



## LETTER DECISION

File OF-EI-Gas-GL-J705-2013-01 01  
20 February 2014

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Dear Mr. King and Mr. Smith:

**Jordan Cove LNG L.P. (Jordan Cove LNG) 9 September 2013 Application for a  
Licence to Export Natural Gas pursuant to Section 117 of the *National Energy  
Board Act* (NEB Act) National Energy Board (Board) Reasons for Decision**

Recent developments in gas production technology have resulted in a significant increase in the Canadian gas resource base and North American gas supply. One of the major impacts of this increase is lower demand for Canadian gas in traditional gas markets in the United States and eastern Canada. As a result, the Canadian gas industry is seeking to develop access to overseas gas markets.

On 9 September 2013, Jordan Cove LNG applied to the Board pursuant to section 117 of the NEB Act for a licence (Licence) authorizing the export of natural gas (Application). Jordan Cove LNG seeks a licence duration of 25 years, starting on the date of first export with an annual volume of 16.03 billion cubic metres ( $10^9\text{m}^3$ )<sup>1</sup> of natural gas, which corresponds to a natural gas equivalent of 1.55 billion cubic feet per day (Bcf/d)<sup>2</sup>, and a maximum quantity of  $442.68 \times 10^9\text{m}^3$  over the term of the licence<sup>3</sup>. The proposed export points would be at the points at which natural gas crosses the Canada/U.S. border via existing natural gas pipelines near Kingsgate, British Columbia and near Huntingdon, British Columbia.

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<sup>1</sup> Applied-for annual quantity not including tolerance

<sup>2</sup> As calculated by the Board from Jordan Cove LNG's applied for export volume of 565.75 Bcf/year divided by 365 days

<sup>3</sup> As calculated by the Board, Jordan Cove LNG's applied for maximum term quantity of 15.63 trillion cubic feet (Tcf) is equivalent to  $442.68 \times 10^9\text{m}^3$  using a conversion of  $35.301\text{cf/m}^3$  and includes the applied-for tolerance and ramp-up

The quantity of gas requested for export under the Licence is necessary to support a liquefied natural gas (LNG) export facility to be located at the Port of Coos Bay, Oregon.

### **Board Decision**

We have decided to issue a licence to Jordan Cove LNG, subject to the approval of the Governor in Council, to export natural gas with the terms and conditions described in Appendix I to this letter. Our role, under s. 118 of the NEB Act, is to assess whether the natural 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 within a North American integrated market. Depending on regional characteristics, exports and imports contribute to either gas supply or gas demand. It is in this context that we must consider whether the Surplus Criterion in the NEB Act is satisfied.

We have determined that the quantity of gas proposed to be exported by Jordan Cove LNG is surplus to Canadian needs. The Board is satisfied that the gas resource base in Canada, as well as North America, is large and can accommodate reasonably foreseeable Canadian demand, the natural gas exports proposed in this Application, and a plausible potential increase in demand.

We note that the evidence in this Application is generally consistent with the Board's own market monitoring. Recent studies of natural gas resources uncovered significant amounts in the Western Canada Sedimentary Basin and in the United States (U.S.). The North American gas market is a mature marketplace characterized by a large number of buyers and sellers, an extensive and growing pipeline and storage network and a sophisticated commercial structure. 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.

### **Natural Gas Export Regulation**

The Board's regulation of natural gas exports is governed by a statutory framework that includes the following three components:

- that all natural gas exports must be authorized by an order or licence<sup>4</sup>;
- that the Board must satisfy itself that the gas to be exported by licence is surplus to Canadian requirements<sup>5</sup>; and
- that all exports are reported<sup>6</sup>.

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<sup>4</sup> Section 116 of the NEB Act

<sup>5</sup> Section 118 of the NEB Act

<sup>6</sup> Section 4 of the *National Energy Board Export and Import Reporting Regulations*

A mandatory hearing for gas export licences is no longer required by the amended NEB Act. For this Application, the Board decided to utilize a written process providing a Notice of Application by the applicant and a Comment Period for impacted persons.

