

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE PIPELINE ACT

- and -

IN THE MATTER OF AN APPLICATION by **BEAR PAW PIPELINE CORPORATION INC.** for a Permit to Construct a natural gas pipeline and related facilities

BEFORE: Peter W. Gurnham, Q.C., Chair
Murray E. Doehler, CPA, CA, P.Eng., Member
Roberta J. Clarke, Q.C., Member

APPLICANT: **BEAR PAW PIPELINE CORPORATION INC.**
Daniel M. Campbell, Q.C.

INTERVENORS: **EXXONMOBIL CANADA PROPERTIES**
Dylan V. Pugh

HERITAGE GAS LIMITED
Michael Johnston

MUNICIPALITY OF THE COUNTY OF RICHMOND
Warren Olsen

NATIVE COUNCIL OF NOVA SCOTIA
Roger Hunka

BOARD COUNSEL: S. Bruce Outhouse, Q.C.

HEARING DATE(S): May 9, 2016

FINAL SUBMISSIONS: June 7, 2016

DECISION DATE: **July 29, 2016**

DECISION: **Application approved with conditions.**

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1.0 INTRODUCTION AND BACKGROUND

[1] Bear Paw Pipeline Corporation Inc. (“Bear Paw”, “Company”) made an Application to the Nova Scotia Utility and Review Board (“Board”) for a Permit to Construct a pipeline and related facilities which will deliver natural gas from receipt points near Goldboro, Nova Scotia to the proposed Bear Head LNG export facility located near Point Tupper, Nova Scotia.

[2] On January 6, 2016, the Board issued an Order providing a timeline for the proceeding.

[3] Intervenor status was granted to ExxonMobil Canada Properties (“ExxonMobil”), Heritage Gas Limited (“Heritage”), the Municipality of the County of Richmond (“Municipality”), and the Native Council of Nova Scotia (“NCNS”).

[4] The Board heard Bear Paw’s application on May 9, 2016, at the Port Hawkesbury Civic Centre, 606 Reeves Street, Port Hawkesbury, Nova Scotia. An evening session for registered public speakers was held in the same place on that date.

[5] Bear Paw was represented by its counsel, Daniel Campbell, Q.C. Its evidence was presented by a panel consisting of Darshi Jain, Vice-President of Engineering, Construction and Permitting; Paul MacLean, Strategic and Regulatory Affairs Advisor; and Dr. Cecil Allen, P. Eng., Senior Principal, Stantec Consultants.

[6] ExxonMobil, Heritage and the Municipality did not participate in the hearing.

[7] The NCNS was represented by Roger Hunka, Director of Intergovernmental Affairs, Maritime Aboriginal Council, who delivered an opening statement on behalf of Chief Grace Conrad. The evidence of NCNS was presented by a panel which included Mr. Hunka, Jessica Seward, and Joshua McNeely.

[8] S. Bruce Outhouse, Q.C., acted as Board Counsel. Evidence was given on behalf of Energy Consultants International Inc. (“ECI”), the Board’s Certifying Authority, by a panel consisting of Brady Ryall, P. Eng., and Ken Mills, C.E.T.

[9] The Board issued a Final Issues List identifying the issues for consideration in the hearing. It has chosen, however, to first address the non-technical items on that List in this Decision.

2.0 ISSUES

2.1 Land rights and acquisition

[10] Bear Paw has not yet finalized the route of the pipeline corridor; however, it plans to build along a corridor parallel to the existing Maritimes and Northeast Pipeline (“M&NP”) and the Sable Offshore Energy Project (“SOEP”) pipeline easements, with some deviations. According to its Application, the corridor will cover “...approximately 1,087 ha of land, of which approximately 50% is Provincial crown land”. The right of way will be just over 62 kilometers long, and, according to Mr. Jain, the “disturbed area” or corridor will be approximately 38 metres wide. The area covered by the required environmental assessment was wider, however.

[11] Bear Paw has not yet acquired, nor has it developed any plan for compensation for, any land or land rights. The Application indicated that discussions had started to obtain the necessary easements, with final acquisitions expected in the final design stage. Bear Paw stated it would provide copies of the executed agreements with the Board.

