

July 26, 2007
Telegraph-Journal

Lawsuit filed over natural gas pipeline route

Sierra Legal comes in to help the Friends of Rockwood Park in their battle

Sandra Davis

SAINT JOHN - A lawsuit has been filed against the National Energy Board (NEB) alleging that its review panel failed to consider an alternative route before giving Emera Brunswick Pipeline Company Ltd. the green light to build a natural gas pipeline through Rockwood Park.

The lawsuit was filed earlier this month in the Federal Court of Appeal by Sierra Legal on behalf of the Friends of Rockwood Park.

"We allege that the NEB review panel failed to do what was perhaps the most fundamental task it had been charged with and that was considering an alternative marine route through Saint John Harbour," said Lara Tessaro, Sierra Legal lawyer, during a press conference on Wednesday morning.

"We think that a suggestion that they only had to consider their (Brunswick Pipeline's) preferred route is wrong in law."

Sierra Legal is Canada's largest non-profit environmental law organization.

It's impossible to weigh the economic and environmental pros and cons of a route through the park versus a route through the harbour when the NEB failed to consider a marine route, said Tessaro.

"At essence, we think it's very important that the people of Saint John and the NEB decision-makers know which route is environmentally harmful and we don't think that can be ascertained by the studies that the NEB did."

Tessaro alleges that, under the Canadian Environmental Assessment Act, the NEB was bound to consider the underwater route.

Several federal departments and agencies are also named in the lawsuit, along with Emera Inc. and Emera Brunswick Pipeline Company Ltd.

Brunswick Pipeline is a wholly owned subsidiary of Emera Inc., a publicly traded, Halifax-based company. The 145-kilometre, 76-centimetre diameter pipe will deliver natural gas from the Canaport liquefied natural gas terminal in Saint John to the U.S.-Canada border near St. Stephen, where it will connect with the Maritimes & Northeast Pipeline.

Hearings for the proposed pipeline mark the first time the federal environment minister has approved the NEB's public hearing process for assessing the environmental effects of a project as a substitute for an assessment under the Canadian Environmental Assessment Act.

"It was clear to us that, as a condition of that, the alternative route would have to be considered meaningfully," said Tessaro.

"For that reason, we think there is some precedent to be set here even in a colloquial way. It's important that

a substitute review panel understand that they have to do their job, too."

The lawsuit, in the form of a judicial review, has been before the courts for three weeks while, at the same time, Tessaro waits to hear whether the Friends of Rockwood Park will be granted an extension to seek leave to appeal - ideally, the appeal should have been filed within 30 days of the decision, which came down on May 31. Tessaro filed a request for an extension last Wednesday.

"Our view is that, if we're not given leave to appeal, we still have the ability to go ahead with our judicial review," said Tessaro.

"Ultimately, what we'd like to do is consolidate the two. The argument is the same and we think it's important not to have the court hear the same kind of argument twice."

In an appeal, if the applicant is successful, the court overturns the decision. If a judicial review is successful, an order could prohibit federal permits from being issued.

Tessaro hopes the wheels of government turn slowly.

"It's our hope that the government will see fit not to issue permits until this litigation has a chance to go through the courts," she said.

Meanwhile, Brunswick Pipeline spokeswoman Susan Harris said the company is continuing to file for permits with a view to starting pipeline construction in November.

"I don't see it (the court proceedings) as slowing Brunswick down. The appeal was not unexpected. We will continue our pre-construction work and our filings," she said. Common council approved an easement through Rockwood Park last week.

Leland Thomas, a spokesman for the Friends of Rockwood Park, said the lawsuit's launch represents a 'turning point' in their battle to keep the pipeline from going through the park. He says the group has collected 15,000 signatures of people opposing the pipeline route.

"We will no longer stand in silence and accept development that no one else wants."

Sierra Legal is providing legal advice and representation pro bono but it's unclear who will cover the opposing side's legal costs if the Friends of Rockwood Park lose an appeal.

But, Thomas admits, the possibility is something the group has considered.

"If everyone is scared away from taking corporations to court, our system of laws breaks down and we'd have the corporations running the country instead of the people," he said.

The project is expected to attract about 1,000 workers over the course of construction.

Total direct employment for the \$350-million-plus project is estimated at 373 person-years.

Brunswick hopes to complete the pipeline by late 2008.