

Grassy Mountain Coal Project Joint Review Panel

August 12, 2020

By e-mail only

To: Hearing Participants

Subject: List of Hearing Participants and Outline of Electronic Hearing Procedures for Comment

On June 29, 2020 the Joint Review Panel (the Panel) established to review the proposed Grassy Mountain Coal Project (the Project) issued a Notice of Hearing. The Panel has issued its participation decisions in response to the requests to participate it received in response to the Notice of Hearing. All participation decisions have been communicated directly to the parties that submitted a request. A list of hearing participants is included in Appendix A.

Within the notice, the Panel asked parties to provide their views on preferred dates, locations, and format of the hearing along with their request to participate. This letter provides a summary of the input received with respect to locations and format, the Panel's decisions related to these matters, and areas where the Panel is seeking further feedback from hearing participants.

Views on Hearing Locations, and Format

With respect to views on location(s) for the hearing, the majority of parties suggested Calgary, Crowsnest Pass or another community near the Project as potential locations. Lethbridge and Pincher Creek were also included in the suggestions of possible locations. Some parties recommended that the hearing be split between Calgary and a local location.

With respect to views on format of the hearing, there were several suggestions for a hybrid approach, as well as submissions which indicated people or groups could be amenable to either an in-person or an electronic format. Some parties indicated a preference for or requested electronic means only due to travel restrictions and safety considerations related to COVID-19. Some parties suggested "small" in-person sessions, and to limit the attendance of in-person hearings to only those presenting, due to concerns related to COVID-19. Some submissions also mentioned that the public hearing should be available online for all to observe.

Request for an Information Request Process

Some parties requested that the Panel establish a formal process for information requests (IRs) to allow for hearing participants to request additional information from Benga Mining Limited (Benga). The Panel has decided not to designate a formal IR process because it has already undertaken an extensive process, which consisted of several comment periods and several packages of panel IRs being issued to Benga. The Panel's IR process was conducted in addition

to the IR process that was completed by the Alberta Energy Regulator (AER) and the Impact Assessment Agency of Canada (the Agency) prior to the appointment of the Panel. Should hearing participants find it necessary to ask Benga for additional information, the Panel encourages those participants to reach out to Benga directly as recommended in Benga's letter to the Panel (CIAR #444).

Request for a Pre-Hearing Meeting

Some parties requested that the Panel hold a pre-hearing meeting to discuss the format, timing, location, procedures, and other matters related to the hearing. The Panel recognizes that the COVID-19 pandemic has created uncertainty about how the public hearing for the Project will be conducted. The Panel has decided not to hold a pre-hearing meeting and is of the view that the most effective approach to determining the procedures for the public hearing is to release an outline of electronic hearing procedures for comment. The hearing procedures have been prepared in consideration of the unique circumstances of conducting a public hearing during a pandemic, while ensuring that the hearing is accessible to all participants.

Constraints to having an In-Person Public Hearing

The Panel is faced with numerous constraints, considerations and requirements with respect to holding a conventional in-person public hearing during the COVID-19 pandemic, such as:

- Obtaining approval from the AER and the Agency to hold a public event and for members of the Panel secretariat to travel to provide administrative, technical, and procedural support to the Panel. At this time the AER is not holding oral portions of public hearings by virtue of its March 17 COVID-19 response policy. Due to COVID-19, employees of the Agency are carrying out their work remotely.
- The right of all workers, regardless of their employer, to refuse work that is perceived to be unsafe.
- New/random interactions among individuals may cause an increased risk to established cohorts or social bubbles.¹
- Limitation on the number of people who may gather in an indoor space.
- Administering COVID-19 screening questionnaires and temperature checks to all attendees on every day of the in-person hearing and refusing attendance to individuals who do not pass screening questions.
- Procuring a physical space which can accommodate physical distancing requirements for all areas (entry/exit, meeting space, washrooms, hallways, aisles and dining spaces).
- Managing the physical hearing space and the participants to ensure minimum physical distance (2 m) is maintained.

