the central issue in the GSX controversy.

### **NEB Part**

This initial report does not deal with the National Energy Board part of the terms of reference: the economic justification for the pipeline, gas supply, resultant electricity prices, and the effect on domestic and industrial power consumers. It also avoids discussing recently proposed alternatives, such as green power, conservation, and increased industrial cogeneration. The Panel even refused to consider recent information on Terasen Gas's proposal to increase the capacity of its existing pipeline to Vancouver Island, despite an intervenor's motion to do so. (Terasen used to be Centra Gas, and was BC Gas for a while; the names have changed while all this has been going on.)

As the BC Utilities Commission (BCUC) hearings started up at about the time the Panel wound down, it appears that the Panel took the opportunity to narrow their focus to a squint at

the GSX proposal and only the GSX proposal, and concluded, 'Yeah, that'll be OK if they do what they say they're going to do, and send us lots of documents along the way to cover themselves' (and, not incidentally, to cover the federal Environment Ministry).

So now this report has been sent to the federal Minister of the Environment. He will send it to Parks Canada and Fisheries & Oceans Canada for their comments, and then the whole thing will be forwarded to the federal cabinet for their 'response'.

This is supposed to be accomplished in 60 days, which takes us to the end of September. The response is then sent back to the Joint Review Panel, who then expect to take six to eight weeks to produce a second report, termed the National Energy Board's 'Reasons for Decision'; the 'Decision' being whether or not to issue a Certificate of Public Convenience and Necessity to GSX.

If you're still with us, this could take us to the end of November (or longer, anticipating changes in the federal cabinet).

This should be sufficient delay to ensure that the NEB doesn't get ahead of the BCUC, which, just to confuse things further, is supposed to issue another Certificate of Public Convenience and Necessity to the proposed Duke Point generation plant. And, as Hydro has testified, no Duke Point, no need for GSX. Is that all clear now?

### **Excuses, Excuses**

The Panel turned many logical cartwheels to avoid considering alternatives to the GSX pipeline. First of all, it accepted the list of alternatives put up by GSX-PL (Hydro). These included alternative routes for the pipeline across the Strait, or transporting Liquefied (LNG) or Compressed Natural Gas (CNG) from the mainland by ship. These alternatives were all summarily dismissed, for generally practical reasons. The alternative of increasing the capacity of the existing Terasen gas pipeline was also dismissed since, on Hydro's costing, this would cost more than building the entire GSX. (Terasen disputed this at BCUC; see below).

Interestingly, another reason put forward by Hydro for rejecting these alternatives was that they would 'bypass potential markets in Washington State.' I can only think they mean San Juan Island.

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But the most revealing mental gymnastics occurred as the Panel attempted to justify its refusal to consider the refurbishment of the existing HVDC transmission lines as an alternative. Are you ready for the key quotation?

'While the cables might be an alternative way to meet the demand for electricity on Vancouver Island, they are not an alternative to the Project as scoped under the *CEA Act*. "Alternatives to" the Project must achieve the Project purpose and meet the Project need. The Minister scoped the Project as a gas transportation undertaking that will move gas to Vancouver Island. The need for the Project is to provide gas primarily for the generation of electricity on Vancouver Island. A project which supplies only electricity to Vancouver Island, such as the replacement or refurbishment of the existing subsea cable system, does not encompass the same purpose nor meet the same need as the Project. The subsea cable system would not transport gas to generate electricity and it would not, for the purposes of the *CEA Act*, be an 'alternative to' the project as scoped by the Minister.'

The mind boggles. Not a slight, wavering boggle, but a boggle of an amplitude of at least 7 on the Richter scale.

Retired BC Chief Justice Bryan Williams, Q.C., the 'local' member of the Panel (the other two, Elizabeth Quarshie and Rowland Harrison, are both government appointees to the NEB) appears to have boggled as well, but may have been outvoted. In a footnote, he adds plaintively: 'I would have welcomed the opportunity to consider the refurbishment or replacement of the subsea cables as an option or 'alternative' to the pipeline to meet the need for electricity on Vancouver Island as the cable system is something that should be considered. However, it appears that this Panel does not have the authority under the *CEA Act* in light of the scope of the Project set by the Minister to consider the cables as an alternative. It is for that reason alone that I have concluded the Panel is precluded from considering the cable system as an alternative.'

### The Vancouver Island Electricity Strategy

The Panel devoted a small part of this report to discussing why it would not discuss the overall strategy of gas-fired generation on Vancouver Island. (It did, however, devote a substantial part of the appendices to case law supporting its reluctance to take on this issue.) Its reasons: constitutionally, it's the BC Government's business, and anyway, the BCUC is doing it. One can almost hear the sigh of relief.

It did, however, administer a tap on the wrist: 'the perceived absence of a clear transparent process to incorporate public input into the Province's energy decisions has resulted in a high degree of frustration and anger for residents of Vancouver Island. Concerns regarding the provincial decision to use gas-fired electrical generation on Vancouver Island, and a genuine desire to be actively involved in such policy decisions, resulted in many parties seeking to use this panel review process as a

substitute for a proper provincial process (\*footnote here refers to the BCUC hearings). The panel heard from many concerned individuals eager to share their views on the importance of the wise use of energy resources. While these matters are outside the Panel's mandate, the Panel is of the view that these concerns are important and should be shared with other Canadians and their governments. To that end, these concerns are conveyed in this Report in the hope that they will be read and considered by the Minister of the Environment and other provincial and federal government departments.'

Clearly, the Panel saw the danger of getting any more involved than this. In a lengthy Appendix, quoting many legal precedents, it anticipated that it could lead to 'this Panel undertaking an assessment of the energy strategy of the Province of BC'. This would be 'constitutionally inappropriate'.

### Copping Out

So despite spending a lot of time hearing arguments about the gas-fired strategy, pollution and greenhouse gases from the proposed Duke Point plant, and the accuracy of Hydro's estimates of future power consumption, the Panel has refused to comment on them in this environmental report.

But it has coyly suggested that they may be considered in its NEB 'Reasons for Decision' to be issued later in the fall. Under Section 52 of the NEB Act, the Panel is supposed to consider the availability of gas, the existence of markets, the economic feasibility of the pipeline, the financial responsibilities of the applicant, and the public interest. It remains to be seen whether these continue to be interpreted by the Panel as narrowly as we have seen so far, or whether it will withdraw further into its legal shell.

### BCUC Carries On

Meanwhile, a BCUC session in Vancouver on July 28 hinted at its current thinking. Just suppose, said the BCUC, that:

- the HVDC (the powerline that runs across Galiano and Salt Spring) system is 'zero-rated' in 2007 (this doesn't mean it's closed down, just that they don't depend on it)
- the power shortfall on Vancouver Island in 2007 is 100-150Mw (less than the 213Mw Hydro estimated)
- there is some urgency to making up this shortfall but it could wait till 2008 (casting further doubts on Hydro's estimates)
- the eventual long-term solution to Vancouver Island's needs is some combination of on-Island generation and new 230Kv lines from the Mainland
- there's not enough evidence to conclude that the GSX/Duke Point strategy is the least cost alternative
- a Call for Tenders by Hydro is the appropriate next step. This would enable the BCUC to determine the least cost alternative, and check out firm proposals from Terasen and NorskeCanada, among others.

As before, stay tuned. ☞

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