[12] Bear Paw advised that it had several open house meetings in the area of the proposed pipeline to provide information to landowners who may be affected by the pipeline construction and others who may have an interest in the pipeline. The consultations were undertaken through a consultant, Land Solutions LP. In response to ECI IR-2, Bear Paw indicated that 95% of the landowners along the proposed pipeline had been contacted and personally met with to discuss the pipeline project and proposed route.

[13] Open houses were held in Guysborough and Port Hawkesbury which Bear Paw advised were well attended. In response to IR-2, Bear Paw further described the consultation:

b) Comments and feedback are summarized below:

- Generally there is support from the landowners along the proposed route, as they feel this project is beneficial to the communities and the province.
- There were some questions, mostly around routing and compensation. Land owners were assured that they will be treated fairly, but specific compensation packages have not yet been discussed with land owners.
- There were questions with respect to safety in construction of the pipeline. We believe these were addressed to their satisfaction.
- There were questions with respect to decommissioning. We believe these were adequately answered to their satisfaction.
- One landowner did express objection to the ROW passing on their property, but was not opposed to the project.

[Exhibit B-3, (ECI) IR-2, p.2]

[14] In its closing submission, Bear Paw noted that most of the affected landowners already have two pipelines crossing their land, so it is confident it will be able to obtain the necessary easements without much difficulty.

[15] Bear Paw also addressed the matter of easements over Crown lands identified as protected or proposed protected nature reserves, which will be considered in the environmental assessment which is discussed later in this Decision.

[16] ExxonMobil questioned Bear Paw about the route and activities which might encroach on the SOEP pipeline which it operates. Bear Paw's responses to ExxonMobil's IRs note intended consultation, agreements and monitoring to ensure there will be no negative impacts.

[17] Mr. Jain testified that the Company has been in discussions with M&NP and ExxonMobil, sharing information about the proposed pipeline location and safety requirements. He stated he did not anticipate any difficulty in obtaining consent from them if the pipeline impacts their respective rights of way.

[18] Encana Corporation, which owns and operates the offshore Deep Panuke natural gas field and has an onshore pipeline, sent a letter of comment to the Board about any potential impact to its pipeline and onshore facility. At the hearing Mr. Jain testified that Bear Paw had been in contact with Encana, and will meet with its representatives. He did not believe there will be any issue impacting Encana's pipeline as it runs "away from [Bear Paw's] compressor station."

[19] In its evidence, the NCNS devoted significant attention to the aboriginal, treaty and other rights its members enjoy over the land, in particular Zone 7, which includes Guysborough County, and Zone 6 which includes Richmond County. It questioned whether there would be any "exclusion zones" which would interfere with these rights to access and use the lands for traditional purposes. Mr. Hunka said that the evidence it provided was intended to demonstrate this is not "a trivial matter".

[20] In his opening statement, Mr. Jain said:

In particular, Bear Paw has consulted with the representatives of Mi'kmaq people, the First Nations of Nova Scotia, as part of environmental assessment process. Bear Paw commissioned a Mi'kmaq ecological knowledge study to identify the activities being conducted by Mi'kmaq in the project area. Our project will have minimal impact on the traditional activities identified in the study.

Furthermore, Bear Paw will continue to consult and work with native organizations to ensure meaningful Mi'kmaq participation through the development of this pipeline.

[Transcript, p. 13]

2.1.1 Findings

[21] The *Pipeline Act* provides:

Acquisition of required land

32 (1) When a holder of a permit or licence requires an interest in land for the purposes of a pipeline for which a permit or licence is issued, the interest may be acquired in such lands

(a) by agreement with the owner of the lands; or

(b) if the holder is unable to arrive at an agreement with the owner of the lands, by application to the Minister for an order that the interest in lands required be vested in the holder of the permit or licence.

[22] Pursuant to the *Land Acquisition Regulations* (NS Reg. 67/98) ("*LA Regs.*"),

Bear Paw is required to give notice to the owners of land (which includes easements) it requires for the pipeline corridor:

Notice to owner

4 (1) A permit or licence holder requiring land for the purpose of a pipeline shall serve a notice on all owners of land so far as they can be ascertained, accompanied by

(a) a description of the lands that are required by the permit or licence holder for the pipeline;

(b) details of the compensation, if any, offered by the permit or licence holder for the lands required;

(c) a detailed statement made by the permit or licence holder of the value of the lands required in respect of which compensation is offered;

(d) a description of the procedure for approval of the detailed route of the pipeline; and

(e) a description of the procedure available in the event that the owner of the lands and the permit or licence holder are unable to agree on any matter respecting the compensation available.

