



LETTER DECISION

File OF-Fac-Gas-N081-2013-10 03
15 September 2016

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Dear Mr. Thrasher:

**NOVA Gas Transmission Ltd. (NGTL) North Montney Project
Certificate GC-125 (Certificate)
Order XG-N081-010-2015 (Order)
Request for Extension of Sunset Clause**

On 28 March 2016, the National Energy Board (Board or NEB) received a request from NGTL to extend the sunset clauses in Certificate Condition 45 and Order Condition 14 by one calendar year, to 10 June 2017. In its letter, NGTL stated it would not be in a position to start construction by 10 June 2016 due to circumstances beyond its control.

NGTL stated that Condition 4 of the Certificate requires NGTL to notify the Board at least 60 days prior to commencing construction that Progress Energy Canada Ltd. (Progress) has made a positive final investment decision (FID) on the Pacific NorthWest LNG (PNW LNG) project. However, as a result of a three-month extension granted by the Minister of Environment and Climate Change to the legislated timeline for the environmental review of the project under the *Canadian Environmental Assessment Act, 2012*, there is uncertainty regarding the timing of when that review process will conclude and any conditions that might accompany an approval may be fulfilled. NGTL indicated that as a consequence, it would not be in a position to meet timing requirements in the Certificate and Order to commence construction on the Project by 10 June 2016. NGTL said that extending the deadline for construction would not substantively or adversely impact any party interested in, or impacted by, the Project.

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NGTL indicated that under Certificate Condition 45 and Order Condition 14, the Board can ‘otherwise direct’ different expiry dates. The Board can extend the sunset clause for the Project on its own determination and does not require approval from the Governor in Council (GIC) under section 21 of the *National Energy Board Act* (NEB Act).

On 16 May 2016, the Board issued a letter directing the date in Condition 45 be extended until 31 December 2016 to allow the Board to properly consider the variance application and obtain any required GIC approval. The Board also approved the extension of the date in Order Condition 14 from 10 June 2016 to 31 December 2016.

On 3 June 2016, the Board issued a letter inviting public comments until 8 July, 2016 and reply comments from NGTL by 29 July, 2016. The Board indicated it did not intend to rehear issues it had already decided. The Board indicated it will consider the request as an application to vary the Certificate pursuant to section 21 of the NEB Act. If the Board grants the variance requested, it will not be effective until approved by GIC.

The Board received comments from Progress Energy Canada Ltd. (Progress) on 5 July 2016, Canadian Association of Petroleum Producers (CAPP) and Blueberry River First Nations (BRFN) on 7 July 2016, and Sauteau First Nations (SFN) on 8 July 2016. On 15 and 21 of April 2016, West Moberly First Nations (WMFN) and SFN also submitted letters of comment.

The application and related filings can be found at: <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll?func=ll&objId=2982347&objAction=browse&viewType=1>.

Progress Energy Canada Ltd.

Progress Energy Canada Ltd. (Progress) stated that an unanticipated regulatory delay has been experienced in obtaining approvals associated with the downstream Pacific NorthWest LNG facilities and this delay has affected the ability to make a FID. Progress noted that its FID on the PNW LNG facilities is required as a condition of proceeding with the Project. Progress stated that there has been significant investment to date on the Project and the requested extension is critical to preserving the investment made to date to develop the North Montney gas supply.

Canadian Association of Petroleum Producers

CAPP indicated that an extension of the sunset clause is needed because of the time required by federal authorities to complete the environmental assessment of the PNW LNG project and this is entirely reasonable justification for the extension. CAPP said that both PNW LNG and NGTL continue to advance their respective projects. CAPP is not aware of new relevant and persuasive evidence that should affect the conclusion that the Project remains in the public interest. CAPP supports NGTL’s request.

West Moberly First Nations

WMFN indicated it is of the view there are deficiencies in the Peace Moberly Tract Protection Plan (PMTTP) that NGTL filed to fulfill Condition 11 of the Certificate for the Project. WMFN said that the one-year extension NGTL is seeking will mean there is ample time for additional

consultation to improve the PMTPP and that the Board's direction to NGTL is required to reinitiate discussions of the PMTPP.

Saulteau First Nations

SFN submitted that NGTL failed to justify the proposed route, and requested that the Board and GIC direct NGTL to use any extension granted to carry out further investigations into alternate routes and wildlife mitigation measures. SFN also submitted that the Government of Canada's declaration of support for and its promise to implement the United Nations Declaration on the Rights of Indigenous Peoples imposes a new public interest criteria that must be considered in connection with proposed decisions concerning the Project.

SFN also expressed concerns about the status of Progress' Pacific Northwest Liquefied Natural Gas (PNW LNG) Project and requested that the Board require more detailed information about the current status of the Project prior to any decision.