### **Summary of the Notice, Comment Process and Submissions**

On 2 October 2013, the Board directed Jordan Cove LNG to publish a Notice of Application and Comment Period in the *Globe and Mail* and *La Presse* and to serve the Notice of Application and Comment Period on specified persons and agencies. The Notice of Application and Comment Period requested that any impacted person who wished to file submissions on the merits of the Application do so by 18 November 2013. The Board received submissions from the Chemistry Industry Association of Canada (CIAC) on 15 November 2013, Landowners United on 17 November 2013, Citizens Against LNG Inc. on 18 November 2013, and NOVA Chemicals Corporation 18 November 2013. Jordan Cove LNG provided reply comments to these submissions on 26 November 2013.

The Board issued one Information Request (IR) to Jordan Cove LNG on 14 November 2013. Jordan Cove LNG filed its response to the IR on 21 November 2013.

### **Surplus Determination**

Jordan Cove LNG submitted that the quantity of gas it seeks to export does not exceed the surplus as required by the Surplus Criterion. In support of this submission, Jordan Cove LNG submitted the following studies: (1) *Supply and Demand Market Assessment and Surplus Evaluation Report* prepared by Navigant Consulting Inc. (Navigant), and (2) an *Export Impact Assessment* prepared by Mr. Gordon Pickering, Navigant.

Navigant submitted that U.S. and Canadian domestic natural gas supply is abundant to such a degree that it will support domestic market requirements as well as export demands for LNG shipped from North America; and that LNG exports in general offer the potential for a reliable baseload market which will serve to underpin ongoing supply development. Navigant forecasts that Eastern Canadian market imports from the U.S. will lessen competitive demand for Western Canadian gas supplies, enhancing supply availability for Jordan Cove exports. Navigant concludes that pipeline flows between Canada and the U.S., as well as the ability of North American gas supply and demand to balance efficiently and effectively, highlight the interconnected, competitive and functional nature of the North American gas market.

Mr. Pickering concluded that the export of natural gas proposed by the Applicant is unlikely to cause Canadians difficulty in meeting their energy requirements at fair market prices over the forecast period. Mr. Pickering submitted that although changing gas flow patterns between Canada and the U.S. will be dramatic due to access to additional gas supplies, in the future the market should provide an even higher degree of assurance of gas supply availability and reliability at fair market prices for the long term. Mr. Pickering stated that the large North American gas market has a long history of sophistication and performance, made up of key

components of a well-functioning commodity market that has allowed the market to be reliable over the years.

In a letter of comment dated 17 November 2013, Landowners United outlined a number of concerns with Jordan Cove LNG's analysis and conclusions including: the applicant's views of the integrated North American natural gas market, specifically as they relate to the availability of eastern continental gas supplies and the availability of pipeline connections in the Pacific Northwest; that shale gas supplies may not be as great as estimated; and that natural gas demand may be in excess of Navigant's estimate.

Citizens Against LNG Inc., in a letter of comment dated 18 November 2013, questioned the applicant's assumptions that adequate Canadian and U.S. water supplies will be available to sustain increased production by hydraulic fracturing as well as potential impacts of hydraulic fracturing bans by countries, states, regions and cities. Citizens Against LNG Inc. also raised the possibility of exports increasing natural gas prices which could have negative impacts on the manufacturing sector.

In its 26 November 2013 reply comments, Jordan Cove LNG submitted that the gas supply related submissions fail to make the case that the statutory criteria for the grant of an export licence have not been satisfied. Jordan Cove LNG stated that at expected export levels there are more than adequate supplies available to satisfy Canadian requirements, and cited the Board's Montney Formation study which stated Montney natural gas resources are thought to represent 145 years of Canadian needs at current consumption rates. Jordan Cove LNG noted that no moratoria related to hydraulic fracturing exist in the provinces where most of the project supply is expected to be sourced.

In an IR, the Board requested that Jordan Cove LNG provide a Canadian demand sensitivity analysis (an additional 20 per cent increase in Canadian demand above and beyond its original estimates) and discuss its impact, if any, on Jordan Cove LNG's surplus conclusions. Jordan Cove LNG consulted with Navigant to provide its response. The more robust demand scenario requested by the IR did not vary the fundamental conclusions that the natural gas exports would not cause Canadians any difficulty in meeting their gas requirements over the forecast period and that the quantity of gas Jordan Cove LNG seeks to export does not exceed the surplus as required by the Surplus Criterion.