Agreement with owner

5 If a permit or licence holder reaches an agreement with an owner for land for the purposes of a pipeline, that agreement shall include

(a) compensation for the market value of the lands acquired to be paid, at the option of the owner, by one lump sum payment or by annual or periodic payments of equal or different amounts over a period of time;

(b) compensation for all disturbance and injurious affliction suffered as a result of the operations of the permit or licence holder to be paid, at the option of the owner, by one lump sum payment or by annual or periodic payments of equal or different amounts over a period of time;

(c) indemnification of the owner from all liabilities, damages, claims, suits and actions arising from the operations of the permit or licence holder, other than liabilities, damages, claims, suits and actions arising from gross negligence or wilful misconduct of the owner of the lands;

(d) restricting the use of the lands to the line of the pipe or other facility for which the lands are, by the agreement, specified to be required, unless the owner of the lands consents to any proposed additional use at the time of the proposed additional use.

[23] If the Company is unable to reach agreement with a landowner, it may apply for a vesting order from the Minister, and the *Expropriation Act* provisions may come into play.

[24] The Board notes the extent of consultation with landowners thus far. The Board agrees, given the existence of the two current pipelines, Bear Paw will likely be able to acquire the necessary easements for the construction and operation of its pipeline. The Company is required to comply with the provisions of the *LA Regs*. The Board orders that copies of all signed agreements shall be filed with the Board as a condition of approval.

[25] Elsewhere in this Decision, the Board has addressed the issue of aboriginal consultation. The Board recognizes that, as the NCNS stated, the enjoyment of the aboriginal, treaty, and other rights is not a “trivial matter”. The findings below represent

the Board's directions to ensure that such rights are honoured with the First Nations peoples, including those represented by the NCNS, and the Assembly of Nova Scotia Mi'kmaq Chiefs.

2.2 Other permits required – federal, provincial, municipal, roads and highways, water crossings

[26] In its Application, Bear Paw listed the various approvals and permits it requires for the pipeline. In addition to a Class I environmental assessment under the Nova Scotia *Environment Act*, Table 2 of the Application sets out others required:

[Remainder of this page intentionally left blank]

Table 2 Key Permits and Authorizations for Bear Paw

Permit/Authorization	Jurisdiction and Issuing Authority	Regulatory Significance of Modification / Authorization
Fisheries Act S32 and S35(1) <ul style="list-style-type: none"> • Authorizations for Works in Fish Bearing Waters 	Federal – Fisheries and Oceans Canada (DFO)	Number of crossings and crossing methods to be determined during EA and detailed design. The need for a <i>Fisheries Act</i> permit or authorization will depend on the option chosen.
<i>Navigation Protection Act (NPA)</i>	Federal – Transport Canada	Crossing methods for the two major marine watercourses (Strait of Canso and the Milford Haven River) to be determined during EA and detailed design. Options being considered include bottom laying HDD. The need for a NPA permit or authorization will depend on the option chosen.
<i>Nova Scotia Permit/Environment Act</i> <ul style="list-style-type: none"> • Activities Designation Regulations, Part V Division I Water Approval; for Wetlands Alteration Authorization 	Provincial – NSE	Number of wetlands and footprint to be determined during EA and detailed design.
<i>Nova Scotia Environment Act</i> <ul style="list-style-type: none"> • Activities Designation Regulations, Part V Division I Water Approval; for <i>Special Places Protection Act</i> <ul style="list-style-type: none"> • Heritage Research Permit 	Provincial – NSE Provincial – Nova Scotia Department of Communities, Culture and Heritage (Heritage Division)	Number of watercourses to be determined during EA and detailed design. Permit obtained for desktop and field survey research related to archaeological and heritage resources.
<i>Energy Resources Conservation Act</i> <ul style="list-style-type: none"> • Permit to Construct a Pipeline • Licence to Operate a Pipeline 	Provincial – NSUARB	This Application is intended to meet requirements for the Permit to Construct a Pipeline.
Road Crossings	Provincial – NSTIR	NSTIR regulates provincial road crossings (e.g., highways 16 and 334).
Municipal Bylaws	Municipal – Municipality of the District of Guysborough and Municipality of Richmond, specifically the West Richmond Plan Area	Building and development permits and electrical permits for the compressor and meter station, others to be determined.