¹ Available online: <https://www.alberta.ca/assets/documents/covid-19-relaunch-guidance-cohorts.pdf>

- Ensuring adequate personal protective equipment (e.g. masks, face shields, plexiglass dividers, gloves) is available and is being utilized as required by hearing attendees.
- Ensuring that hand sanitizer is available and all surfaces and frequently used areas are sanitized as required.
- Capability to implement a rapid response plan that satisfies provincial and federal health requirements if a hearing attendee starts to feel or exhibit symptoms associated with COVID-19.
- Recommendations against non-essential travel (including inter-provincial travel) would impact the ability of some hearing participants and witnesses (e.g. Government of Canada departments) to attend the hearing in person.

The Panel is committed to following public health measures and the advice of provincial and federal health authorities. The Panel is also unable to predict what public health measures will be in place in Alberta in October 2020. Provision 24 of the Panel's Terms of Reference state that at least a portion of the public hearing sessions shall be held in proximity to the Project. The Panel is exploring options for how this could occur given the constraints noted above and has also requested clarification from the President of the Impact Assessment Agency of Canada and the Chief Executive Officer of the Alberta Energy Regulator on whether this provision of its Terms of Reference could be satisfied by allowing participants to participate electronically, given the extenuating circumstances (CIAR #489).

Comments on the Outline of Electronic Hearing Procedures

Conducting an in-person hearing or hearing sessions would be highly complex and the risk of contracting COVID-19 could not be completely mitigated or eliminated. The AER's hearing room (Govier Hall) is small and when considering physical distancing requirements (2 m), would only be able to accommodate a small number of people. Under the current direction of the AER due to COVID-19, external parties are not permitted to enter Govier Hall.

Because a conventional in-person hearing would be very difficult to carry out, the Panel believes that the hearing should be held online, using electronic means. The Panel is seeking the views of hearing participants and Benga on the following outline of electronic hearing procedures. In designing detailed procedures, the Panel will consider feedback from participants and have regard for emerging practices for electronic hearings. The Panel is aware of a number of best practice documents that have been released, such as [The Best Practices for Remote Hearings \(May 13, 2020\)](#) developed by the Ontario Bar Association.

1. The Panel proposes to use Zoom as the electronic platform to host the public hearing online.
2. Only the Panel, Panel's counsel, electronic hearing host, Hearing Coordinator(s), Panel Manager, Panel secretariat, court reporters and hearing participants (including counsel and witnesses) would participate in the hearing via Zoom (or by telephone call-in feature).
3. Any hearing participants that are not actively presenting, conducting questioning or responding to questions, or speaking on behalf of someone being questioned must turn their video off and mute their microphone.
4. The electronic hearing host will control access to the hearing room and permit entry based on a pre-designated list of hearing participants.
5. Upon entry to the Zoom hearing session, all attendees must label themselves with their name and affiliation (e.g. John Smith, ABC Company).
6. Hearing participants are responsible for ensuring that they have access to all information (including submissions) filed on the Canadian Impact Assessment Registry (the Registry) for the Project.
7. Hearing participants that have presented their oral evidence, responded to questions from Benga and the Panel, and have no further expectation of active participation in the hearing, may elect to observe the remainder of the hearing via YouTube instead of joining the hearing via Zoom.
8. Transcripts of the public hearing will be produced by a court reporter and posted to the Registry for the Project. The transcripts are the official record of the hearing.
9. The hearing will be open to the public via live streaming on YouTube. The YouTube recordings of the hearing will be available to view for 30 days after the close of the evidentiary portion of the hearing. A link to the YouTube recordings will be made available to all hearing participants and observers.
10. All active participants will be responsible to join the Zoom hearing from a location with a strong and stable internet connection. If this is not possible, they will be able to call into the Zoom meeting using a telephone.
11. If an active participant loses their connection, then the hearing will pause until that person or person(s) can rejoin the hearing. Alternatively, the hearing will be adjourned until technical issues can be resolved.
12. Witnesses can be sworn or affirmed over video in accordance with the *Alberta Evidence Act*. They will need to have a Bible or some other sacred object at their location if they choose to be sworn.