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

The Board is satisfied that the gas resource base in Canada, as well as North America, is large and can accommodate reasonably foreseeable Canadian demand, the natural gas exports proposed by this Application, and a plausible potential increase in demand. The Board further accepts Navigant's analysis of Canadian demand and concludes that given the size of Canadian natural gas resources and the integrated and well-functioning nature of the North American gas market, Canadian gas requirements will be met.

The Board acknowledges that production forecasts are typically based on assumptions which carry some uncertainties. In this case, the Board's conclusion on surplus is not dependent on whether specific gas resources, as opposed to others, will in fact contribute to supply. As Jordan Cove LNG has noted, the Application relies on a number of potential supply sources. In regard to natural gas price concerns, the Board considers price as only one indicator of market conditions as North American natural gas supply and demand adjusts to changes in price signals.

The Board notes that the evidence in this Application is generally consistent with the Board's own market monitoring. 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.

Based on all of the foregoing, the Board is satisfied that the quantity of gas proposed to be exported by Jordan Cove LNG 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 gas in Canada.

### **Other Issues Raised During Comment Period**

#### **Chemistry Industry Association of Canada**

The CIAC, in a letter of comment dated 15 November 2013, expressed support for the Application because it would provide ethane feedstock to Alberta's petrochemical industry using existing facilities. This would provide additional benefits to this industry, including increased availability of ethane and lower pipeline transportation tolls. The CIAC did not oppose the Application, but recommended that the Board impose a licence condition requiring Jordan Cove LNG to report the natural gas liquids (NGL) composition contained in exported natural gas.

In its 26 November 2013 reply comments, Jordan Cove LNG submitted that gas to be exported under its licence would provide the same full and fair access to entrained gas liquids at competitive prices as currently exists for all previous and current gas exports at the proposed export points. Jordan Cove LNG stated that the concerns address access to gas liquids and related reporting matters rather than whether the gas to be exported is surplus to reasonably foreseeable requirements for use in Canada, and there appears to be no basis for new or unique licence conditions or reporting requirements such as those proposed by the CIAC. Furthermore, the CIAC did not object to Jordan Cove's Application.

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

The Board acknowledges that the CIAC highlighted the benefits of the applied for export and did not oppose the Application.

The Board denies CIAC's request to include a NGL composition reporting requirement as a condition of this natural gas export licence. The Board is of the view that imposing a NGL reporting requirement on some licences would not be useful. The Board notes that

all licence holders are required to report the average heating value of the gas exported, permitting some monitoring of NGL entrained in the exported natural gas, under the *National Energy Board Export and Import Reporting Regulations* (Reporting Regulations).

### **NOVA Chemicals**

NOVA Chemicals, in a letter of comment dated 18 November 2013 outlined the benefits to Canada's petrochemical industry of the proposed export Application and did not oppose the Application

### **Landowners United**

Landowners United, in addition to their comments regarding the Surplus Criterion discussed above, expressed concerns with Jordan Cove LNG's estimated project timelines for final investment decision given the status of U.S. Department of Energy and Federal Energy Regulatory Commission application reviews and that the new *Canadian Environmental Assessment Act 2012* (CEAA 2012) prohibits the Board from making its decision on export licences until an environmental assessment process is completed.

### **Citizens Against LNG Inc.**

Citizens Against LNG Inc. outlined a number of concerns mainly focused on potential effects of the construction and operation of the Jordan Cove liquefaction plant and the Pacific Connector Gas Pipeline, in addition to its comments regarding the Surplus Criterion, discussed above. Citizens Against LNG Inc. also raised other issues such as: the requirement for the Board to conduct an environmental assessment under the CEAA 2012, including effects crossing international boundaries; the requirement for the Board to conduct an economic assessment of the entire Jordan Cove project; the obligations of the Government of Canada to prevent Canadian companies from placing Americans at risk; and the lack of significant permits for the project at the local, state and federal level in the U.S. Citizens Against LNG Inc. concluded that the Application is not in the Canadian public interest.

