



Kaviq Kaluraq  
Chairperson  
c/o Karen Costello  
Nunavut Impact Review Board  
Cambridge Bay, NU

3. It would not, as Baffinland suggests, be fair to all parties to reconvene the Public Hearing for the Phase 2 Proposal until the Board-directed Technical Meeting and PHC have been held to discuss and deal with technical issues, per the NIRB's Rule 18.1 and 18.2:

18.1 In order for the Board to be satisfied that the EIS contains the information necessary to proceed to a hearing, the Board may direct NIRB staff to hold a meeting of the parties' technical experts, either in writing, by teleconference, or in person. A meeting of technical experts is not a hearing.

18.2 The Board shall give notice of a meeting of technical experts to the proponent and the project proposal distribution list at least 60 days before a meeting of technical experts.

4. It would not be fair to proceed to a Hearing, and in so doing, deem the Phase 2 proposal sufficiently developed and technical issues substantially dealt with, without holding a Technical Meeting which allows for the presentation of resolutions by parties, and provides an opportunity for all Intervenors and their technical experts to submit questions and engage in discussions with other Intervenors and technical experts around resolutions and the pathways used to reach them.
5. It would not be fair to proceed to a Hearing, and in so doing, deem the Phase 2 proposal without holding a PHC and Community Roundtable session, to both identify issues to be dealt with at the Hearing and to solicit and consider input from community members related to the technical matters and Proponent commitments under consideration prior to the Hearing.

With respect to Procedural History and Adjournment of 2019 Public Hearing, our responses are as follows:

1. Baffinland suggests that the procedural history of these proceedings since the Board adjourned the Public Hearing on November 6, 2019 demonstrates the fairness in reconvening the Public Hearing on October 30, 2020. The MHTO submits that this is not the case.
2. In March 2020, NIRB postponed the Technical Meeting, PHC, and Community Roundtable owing to pandemic health concerns.
3. On April 14, 2020, Baffinland requested an immediate re-start to the process, asking that Technical Meetings and PHC be scheduled to commence within two weeks, by April 30, 2020.
4. Contrary to its own 2009 Gazetted Rules of Procedure, specifically item 18.2 and 20.1 (b), on April 21, 2020 the NIRB issued notice that the TM would commence in 14 days, on April 28, 2020.

18.2 The Board shall give notice of a meeting of technical experts to the proponent and the project proposal distribution list at least 60 days before a meeting of technical experts.

20.1 The Board shall give notice of a hearing to the proponent and the project proposal distribution list at least: (a) 25 days before a community meeting, hearing of a motion, or other pre-hearing matter;

5. Baffinland's summary of procedural history neglected to identify that on or before April 23, 2020, the Arctic Bay Hunters and Trappers Organization, Hamlet of Clyde River, Igloolik Working Group, Hamlet of Pond Inlet, Hamlet of Sanirajak, Hunters and Trappers Organization of Sanirajak, and EcoJustice on behalf of the MHTO, provided correspondence to the NIRB outlining the grave unfairness to community organizations from proceeding with haste, and via a teleconference format.
6. Furthermore, Baffinland's summary of procedural history incorrectly states that "on April 24, 2020, the Board postponed the third Technical Meeting set to begin April 28, 2020 because of COVID-19", when in fact, the NIRB stated that given "significant opposition and limits on the participation of all parties...these meetings cannot proceed as proposed." The NIRB also indicated that "prior to proposing a modified process, the Board will solicit comment from prospective participants to ensure their views are fully considered before charting a path forward for this assessment." Baffinland's summary omits both the opposition to proceeding, and the NIRB's important procedural commitment to consult with parties prior to proceeding with re-scheduling.
7. On July 7, 2020, Baffinland again wrote to NIRB asking for a recommencement of the Technical Meeting, owing to the signing of the Inuit Certainty Agreement (the "ICA") with the Qikiqtani Inuit Association (the "QIA") and supposed resolution of "many" technical issues.
8. On July 24, 2020, Baffinland wrote to the NIRB again, requesting the NIRB reschedule the Hearing, noting that all parties had a nine-month opportunity to review information. The MHTO submits that given the pandemic related closures, limits on gatherings, and travel, the parties have not had nine months to review information as suggested by Baffinland. Five of the last nine months have been spent under orders of a Public Health Emergency, which has significantly changed and limited the way people work and has not allowed for normal progress toward review of information as Baffinland suggests.
9. The NIRB has not yet consulted with parties on next steps in the assessment per its commitment of April 24, 2020. Proceeding with a scheduling of the Hearing or any further process steps at this point, absent input on that matter, would run contrary to its commitment, and would prejudice the MHTO.
10. Baffinland's procedural history references the ICA and resolution status of technical issues it developed with the QIA.
11. The MHTO submits that these resolutions and the ICA as applicable, must be subject to testing before other technical experts at a Technical Meeting, and, if deemed necessary, also further considered at a Pre-Hearing Conference. Furthermore, in keeping with the NIRB's March 12, 2020 correspondence stating the "objective of the Technical Meeting and Pre-hearing Conference is to review outstanding technical issues associated with parties' review of the Final Environmental Impact Statement (FEIS) Addendum, as well as outstanding issues and additional submissions provided by Baffinland following the adjourned Public Hearing in November 2019", the MHTO submits that we require these additional process steps prior to a Hearing.
12. Baffinland has not demonstrated that all technical issues are resolved, or that any issues of high importance have been resolved. On this basis the MHTO submits that a Technical Meeting and Pre-Hearing Conference are required prior to scheduling a Hearing.

