

File OF-Fac-PipeGen-T211 03 0201  
6 October 2017

## LETTER DECISION

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Dear Mr. Andrews, Ms. Carpenter and Mr. Forrest:

### **Review of the National Energy Board's 30 November 2015 decision on the Application of Michael Sawyer regarding jurisdiction over the proposed Prince Rupert Gas Transmission Project (PRGT Project)**

#### *Background*

On 9 October 2015, Mr. Michael Sawyer filed an application with the National Energy Board (NEB or Board) with respect to a proposed natural gas pipeline that was to extend from a point near Hudson's Hope to the proposed Pacific Northwest LNG facility that was to be located on Lelu Island, British Columbia (Project). Prince Rupert Gas Transmission Ltd. (PRGT), a wholly owned subsidiary of TransCanada Pipelines Ltd (TransCanada), is the proponent of the PRGT Project.

On 29 August 2017, the Board directed PRGT to file a status update with respect to the Project and any potential implications this may have on the Board's process to conduct a redetermination of Mr. Sawyer's 2015 application ([A85693](#)). PRGT provided this update on 12 September 2017 ([A85969](#)). Mr. Sawyer was invited to submit comments in response, which he filed on 26 September 2017 ([A86294](#)).

### *Submissions*

In its filing, PRGT indicated that the facts of the Project for the earlier NEB proceeding, as well as the Federal Court of Appeal decision issued on 17 July 2017, have materially changed. Per PRGT, there is now “no concrete basis on which to make a *prima facie* determination, and new facts have not yet crystallized.” According to PRGT, such a determination can only be made once all relevant factors are known. Accordingly, PRGT requested that the matter be dismissed.

For his part, Mr. Sawyer acknowledged that “at the present time the constitutional facts regarding the PRGT Project are not known with sufficient certainty to enable the Board to determine a *prima facie* case for federal jurisdiction of the PRGT Project”. He, however, opposes PRGT’s request for a dismissal and asks the Board to adjourn the matter *sine die*, with a direction to PRGT to notify the Board and Mr. Sawyer in the event of any material change to the Project’s status. Alternatively, Mr. Sawyer requests that if the Board dismisses his application that it be done on a without prejudice basis and with a direction to PRGT to notify the Board and Mr. Sawyer of any material change to the Project. Mr. Sawyer notes that the Project has not been terminated and in the event a customer is found, it may yet proceed.

### *Views of the Board*

The Federal Court of Appeal remitted Mr. Sawyer’s 2015 application to the Board for a redetermination of whether there was a *prima facie* case for federal jurisdiction. PRGT’s submissions indicate material changes have occurred from the time of Mr. Sawyer’s application in 2015 and uncertainty surrounding the Project on the whole. Mr. Sawyer himself acknowledges that the underlying facts he relied on have substantially changed and the Board is unable to conduct his applied-for determination. The Board agrees and is of the opinion that it is unable to make the requested *prima facie* determination. While the Board has the ability to adjourn proceedings, at this stage, there are no proceedings to adjourn given that Mr. Sawyer’s application has become moot.

As regards Mr. Sawyer’s request for the Board to direct PRGT to notify both the Board and Mr. Sawyer of any future material changes to the Project, the Board declines to do so. This is in light of the lack of certainty over the future of the Project and the regulatory requirements to which it will be subject to, if and when it proceeds. The Board notes generally that project proponents must comply with the relevant regulatory requirements in place at the time a project is brought forward, which include appropriate notification requirements for potentially impacted parties.

*Decision*

In light of the above, the Board is dismissing Mr. Sawyer's application. This is without prejudice as it was not adjudicated on the merits as a result of the material changes that have occurred with respect to the Project.



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L. Mercier, *Panel Member*



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A. Scott, *Panel Member*



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D. Côté, *Panel Member*

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