[Exhibit B-1, pp. 9.1-9.2]

[27] Bear Paw stated that it is not subject to either the *National Energy Board Act* or the *Canada Oil and Gas Operations Act*; nor is it required to have an environmental assessment under federal legislation.

[28] The Company noted that environmental concerns regarding the crossing of watercourses, particularly the two major crossings, i.e., Milford Haven River and the Strait of Canso, had been raised by representatives of associations of local fishers. It said that until detailed engineering is complete, decisions about the location of the pipeline and how it would be placed would not be made.

[29] In response to ECI IR-17(c), Bear Paw said that contact had been made with Fisheries and Oceans Canada regarding marine and freshwater crossings. At the hearing, Mr. Jain confirmed that the applications had been filed to request the necessary review. This issue is to be assessed in the Class I environmental assessment as well as the associated review of the applications. The Company also stated that the required notice had been given under the *Navigation Protection Act* which starts a separate and parallel process, according to Mr. Jain.

[30] Mr. Jain confirmed that the Class I environmental assessment had been filed with the Province on March 30, 2016. A copy was provided to the Board in response to Undertaking U-3. The review period, during which public comments could be received, ended on April 29, 2016. The Company is awaiting the decision of the Minister of Environment.

[31] In response to a question from the Board about the heritage research permit required under the *Special Places Protection Act*, Bear Paw filed Undertaking U-2 which stated that the necessary report had been completed and submitted as part of the Class I environmental assessment.

[32] Bear Paw also said that representatives of First Nations had raised issues about, among other things, archeological interests, traditional and current hunting and

fishing, migratory birds and wetlands. The Company said that these would be addressed in the environmental assessment, as well as directly with the parties.

[33] Mr. Hunka testified that the NCNS had submitted comments to the Minister of Environment as part of the Class I environmental assessment process, but had received no response. These comments were provided to the Board in response to Undertaking U-5. They were similar to issues raised by the NCNS in its evidence before the Board: the impact on harvesting fish, game, fowl and plants; commercial fishing impacts; a need for a detailed species at risk survey; the impact of construction and operation of the pipeline on migratory birds, nesting birds and waterfowl; the impact on fish and fish habitats; and, the impact on wetlands.

[34] In its closing submission, Bear Paw acknowledged that the environmental assessment process will address these issues. The Company noted that the Minister of Environment had requested more information, to which it is responding. It expects that there will be conditions to any permit issued.

[35] In its closing submission, the NCNS expressed concern about the lack of mitigation plans in the Class I environmental assessment. It also considered that the proposed continued consultation with the representatives of fishers' associations is insufficient.

[36] ECI recommended that the following relevant conditions be included in the Permit to Construct:

1. Bear Paw shall ensure that the proposed works are carried out and completed in accordance with:
 - (a) all federal, provincial and municipal laws, and in particular the *Nova Scotia Pipeline Act*, R.S., c. 345, s.1, the *Pipeline Regulations (Nova Scotia)*, the *Land Acquisition Regulations*, the *Pipeline Benefits Plan Regulations*, CSA Z662 - Oil and Gas Pipeline Systems, as amended from time to time;
 - (b) all applicable codes and standards, as amended from time to time;

...

14. Bear Paw shall provide a copy of required permits and approvals, including but not limited to those from federal, provincial and municipal Departments, Boards and Agencies, to the Board and the Certifying Authority prior to commencing construction of those portions of the proposed works which would be subject to such permits and approvals.

[Exhibit B-6, pp.21-22]

2.2.1 Findings

[37] The Board notes that Bear Paw is proceeding to obtain all necessary permits and approvals from the respective governments and agencies. The Board also notes that the decision of the Minister of Environment on the Class I environmental assessment is likely to address most, if not all, of the issues raised by First Nations groups, and particularly the NCNS. Bear Paw will be required to abide by any conditions imposed by the Minister as a result.

