

Disclosure of and Approach to Material Risks Related to Free Prior and Informed Consent of First Nations

Whereas:

The company's proposed \$4.5 billion *Northern Gateway Project* (Gateway) in Western Canada takes place in areas where comprehensive aboriginal territory claims have not been settled – i.e. where aboriginal groups have not signed Treaties or otherwise ceded their title.

In 1997, the Supreme Court of Canada ruled that exercising power in a manner that negatively impacts ecosystems may extinguish aboriginal title by destroying their relationship to the land and thus incite legal action from First Nations to halt resource development activities. *Delgamuukw v. British Columbia*

Furthermore, lands held pursuant to aboriginal title have an 'inescapable economic component' which affirms First Nations' entitlement to benefit from the resources on their territories. *Delgamuukw v. British Columbia*

In 2004, the Supreme Court affirmed that the Crown has a duty to consult and accommodate First Nations prior to a final claims resolution. *Haida Nation v. British Columbia and Weyerhaeuser*.

In some unsettled areas of BC, provincially granted permits, past or present, may be made invalid by a successful claim of aboriginal title. *Tsilhqot'in Nation v. British Columbia 2007*.

In 2006, regarding the Gateway project, the Carrier Sekani Tribal Council launched a lawsuit against the Government of Canada for failure to consult on process. www.cstc.bc.ca/cstc/67/enbridge.

Furthermore, The Haida Nation has recently expressed strong opposition to the Company's Gateway project. *Nov 21, 2008, CBC Edmonton - Oil Sands Plan B*

In cases where there is conflict or dispute between aboriginal, provincial and federal governments, as is often the case on unsettled territorial claims, companies risk project delays and even cancellation without the Free Prior and Informed Consent of local and aboriginal communities.

In 2007 UR Energy did not receive approval for a BC mining project with decision makers citing the unique cultural and ecological significance of the project area to the Dene First Nations. In September of the same year a Federal-Provincial Joint Review Panel determined that the proposed Kemess copper-gold mine in BC was not in the public interest acknowledging the First Nations of the region would experience adverse impacts and receive limited benefits.

Clearly, it is not sufficient to rely solely on Governments to exercise their duty to consult and accommodate. Considering the materiality of the risk a lack of consent can bring, investors should be apprised of the efforts and success of the company in achieving the consent of impacted First Nations.

Resolved:

That the Board of Directors: (1) provide a report to shareholders by October 1, 2009 (at reasonable cost and omitting proprietary information) that assesses the costs and benefits of adopting a policy of requiring the free, prior, and informed consent of impacted aboriginal communities as a necessary condition for proceeding with the construction of Enbridge projects; (2) direct Management to disclose to investors, through the quarterly MD&A, the status of negotiations with First Nations along the proposed pipeline and marine transportation route of the Northern Gateway Project, including reference to specific opposition.