In its 26 November 2013 reply comments, Jordan Cove LNG submitted that many of Landowners United and Citizens Against LNG's comments are related to U.S. environmental, regulatory, export and facilities siting approval issues which are irrelevant in the context of NEB export licence applications. It believes that these issues should be left to U.S. regulators and governmental authorities to be determined in accordance with U.S. law. Jordan Cove LNG states that the U.S. based opponents failed to identify any statutory requirement in the CEAA 2012 that requires an environmental assessment prior to the issuance of an NEB export licence and further, that the NEB has indicated in its Interim Memorandum of Guidance that matters such as potential environmental effects and related social effects are not relevant to the Board's exercise of its gas export licence authority. Finally, Jordan Cove LNG concluded that any opportunity for Canada to economically utilize existing gas pipelines and gas processing infrastructure and to diversify its traditional export markets clearly serves the Canadian public interest.

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

In the Board's view, the concerns of Landowners United and Citizens Against LNG Inc. are largely environmental and public interest in nature and are outside the Board's jurisdiction on natural gas export licence applications. The sole consideration of an export licence application is the Surplus Criterion identified in section 118 of the NEB Act.

In the Board's view, Jordan Cove LNG's Application does not trigger the environmental assessment requirement of CEAA 2012 as the issuance of an export licence is not a designated physical activity under that Act. The Board notes that a decision on this Application does not authorize the construction or operation of the physical facilities in the U.S. of concern to both Landowners United and Citizens Against LNG Inc., including the LNG Terminal.

The Board is of the view that the Licence is a standalone authorization. The NEB Act does not require that a Licence be issued before, concurrently, or after the issuance of authorizations required for any facilities or activities that may be necessary to enable the export. The export licence is not dependent upon any other permits or approvals from other levels of government, or processes relating to a project under review outside Canada.

### **Relief Requested**

#### **Agent on Behalf of Affiliates and Third Parties**

Jordan Cove LNG seeks authorization to export natural gas on its own behalf, and as an agent of the actual owners of the gas.

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

Section 116 of the NEB Act prevents any person, except as otherwise authorized by the regulations, from exporting gas except under and in accordance with a licence issued by the Board. In the Board's view, this section does not require the holder of the licence to also be the owner of the gas proposed for export; therefore the Board does not find it necessary to include a term on the licence permitting Jordan Cove LNG to act as agent on behalf of the actual owners of the gas. The Board notes that Jordan Cove LNG, when acting in its capacity as an agent, would be exporting under its licence and responsible for reporting those exports under the Reporting Regulations.

#### **Relief from Filing Requirements**

Jordan Cove LNG 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* (Oil and Gas Regulations) and the Board's Filing Manual, except where those requirements are addressed within its Application.

The Board notes that it is in the process of updating the Oil and Gas Regulations to align with recent changes to the NEB Act.

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

The Board notes that it may exempt applicants for gas export licences from the filing requirements contained in section 12 of the Oil and Gas 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) of the Part VI Regulations. The Board also recognizes that not all of the other filing requirements contained in section 12 of the Oil and Gas Regulations are relevant to its assessment of this Application. Therefore, the Board exempts Jordan Cove LNG from the filing requirements contained in section 12 of the Oil and Gas Regulations that were not included in the Application.

As stated previously, the Board focused its assessment of the Application on the Surplus Criterion contained in section 118 of the NEB Act. The requirements that are needed for the Board's assessment are identified in Guide Q of the Filing Manual<sup>7</sup>. In the Board's view, the information included in Jordan Cove LNG's Application met the requirements outlined in Guide Q.

The Board notes that Jordan Cove LNG filed some information using an approach consistent with the Board's Market Based Procedure (MBP)<sup>8</sup>. The MBP is no longer in effect. For LNG and natural gas export applications filed since the NEB Act was amended in June 2012, the Board has utilized a written public notice and comment process in place of an oral public hearing and the Complaints Procedure. In addition, the Board has issued Guide Q of the Filing Manual which provides guidance on information requirements for natural gas export licence applications. The Board notes that Guide Q does not prescribe a specific format or specific application content, such as a discussion on energy conservation or fuel switching, and its information requirements may be met in a variety of ways, including qualitatively or quantitatively.

### **Exemption from Reporting Requirements**

Jordan Cove LNG also seeks relief from the reporting requirements set out in section 4 of the Reporting Regulations and requests that the reporting requirements of the licence be limited to quarterly reporting.