13. Virtual breakout rooms (on Zoom) will be provided for each participant or participant group for use as required.²
14. In order to accommodate hearing participants located in different time zones and to allow more time between hearing sessions, the Panel is willing to consider shorter hearing days. Therefore, the hearing may extend for a longer period of time than a conventional in-person hearing.
15. The Panel secretariat will hold an information session on hearing procedures, as well as on the use of Zoom prior to the hearing.
16. The Panel secretariat will also hold a test session so that any technological issues can be detected and resolved in advance of the hearing. All hearing participants are required to participate in the test session (invitations to be provided).
17. During the hearing, participants may contact the Hearing Coordinator or Panel Manager by email ([hearing.services@aer.ca](mailto:hearing.services@ aer.ca) or IAAC.GrassyMountain.AEIC@canada.ca).

Questions for Participants

The Panel has identified the following questions to guide hearing participants in providing feedback on the outline of electronic hearing procedures. Responses to these questions will be considered in the Panel's decisions about hearing format moving forward.

Question 1 – Procedure of the hearing:

Would you prefer to have the presentation of evidence and cross examination during the electronic hearing be conducted by party³ or by issue/topic? Please provide a rationale for your stated preference.

Question 2 – Concerns about electronic hearings:

As a hearing participant, if you have concerns about participating in an electronic hearing, what are they? What measures (and by whom) could be taken to mitigate those concerns?

Question 3 – Counsel concerns about electronic hearings:

(If applicable) As counsel representing a hearing participant(s), what do you see as the potential difficulties in fulfilling your roles and responsibilities if the hearing was conducted via electronic

² Using Zoom, up to 50 breakout rooms can be created. The maximum number of participants in a single breakout room depends on the meeting capacity, number of breakout rooms created, and if participants are assigned during the meeting or before the meeting.

³ Hearings held by the AER typically follow a procedure where the hearing begins with the applicant's direct evidence followed by cross examination by other participants (adverse in interest) and questions from the Panel and the Panel secretariat. Following the applicant, participants present their direct evidence and are subject to cross examination (by parties adverse in interest) and questions from the Panel and the Panel secretariat. An alternative option is for direct evidence, cross examination and questioning to be completed by topic (water, wildlife, etc.).

means? What measures (and by whom) could be taken to mitigate these perceived/potential difficulties?

Comments on the outline of electronic hearing procedures should be provided to IAAC.GrassyMountain.AEIC@canada.ca **no later than August 26, 2020**. Documents submitted or generated as part of the environmental assessment will be considered public, and will be made available on the Canadian Impact Assessment Registry for the Project.

Yours truly,

<Original signed by>

Alex Bolton
Chair, Joint Review Panel

Appendix A: List of Hearing Participants for the Grassy Mountain Coal Project Public Hearing

A

Alberta Chapter of the Wildlife Society and
the Canadian Section of the Wilderness
Society
Allred, Ken

B

Benga Mining Limited⁴
Bradley, Fred

C

Canadian Parks and Wilderness Society –
Southern Alberta Chapter
Coal Association of Canada
Coalition of Alberta Wilderness Association
and Grassy Mountain Group
Crowsnest Conservation Society

D

Des Moulins, Alistair
Des Moulins, Gail
Donkersgoed Feeders Ltd. and Berdina
Farms Ltd.

E

Eco-Elders for Climate Action
Emard, Vern
Environment and Climate Change Canada

F

Field, Monica
Fisheries and Oceans Canada

G

Garbutt, Allan

H

Health Canada

I

Impact Assessment Agency of Canada

J

Janusz, Barbara D.
Judd, Mike

K

Ktunaxa Nation

L

Livingstone Landowners Group

M

McIntyre, David
Métis Nation of Alberta Region 3
Municipal District of Ranchland No. 66
Municipality of Crowsnest Pass

N

Natural Resources Canada

O

Oldman Watershed Council

R

Rennie, Jim

S

Shuswap Indian Band
Stoney Nakoda Nations
Suncured Alfalfa Cubes Inc.

T

Timberwolf Wilderness Society
Town of Pincher Creek
Trout Unlimited Canada

⁴ Please note that Benga Mining Limited is the applicant in the public hearing for the Grassy Mountain Coal Project.