13. A Community Roundtable was scheduled to be held in March 2020, in order to hear input from potentially impacted communities around technical concerns and issues relevant to the current stage of the assessment.
14. In correspondence filed July 24, 2020, Baffinland suggests a Community Roundtable would be included in the Public Hearing it requests to have scheduled in October 2020.
15. MHTO submits that this would effectively do away with one Community Roundtable session, and instead, hold only one of these sessions during the Public Hearing as proposed for October 2020.
16. The MHTO suggests that this is an unacceptable modification to the process, and one that adversely prejudices community members, and unfairly limits the amount of community input to the NIRB process.
17. Baffinland has not provided evidence of any significant or meaningful community engagement undertaken since the adjournment of the November 2019 Public Hearing.
18. Baffinland has not provided evidence of recently improved community comprehension around the Phase 2 proposal.
19. Baffinland has not provided evidence of recently expressed community support for Phase 2 proposal.
20. The MHTO has not been consulted adequately on the ICA or the resolution of technical issues it claims to have resolved.
21. The MHTO is not aware that the QIA or Baffinland have presented any aspect of the ICA to communities, aside from posting documents to local social media pages. It is unacceptable to levy the ICA without adequate and informed consultation and consent of communities to its use in limiting assessment process steps.
22. It is not appropriate to schedule a Public Hearing, or even determine that a Hearing should proceed, until after a Pre-Hearing Conference is held in respect of the Phase 2 Proposal per Rule 21.1.

Rule 21.1 states: In order to facilitate the hearing process, the Board may hold a pre-hearing conference with the parties either before or after the date of a hearing is set. The pre-hearing conference may be held in writing or orally, by teleconference or in person, and deal with any of the following matters:

- (a) Prepare a clear statement of issues in question;
- (b) Confirm the participation of authorizing agencies in the hearing;
- (c) Identify and register intervenors;
- (d) Determine the positions of the parties;
- (e) Determine the witness list;
- (f) Determine whether the parties may benefit from a mediation meeting to discuss the issues;
- (g) Set a timetable for the exchange of documents and information requests prior to the hearing;
- (h) Finalize procedures to be followed in the hearing; and
- (i) Decide any other matters that may aid in the simplification of the hearing.

23. A PHC has already been scheduled for this Hearing. Despite this, Baffinland now claims a delay in scheduling the Hearing through the holding of the PHC will cause prejudice to its shareholders, contractors, and employees.
24. The MHTO submits that Baffinland, in accordance with its 2019 Sealift Management Plan filed with the NIRB and dated July 16, 2019, preemptively procured and shipped significant amounts of equipment and materials required for the Phase 2 proposal, prior to the scheduling of the November 2019 Hearing, and prior to any certainty around project approval. Given the demonstrated acceptability of this level of risk to Baffinland, we suggest the NIRB's scheduling of next steps in this process would not introduce any additional prejudice, and further note that the duty of procedural fairness is not owed to shareholders, contractors, or employees, but to the Applicant, who makes decisions that impact on its shareholders, contractors, and employees.
25. Baffinland claims a need for relief via a scheduling of Hearing dates so as to prevent prejudice to its shareholders, contractors, and employees. Baffinland is prejudiced by the timing of process steps only if the NIRB's ultimate recommendation and Minister's decision is an approval; a delay in Project approval costs Baffinland in terms of liens on Project materials procured and shipped prior to approval, and in terms of foregone opportunity. If the Phase 2 is ultimately not approved, the process timing will not have had any bearing on Baffinland's shareholders, contractors, or employees.
26. Additionally, the prejudice to the MHTO from expediting the process will greatly outweigh any alleged benefit to the proponent. The ICA has not addressed the concerns of the HTOs or impacted communities. In order for the NIRB to uphold their duties to consult these communities and organizations, the previously scheduled Technical Meeting and PTC are significant and cannot be avoided.

In Summary, the MHTO notes the following as grounds to dismiss Baffinland's Motion:

1. Outstanding technical issues have not been addressed adequately. The ICA was signed without any consultation or agreement of community organizations or individuals.
2. The previously scheduled Technical Meeting and Pre-Hearing Conference and associated Community Roundtable are no less important now, given the amount of time that has passed since adjournment of the November 2019 Hearing. The risk of this project and the costs that communities and Inuit would face if the assessment process follows anything other than the highest level of engagement and thoroughness, is too high, and modifications which threaten engagement or thoroughness, are entirely unacceptable.
3. All things are not equal, that is, a nine month delay in the NIRB's process does not reflect nine months of effort to address technical issues and develop commitments for a path forward. The request to reschedule the NIRB Hearing does not take into account the major issues the Covid-19 pandemic have caused, and continues to cause for the public and for organizations operating in Nunavut.

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The MHTO trusts our Reply to the Motion will be duly considered by yourself and the Board in its finding on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Enookie Inuarak', with a horizontal line drawn through the middle of the signature.

Enookie Inuarak  
Vice-Chairperson  
Mittimatalik Hunters and Trappers Organization