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Who will pay for Gateway spills?

Sara Miles

Most of the public concern about Enbridge's 1200km Northern Gateway pipeline proposal has focused on the impacts that an oil spill could have on the natural environment. It is true, the pipeline that Enbridge is planning to build to send diluted bitumen from Alberta's tar sands to the BC coast, and on to Asia, does pose a great risk to our commons. However, a driving factor of the project—the economics of that risk—have not been a big enough part of the discourse. Economist Robyn Allan, who was CEO of ICBC and now lives in Whistler, is uncovering details about the business structure of the Gateway project that will astound you.

In her first submission to the Joint Review Panel (JRP) that is considering the Gateway proposal, Allan pointed out the potential financial obligations and the lack of resources for the project in the event of an accident. The National Energy Board came back to her with questions, which she expanded upon in a 68-page response.

'They may have concerns as well,' says Allan. 'This seems to be the first time the regulator has been presented with a structure where the project is a stand-alone project and shippers are also investors.' In an interview with *Island Tides*, Allan explained several reasons why BC taxpayers might end up footing the bill for the clean-up of any oil (or diluent) spilled from the twin pipeline.

First of all, she has found that there is currently no guarantee that the project will have sufficient 'leak and burst' insurance. In fact, it might not have any insurance, as this appears not to be a requirement for the project.

Second, it is possible that there will not be any company money to deal with a major spill, as the project's financial plan states that any profits will be distributed annually as dividends to the shareholders (unit-holders). Money will not be retained or reinvested in the company.

Finally, the Northern Gateway project is structured as a limited liability partnership (LLP). Enbridge intends to own only half of the project. Rights to the rest of the units are being sold to a number of companies, including Sinopec, a national oil company owned by the Chinese government. One unit was reserved for First Nations participation in the project.

LLPs are not an unusual structure; they make it easier to secure financing and can protect investors from tax and other

obligations, such as the inability of Northern Gateway to pay for liabilities. However, with assets consisting solely of the pipeline and the marine terminal, says Allan, Northern Gateway is unique as a *stand-alone* project. As an LLP that will have no cash, very few assets, and little to no insurance, this project is a threat to the public purse.

How much might it cost us to clean up an oil spill? Enbridge is not committing to any estimates, saying it can not predict future costs. For some answers however, we can look to the Line 6B spill that occurred in Kalamazoo, Michigan, two years ago. Enbridge says that incident is not representative of what could happen, but the substance spilled from Line 6B was diluted bitumen (dilbit) from the tar sands, the same product that the company is planning to move through Northern Gateway. The cost of clean-up in Michigan is currently at about \$800 million. Though the river has re-opened for recreational use, the clean-up is not complete and restoration efforts have yet to begin.

At the time of the Kalamazoo spill, Enbridge had \$650 million in pollution liability insurance for their *entire operations*. For the remaining clean-up funds, Enbridge Energy Partners in the US was able to draw upon its multiple operations. By using cash at hand, for example, or borrowing against their many assets they were able to make up the shortfall not covered by insurance. Obviously, they couldn't use the revenues from 6B while it was shut down for three months—no flow, no revenues. They seem to be making out okay though, as Enbridge Energy Partners is a huge company.

It's interesting to note that Enbridge only bought \$575 million in pollution liability coverage for their entire Canadian and US operations in the year following the Kalamazoo River spill, and that even with the reduced coverage, their insurance premiums went up.

Back to Northern Gateway: the twin pipeline and Kitimat marine terminal will be one operating system. Is the LLP going to sell pieces of the system to pay the costs of cleaning up a spill from it? That would be absurd. Besides, there is no guarantee Enbridge could provide any financial resources if the spill claim exceeded the insurance that Enbridge decided to provide, says Allan.

In her report to the JRP, Allan recommends that Northern Gateway, if it is approved, be required to prove it can pay for a

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major spill from the pipeline. A compulsory, stand-alone, minimum \$1 billion insurance policy is one way to achieve this guarantee, she says. 'They can't say they'll make good on the costs without proving they will do it. Without a way to hold Enbridge accountable, we have to believe it will not happen.'

At this point, the profits flow to the unit-holders, but there is nothing showing Enbridge can be held liable for any spill costs associated with Northern Gateway.

Add to this scenario the facts that a) much of the Gateway pipeline will be in territory more remote than where the 6B spill occurred; b) dilbit spilled into waterways poses unique cleanup challenges (as reported by Patrick Brown in *Island Tides*' July 12 edition, the toxic diluent evaporates, and the bitumen sinks to the bottom—imagine trying to get that out of the fast-flowing Kitimat River); and c) Gateway's risk management planning omits the 'human factor'—the system may be perfectly designed, but someone, somewhere, will eventually make a mistake.

Human error and incompetence were the main reasons for the vast amount of dilbit spilled in Michigan. However, Enbridge is not addressing this. 'Reviewing the risk assessment submitted to the JRP, there is no reference to the Kalamazoo spill or what we now know to be Enbridge's 'culture of deviance';

says Allan, referring to the US National Transportation Safety Board's recent findings regarding the Kalamazoo spill.

Essentially, the Gateway application minimizes the risk and overestimates the resources. 'Enbridge seems to have presented to the NEB an analysis that understates spill risk and overstates their ability to respond to that spill when it happens,' concludes Allan. 'Northern Gateway has not assured the people of BC that it has the resources or the capacity to clean up a spill.'

You can't get blood from a stone, the saying goes. In the case of an accident and subsequent shutdown of the pipeline, Northern Gateway's single asset would stop generating revenue until the damage is repaired and the oil flows again. With little to no insurance, where would the clean-up funds come from?

The LLP structure protects the unit-holders, so there would only be two pockets deep enough to deal with the problem: the provincial or federal government treasuries. Your tax dollars!

How would Kevin Falcon and Jim Flaherty, our finance ministers, explain that?

Last year, when Robyn's son asked if she knew anything about the Northern Gateway Pipeline, she said she would get back to him. She is doing just that. ☺