Blueberry River First Nations

BRFN recommended that the Board deny NGTL's request. BRFN stated that in the alternative by contemplating NGTL's request, the Board should assess the Project's impacts on BRFN's treaty rights, cumulative effects, and consult with BRFN on the conditions required to address those impacts. BRFN submitted with its letter of comment a traditional land use (TLU) report containing information about BRFN's traditional use in the Project area, and a report containing information about cumulative impacts within BRFN traditional territory.

BRFN also submitted that the Government of Canada has failed to fulfill the constitutional obligations owed to BRFN with respect to the Project.

NGTL Reply

NGTL stated that the Project has already been subject to a thorough and lengthy environmental review, and the Board concluded that the Project was in the overall public interest subject to 59 conditions. NGTL also stated there has been no material change in the circumstances considered by the Board that affects the validity of its approval of the Project. With respect to the specific concerns raised by SFN and BRFN regarding impacts to treaty rights, cumulative effects, and traditional use, NGTL stated that no new evidence was provided to suggest that the Project's environmental effects will change if the sunset clause is extended, or that the extension will result in any new effects that must be considered. NGTL stated that the issue of whether the Crown has satisfied its duty to consult for the Project will be determined by the courts, and is independent of the Board's decision to extend the sunset clause.

In response to requests by SFN to direct NGTL to use additional time if an extension is granted to investigate alternative routes and wildlife mitigation measures, NGTL stated that the Project route was thoroughly considered and approved by the Board, and that NGTL still intends to commence construction as soon as possible following a positive FID by Progress Energy. NGTL stated that additional studies would delay the Project if NGTL is otherwise ready to start construction prior to the latest possible date that NGTL can commence construction.

NGTL stated that certainty that the PNW LNG project will proceed was not required in order for the Board and GIC to approve the Project in the first place, and should not be required in order to extend the Project's sunset clause. NGTL stated that Condition 4 of the Certificate requires that Progress has made a positive final investment decision (FID) on the PNW LNG project at least 60 days before construction can commence on the Project.

Views of Board

Project routing and Project impacts on Aboriginal interests.

In its approval of NGTL's submission of the PMTPP pursuant to Condition 11 of the Certificate for the Project, the Board noted all parties, including WMFN, SFN and BRFN, have had a significant amount of time to develop the mitigation measures contained in the PMTPP – more time than was originally anticipated in the GH-001-2014 proceeding. The Board considered all of the information submitted by NGTL, WMFN, SFN and BRFN, and was satisfied that NGTL has described and committed to implement sufficient measures to address the Project's environmental and socio-economic effects, including the Project's potential effects on Aboriginal traditional use. The Board is therefore of the view that using any additional time through the granting of an extension to the sunset clause to undertake further studies for the development of further mitigation measures is not necessary.

The Board is also of the view that the Project route was thoroughly assessed and considered by the Board during the GH-001-2014 proceeding, and that no new evidence has been submitted to materially change the Board's conclusions regarding the appropriateness of the Project route or its potential environmental or socio-economic effects. Given these conclusions and the preconstruction filings that have already been approved, the Board is of the view that further investigation or consideration of alternative routes for the Project is not necessary.

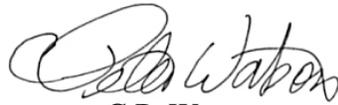
Project Uncertainty

The Board is of the view that Condition 4 mitigates any concerns that Progress may not proceed with the PNW LNG Project. Condition 4, which must be filed at least 30 days prior to construction, requires that Progress has made a positive final investment decision on the proposed PNW LNG Project. Regardless of whether the sunset clause is extended by one year, NGTL may not proceed with the Project if it cannot meet Condition 4.

Decision on the Sunset Clause Extension Requests

The Board finds that the Project is still in the public interest and that the original conditions attached to the approval will require the Project to be designed, constructed and operated in a manner which would be safe, and protect people and the environment.

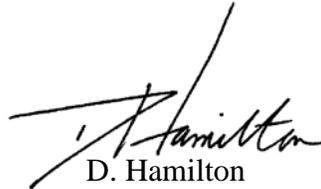
The Board decision is to grant the extensions by varying Condition 45 of the Certificate and Condition 14 of the Section 58 Order so the date in each sunset clause is 10 June 2017. The Board will vary certificate GC-125 for the Project and pursuant to section 21 of the NEB Act will seek approval from GIC for the variance. If approved, this will allow time for regulatory processes for the PNW LNG project currently underway to be completed in order for Progress to make a FID regarding the Project, and to preserve the significant investment made to date on the Project.



C.P. Watson
Presiding Member



P. Davies
Member



D. Hamilton
Member

September 2016
Calgary, Alberta