[38] The Board accepts the recommendation of ECI and will include the conditions noted above in the Permit to Construct. The Board considers that this will adequately address the concerns raised by the NCNS and other First Nations groups.

2.3 Socio-economic impacts

[39] In response to ECI IR-4, Bear Paw discussed benefits from its proposed project, including jobs during construction and operation of the pipeline, as well as training opportunities. It also referred to the requirement for equipment, during operation and maintenance. Bear Paw anticipated the construction of the pipeline would take place

over two years, and the compression station would be constructed over a period of one and a half to two years. The Company stated it would hold information sessions for contractors regarding the goods and services, and employment it will require. It also noted that the project would add significantly to the tax base of Richmond County.

[40] While Bear Paw had referred to the development of a detailed Benefits Plan in its IR response, ECI identified, in its evidence, that the Application did not include a Benefits Plan ("Plan") as required in the *Pipeline Benefits Plan Regulations* (N.S. Reg. 151/97) ("*PBP Regs.*"). Bear Paw remedied this oversight by filing a revised response to the IR which included such a Plan (Exhibit B-7, Attachment 1).

[41] The revised IR response included a commitment on the part of Bear Paw to fulfill the requirements of s. 5(1) of the *PBP Regs.* It also noted the relationship between the Bear Paw project and the Bear Head LNG development, and thus the benefits are tied together. Bear Paw also noted that, in addition to meeting with business organizations and labour groups, it had also met with educational institutions to ensure the capacity for training and resulting qualified employee candidates would be in place.

[42] Once the Plan was filed, further IRs from ECI elicited confirmation from Bear Paw that all of the contractor work to date had been done by contractors with offices in Nova Scotia, although not all were Nova Scotia companies, and most of the personnel were based in Nova Scotia. Further, Bear Paw confirmed that bidders for the pipeline general contract, and the contract itself would require compliance with the *PBP Regs.*, and along with Bear Paw, would provide an undertaking to take all reasonable measures to comply with the provisions of the Benefits Plan.

[43] In response to ECI IR-35, Bear Paw identified two “primary sources of provincial funding with regards to customized training” which it intends to seek, i.e., the Workplace Innovation and Productivity Skills Incentive, and the One Journey Program. These programs provide and upgrade skills in needed fields of employment. In IR-36, the Company said it is in discussions with the Strait Campus of the Nova Scotia Community College (“NSCC”) regarding training for both the construction and operation of the pipeline. It has also entered into an MOU with Cape Breton University “...to provide training services for oil and gas industry personnel in conjunction with NSCC” which could lead to employment with Bear Paw.

[44] Bear Paw also explained that it would develop methods to evaluate bids for work, goods and services to give priority to Nova Scotia sources. The Board explored this with Mr. Jain who confirmed that the engagement of Nova Scotia based goods and services does not mean that a premium would be paid for them. He said that price would not be the only factor for evaluation, but that “all things being equal...Nova Scotia folks will get priority”. This practice would also apply to contractors and subcontractors.

[45] The Board asked ECI what it considered the appropriate level of authority should be for Bear Paw’s office in Nova Scotia, which is mandated in the *PBP Regs.* In its response to Undertaking U-6, after commenting on similar requirements for other oil and gas companies, ECI said:

... Bear Paw has not indicated that it intends to have its senior management team located in Nova Scotia. Bear Paw indicated that:

Bear Paw will establish in the Province an office where decisions are made at a level of authority that the Board considers appropriate;

The “appropriate” level of authority is not well defined and thus the legislation leaves it up to the Board’s judgement. ECI judges that the intent of section 5(1)(a) of the Pipeline Benefits Plan Regulations is to increase the number and seniority of the personnel in the local office, and that this is expected to provide benefits to Nova Scotians through

increased employment and increased responsibility in those positions. The Board must also balance requiring local office benefits with the fact that the parent company is proposing LNG projects all over the world and that it expects to retain certain expertise and decision making at remote offices or at the parent company level in order that it be efficiently shared across multiple projects.

