



## LETTER DECISION

File OF-EI-Gas-GL-N725-2015-01 01  
14 January 2016

Ms. Connie Guo  
Director Regulatory Affairs  
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Dear Ms. Guo:

**NewTimes Energy Ltd Application, dated 11 February 2015, for a Licence to Export Liquefied Natural Gas (LNG)  
National Energy Board Reasons for Decision**

On 11 February 2015, NewTimes Energy Ltd (NewTimes or Applicant) applied to the National Energy Board (NEB or Board) pursuant to section 117 of the *National Energy Board Act* (NEB Act) for a licence to export natural gas (Licence) in the form of LNG (Application). NewTimes seeks:

- a 25-year Licence, starting on the date of first export;
- the export quantity be subject to a 15 per cent annual tolerance with a maximum annual export quantity of 19.09 billion cubic metres ( $10^9\text{m}^3$ )<sup>1</sup> of natural gas;
- a maximum term quantity of 458.16  $10^9\text{m}^3$  (16,173.60 Bcf) of natural gas over the term of the Licence, including tolerance and ramp-up;
- the point of export will be at the outlet of the loading arm of the natural gas liquefaction plant to be located in the vicinity of Prince Rupert, British Columbia, Canada; and,
- an early expiration clause by which, unless otherwise authorized by the Board, the Licence will expire ten years after the date of issuance of the Licence, if LNG exports have not commenced on or before that date.

### **Summary of Public Notice, Comment Period and Information Requests**

On 4 November 2015, as directed by the Board, NewTimes published a Notice of Application and Comment Period (Notice) for impacted persons in both *The Globe and Mail* and *La Presse*.

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<sup>1</sup> Approximately 673.9 billion cubic feet (Bcf)

The Notice requested that any impacted person who wished to file submissions related to the Surplus Criterion<sup>2</sup> do so by 4 December 2015, providing NewTimes with the opportunity to respond by 15 December 2015. The Notice also directed NewTimes to deposit and keep on file, for public inspection during normal business hours, copies of the application at its office located at 999 Canada Place, Suite 404, Vancouver, British Columbia (Office) and provide a copy of the application to any person that requests it. However, on 5 December 2015, the Board was informed that the Application was not available for viewing at the Office. Consequently, the Board extended the deadline of the Notice's comment period from 4 December 2015 to 9 December 2015, and NewTimes' opportunity to reply to the impacted parties' submissions was extended to 20 December 2015.

The Board received a submission from Atlantic Pacific Spaceline Enterprise Incorporated (APSE) on 9 December 2015. NewTimes filed its response to APSE's submission on 15 December 2015. On 14 December 2015, NewTimes filed confirmation with the Board that its application was available for viewing between 9 November 2015 and 9 December 2015 of the Notice Period and that a copy of the Application was given to any individual that requested it.

The Board issued one Information Request (IR) to NewTimes on 19 August 2015. NewTimes filed its response to the IR on 21 September 2015.

### **Surplus Determination**

NewTimes submits that, as required by the Surplus Criterion, the quantity of gas to be exported does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada, having regards to the trends in the discovery of gas in Canada. In support of this submission, NewTimes submits the following studies: (1) *Natural Gas Supply and Demand Forecast to 2053*(Amended) by General Information Technology, Inc. (GIT), and (2) *A Description of the Implications on the ability of Canadians to meet their natural gas requirements and an Assessment of whether this gas is surplus to reasonably foreseeable Canadian Requirements* by Roland Priddle (Mr. Priddle).

GIT submits that the outlook for North American natural gas production has been transformed rapidly due to technological advances in drilling and well completion. GIT noted the supply of natural gas in North America shifted dramatically to a new era in which supplies are abundant and at lower costs. GIT expects the capability and capacity of Canadian and North American gas production is strong and robust enough to meet the demand quickly and dynamically. GIT states supply and demand, including demand for LNG exports, will be well balanced based on the market functioning and that natural gas supply will be responsive to LNG export demand.

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<sup>2</sup> The Surplus Criterion, set out in Section 118 of the NEB Act, states: "On an application for a licence to export oil or gas, the Board shall satisfy itself that the quantity of oil or gas to be exported does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada, having regard to the trends in the discovery of oil or gas in Canada."

GIT states that future trends in the discovery of gas in Canada are likely to continue to be favourable. GIT and Mr. Priddle state that Canadian natural gas requirements are met within an integrated North American market that has a large number of buyers and sellers and is efficient, open, sophisticated and freely functioning. GIT states gas supplies available to the Canadian market can easily accommodate reasonably foreseeable Canadian demand, the LNG exports proposed by NewTimes, and any plausible potential increase in demand. GIT's demand sensitivity analysis, which considers a 20 per cent increase in Canadian demand over the base case, finds that the gas supplies available to the Canadian market will be adequate to meet Canadians' gas needs over the forecast period. GIT and Mr. Priddle state that the export of gas proposed by NewTimes would not cause Canadians any difficulty meeting their natural gas requirements.