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<sup>7</sup> Guide Q of the Filing Manual: [http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/flngmnl/flngmnsrt2013\\_03-eng.pdf](http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/flngmnl/flngmnsrt2013_03-eng.pdf)

<sup>8</sup> The MBP is a comprehensive procedure by which the Board previously assessed applications for natural gas export licences described in the Board's Reasons for Decision in GHR-1-87 Review of Natural Gas Surplus Determination Procedures (July 1987)



In a response to an Information Request from the Board, Jordan Cove LNG states that due to the competitive nature of the global LNG trade, it would be placed at a competitive disadvantage against those LNG licence holders which are exempt from the reporting requirements with which Jordan Cove LNG must comply. Jordan Cove LNG submitted that the nature of its business model contemplates a wide range of supply options, including those where some of the information requested may not be available to it. Jordan Cove LNG believes project participants, producers or marketers may be reluctant to disclose to Jordan Cove LNG, as agent, information that is competitively significant to their position or interest in the export chain, particularly where North American or international competitors are not required to disclose the same information.

***Views of the Board***

The Board has decided to deny Jordan Cove LNG's request for exemption from the Reporting Regulations. The Applicant referred to the competitive disadvantage Jordan Cove LNG would be placed in if other LNG export licence holders were exempted from the reporting requirements with which Jordan Cove LNG is required to comply.

The Board notes that under the Reporting Regulations, Jordan Cove LNG would be reporting exports by pipeline to the U.S., and not LNG exports from the proposed liquefaction facility in Oregon. Reporting on pipeline exports to the U.S. is a well-established practice in which the Reporting Regulations apply to all exporters in a similar manner. The Board reminds Jordan Cove LNG, in any instance where it is acting as an agent, that it is responsible, as the licence holder, for reporting the information prescribed by the Reporting Regulations.

**Maximum Daily Quantity and Daily Tolerance**

Jordan Cove LNG requested a maximum daily quantity of 43,908 thousand m<sup>3</sup> and a daily tolerance of 20 per cent on the maximum daily quantity.

***Views of the Board***

The Board does not find it necessary to regulate daily export quantities and has decided not to impose any daily export limits or a daily tolerance.

**Additional Licence Terms and Conditions**

Jordan Cove LNG requested a 15 per cent annual tolerance to the amount of gas that may be exported under the licence in any 12-month period to account for variability in LNG operations including decreased LNG production due to technical and operational constraints; changes in cargo shipping schedules; changes in market demand including seasonal variations; and, interruptions in pipeline delivery or field production due to technical or operational factors.

Jordan Cove LNG also requested a sunset clause where, unless otherwise authorized by the Board, the licence will expire ten years from its date of issuance if exports have not commenced on or before that date.

***Views of the Board***

The Board accepts Jordan Cove LNG's request for a 15 per cent annual tolerance. The maximum term quantity permitted under the licence is inclusive of the annual tolerance amount, and takes into consideration the ramp up of export volumes at the Canada/U.S. border over the first three years of the 25 year term.

The Board accepts Jordan Cove LNG's request for a ten year sunset clause, from the date of issuance of the licence, as reasonable. It has generally been Board practice in issuing a gas export licence to set an initial period during which if the export of gas commences, the licence becomes effective for the full term approved by the Board. This condition in the licence is referred to as a sunset clause because the licence would expire if the export did not commence within the specified timeframe.



R.R. George  
Presiding Member



P.H. Davies  
Member



J. Gauthier  
Member

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Mr. David Podruzny, Vice-President, Business Development & Economics and Board Secretary, Chemical Industry Association of Canada, 350 Sparks Street, Ottawa, ON K1R 7S8, facsimile 613-237-4061

Ms. Jody McCaffree, Executive Director, Citizens Against LNG Inc, PO Box 1113, North Bend, OR 97459, USA (by mail)

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February 2014  
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. Jordan Cove LNG L.P. (Jordan Cove LNG) 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 Jordan Cove LNG's first natural gas export via the Canada/U.S. natural gas pipeline network and shall continue for a period of 25 years thereafter.
3. This Licence shall expire 10 years from the date of issuance, unless exports from Canada have commenced on or before that date.
4. The quantity of natural gas that can 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  $18.43 \times 10^9 \text{ m}^3$ ;
  - b. Maximum term quantity may not exceed  $442.68 \times 10^9 \text{ m}^3$ .
5. Natural gas will be exported from Canada at the natural gas pipeline export points near Kingsgate, British Columbia and near Huntingdon, British Columbia.