When considering the level of LNG exports from Canada in its supply and demand forecast, GIT states that Canadian LNG exports would be limited, and there are currently no big buyers committed to purchasing long-term LNG from Canada. GIT states that global demand determines the quantity of LNG exports required with all exporters competing in and sharing the same limited global market. Canadian LNG exporters are facing strong competition from other global suppliers. When discussing the global LNG market, GIT states the importance of price for buyers, and it states that North American gas may not have the greatest geographical or production cost advantage. GIT also states that projects in the U.S. would have an earlier start date than Canadian projects, which could put Canadian LNG exports at a disadvantage. Finally, GIT notes that the high construction and transportation costs of Canadian LNG may be uneconomical to high demand regions, and this could ultimately limit the volumes of LNG exported.

### ***Views of the Board***

The Board decided to issue a Licence to NewTimes, subject to the approval of the Governor in Council, to export liquefied natural gas with the terms and conditions described in Appendix I to this letter. Our role, under section 118 of the NEB Act, is to assess whether the gas proposed to be exported does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada, having regard to trends in the discovery of gas in Canada (Surplus Criterion). In fulfilling this mandate, we recognize that Canadian natural gas requirements are met in the context of free trade within a North American energy market. Depending on regional characteristics, exports and imports contribute to either gas supply or gas demand. It is in this context that we consider whether the Surplus Criterion in the NEB Act is satisfied.

We have determined that the quantity of natural gas proposed to be exported by NewTimes is surplus to Canadian needs. The Board is satisfied that the gas resource base in Canada, and the overall North American gas resource base, is large and can accommodate reasonably foreseeable Canadian demand, including the LNG exports proposed by the Applicant, and a plausible potential increase in demand. The Board agrees with GIT and Mr. Priddle that the North American gas market is highly liquid, open, efficient, integrated, and responsive to changes in supply and demand.

The Board further accepts the Applicant's analysis of Canadian demand and, given the size of Canadian natural gas resources and the integrated and well-functioning nature of the North American gas market, concludes that Canadian gas requirements will be met.

The Board monitors Canada's natural gas supply and demand, including LNG developments. Monitoring assists the Board in identifying where markets may not be functioning properly or where the evolution of supply and demand casts doubt on the ability of Canadians to meet future energy requirements. The Board notes that the evidence in this Application is generally consistent with the Board's own market monitoring information. Recent studies of natural gas resources indicate that advances in drilling and hydraulic fracturing have resulted in greatly increased estimates of recoverable resources in the Western Canada Sedimentary Basin and in the United States.

Furthermore, since deregulation of Canadian gas markets in 1985, gas markets in North America have functioned efficiently and there is no evidence to suggest that they will not continue to do so in the future. The North American gas market is characterized by a large number of buyers and sellers, an extensive and growing pipeline and storage network, and a sophisticated commercial structure.

In aggregate, the LNG export licence applications submitted to the Board to date represent a significant volume of LNG exports from Canada. However, all of these LNG ventures are competing for a limited global market and face numerous development and construction challenges. The Board acknowledges NewTimes' evidence which cites the factors that are likely to limit Canadian LNG export volumes including factors such as global gas demand, prices and global competition. GIT also states that the costs related to production, construction, and transportation, the proximity of North America to global markets, and the timing of Canadian projects would be a limiting factor. The Board will not predict which licences will be used or used to the full allowance. The Board evaluates each application on its own merit.

### **Issues Raised During the Comment Period**

On 9 December 2015, APSE submitted comments regarding the Application. APSE's main concerns pertain to the quality of the evidence submitted, the forecast assumptions and uncertainties, and the NEB-approved maximum export volumes.

APSE noted concerns with the evidence submitted by GIT. Regarding the forecasts' assumptions and uncertainties, APSE had issues with GIT's oil price assumption and the effect of possible variables on the conclusion of supply and demand. APSE also stated that there is demand uncertainty regarding the quantity of LNG to be exported from Canada, and that the maximum approved Canadian and North American export volumes would have a steeper rate of production climb than stated in GIT's forecast. Finally, APSE states that the aggregate export quantity must be taken into consideration when assessing demand, and that it is the aggregate of the LNG export projects that will affect society rather than a single "stand-alone" Applicant's project.

On 15 December 2015, in its response to APSE's submission, NewTimes stated that the information before the Board, in the form of its Application and IR responses, is sufficient for the Board to make a surplus determination. NewTimes stated that the Board's approach to consider an individual applicant's export quantities, rather than the aggregate of all applicants' export quantities, remains sound and is valid.

### ***Views of the Board***

The Board is satisfied that the Applicant's evidence demonstrates that the proposed quantity of gas to be exported is surplus to Canadian needs after due allowance has been made for the reasonably foreseeable requirements for use in Canada, having regard to the trends in the discovery of oil or gas in Canada. The Board cannot consider LNG facilities' project-related matters.

Although the Board acknowledges that production forecasts are typically based on assumptions which carry some uncertainties, a large resource base exists and markets will price its extraction appropriately. The Board is satisfied that the gas resource base in Canada, as well as North America, is large and can easily accommodate reasonably foreseeable Canadian demand as well as the Applicant's proposed LNG exports. Not all LNG export licences issued by the Board will be used or used to the full allowance.

As discussed, the Board considers that the applications approved by the Board to date represent a significant volume of LNG exports from Canada. However, all of these LNG ventures are competing for a limited global market and face numerous development and construction challenges.

### **Terms, Conditions and Relief Requests**

NewTimes states it intends to act as an agent on behalf of third parties to export LNG from Canada pursuant to the terms of the licence.

NewTimes requests exemptions from the reporting requirements set out in section 4 of the *National Energy Export and Import Reporting Regulations* (Reporting Regulations). Instead of monthly reporting, the Applicant requests quarterly reporting.

The Applicant states that the monthly reports presently required by the Reporting Regulations could reasonably be expected to prejudice NewTimes' competitive position and could violate the terms of the contractual arrangements. NewTimes further states this was the same concern that motivated KM LNG Operating General Partnership (KM LNG) to request quarterly reporting, and NewTimes requests the same relief that was extended to a previous applicant, KM LNG.<sup>3</sup>

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<sup>3</sup> NEB "Information Request No. 1.4: Request for Relief from Reporting Requirements" dated 19 August 2015 (File [A72168](#)) and Applicant's response dated 21 September 2015 (File [A72677](#))

NewTimes requests relief from the information requirements for gas export licence applications set out in section 12 of the *National Energy Board Act Part VI (Oil and Gas) Regulations* (Part VI Regulations), except where those requirements are addressed in its Application. NewTimes also applied for relief from the information requirements set out in the Board's Filing Manual, and any further relief as may be requested and as the Board may consider appropriate in the circumstances.

### ***Views of the Board***

In the Board's view, section 116 of the NEB Act does not require the holder of the export licence to also be the owner of the natural gas; therefore, the Board finds it unnecessary to include a term in the Licence permitting NewTimes to act as agent on behalf of third parties. The Board notes that NewTimes, acting in its capacity as an agent, would be exporting natural gas under its Licence, which requires it to report those exports in accordance with the Reporting Regulations.

The Board denies NewTimes' request to allow quarterly reporting instead of the monthly reporting requirements set out in the Reporting Regulations. The Board's market monitoring relies on information that is required to be submitted by export authorization holders in compliance with the Reporting Regulations. The Board notes that the information supplied by an export licence holder to the Board is not necessarily the information that is published by the Board. The Board will continue to support market transparency while exercising discretion with respect to the information it chooses to release to the public.

The Board reminds NewTimes that, as required by the Reporting Regulations, it must submit to the Board, on or before the last day of each month during the term of the licence, a return for the previous month containing specified information pertaining to transactions under the licence.

The Board notes that it may exempt applicants for gas export licences from filing requirements contained in section 12 of the Part VI Regulations. In its *Interim Memorandum of Guidance Concerning Oil and Gas Export Applications and Gas Import Applications under Part VI of the National Energy Board Act*, dated 11 July 2012, the Board indicated that it no longer requires applicants for gas export licences to file the information contained in section 12(f). The Board further recognizes that not all of the filing requirements contained in section 12 of the Part VI Regulations are relevant to its assessment of this Application. Therefore, the Board exempts NewTimes from the filing requirements contained in section 12 of the Part VI Regulations that were not included in the Application.

In the Board's view, no further relief is required in the granting of this Application.



R. R. George  
Presiding Member



P.H. Davies  
Member



J. Gauthier  
Member

January 2016  
Calgary, Alberta

## Appendix I

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### Terms and Conditions of the Licence to be Issued for the Export of Natural Gas

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#### General

1. NewTimes shall comply with all of the terms and conditions contained in this Licence unless the Board otherwise directs.

#### Licence Term, Conditions and Point of Export

2. Subject to Condition 3, the term of this Licence shall commence on the date of first export and shall continue for a period of 25 years thereafter.
3. This Licence shall expire 10 years after the date of GIC approval of its issuance, unless natural gas exports have commenced on or before that date, or the Board otherwise directs.
4. The quantity of natural gas that may be exported under the authority of this Licence is:
  - a. Maximum annual quantity that may be exported in any 12-month period, including the 15 per cent tolerance, may not exceed  $19.09 \times 10^9 \text{ m}^3$ .
  - b. Maximum term quantity, including the 15 per cent tolerance, may not exceed  $458.16 \times 10^9 \text{ m}^3$ .
5. Natural gas will be exported at the outlet of the loading arm of the natural gas liquefaction plant to be located in the vicinity of Prince Rupert, British Columbia, Canada.