In ECI's view, the appropriate level of authority for the local office requires that the local office be staffed with personnel with sufficient expertise such that decisions can be made at the local level within budgets established by the Houston office, Board of Directors, or parent company. Expertise in the local office should be in the following areas during the design and construction phase:

- pipeline design,
- compressor station design,
- construction management,
- health, safety, security, and environmental management,
- human resources management, and
- procurement.

Expertise in the local office should be in the following areas during the operational phase:

- operations,
- maintenance management,
- health, safety, security, and environmental management,
- human resources management, and
- procurement.

Bear Paw's local office need not be restricted from accessing expertise from its parent company or external resources in any of these areas.

[Exhibit B-19, pp. 5-6]

[46] In its closing submission, Bear Paw said:

14. The regulations require that proponent establish in the Province an office where decisions are made at a level of authority that the Board considers appropriate. Bear Paw now has offices in Halifax and Port Hawkesbury where project management representatives are available. During the procurement and construction phase Bear Paw will assigned additional resources, including a project manager out of the Nova Scotia offices. When the project goes into operation, there will be a general manager based in Nova Scotia. The project manager and general manager will have local decision-making authority on hiring and local procurement. Budgetary and strategic decisions will be retained for senior management, although the local manager will make recommendations. Bear Paw submits that this level of local decision-making authority is appropriate for a project of this nature.

[Bear Paw Closing Submission, pp. 4-5]

[47] In its Reply Evidence, Bear Paw stated that the pipeline and the Bear Head LNG facility "...will bring employment and other economic opportunities to the communities of northeastern Nova Scotia and will form an important part of the

infrastructure of the Strait Area industrial complex.” The Company said the details of both the timing and scope of the benefits will become more specific as the projects progress.

[48] Mr. Jain, in his opening statement, said the Bear Paw project and the Bear Head facility will contribute to economic growth in the Province and contribute significantly to the industrial base of the Strait of Canso area “...providing ongoing employment for skilled operators and trades, ongoing business opportunities, and tax revenues...” which will have “a multiplier effect”.

[49] Mr. Hunka questioned the number and type of jobs likely to result, both during and after construction of the pipeline. Mr. Jain said that there would be a “peak labour force” of 250-350 during pipeline construction which will take about two years; the “peak labour force” for the compression station would be 80-100. There would be a “wide range of skills required”, according to Mr. Jain. Once in operation, with the exception of various support staff, the full-time staff would be five to seven people, which are more technical positions.

[50] Bear Head LNG entered into a Memorandum of Understanding (“MOU”) with the Kwilmu’kw Maw-klusuaqn Negotiation Office (“KMKNO”) on behalf of the Assembly of Nova Scotia Mi’kmaq Chiefs with respect to the Bear Head LNG facility.

[51] The NCNS asked Bear Paw about entering into an MOU in its IR-1:

[Remainder of this page intentionally left blank]

- a) *Is Bear Head LNG Corporation, and Bear Paw Pipeline Corporation Inc. prepared to commit through a Memorandum of Understanding working relationship with the Native Council of Nova Scotia Community of Off-Reserve Status and Non-Status Indian/Mi'kmaq/Aboriginal Peoples to facilitate best efforts to meaningfully access benefits, training and employment opportunities for our largely disadvantaged community continuing in a rural depressed area of Nova Scotia?*
- b) *Is Bear Paw Pipeline Corporation Inc. also prepared to introduce and have included in their Bear Paw Pipeline Benefits Plan a proactive good faith effort to identify and document with the NCNS Aboriginal Training and Employment Commission (APTEC), NCNS Community candidates interested or seeking training for the higher skilled technical operational positions?*

Answer:

- a) Bear Paw is committed to working collaboratively with all parties having an interest in the areas near the projects, including the Native Council of Nova Scotia Community of Off-Reserve Status and Non Status Indians/Mi'kmaq/Aboriginal Peoples, to ensure that those parties know of and have meaningful access to available training and employment opportunities. This can best be accomplished through ongoing dialogue with identified parties, including, but not limited to, those responsible for training. Other avenues through which information will be dispersed will be the Community Liaison Committee and the Fisheries Consultative Group. The Native Council of Nova Scotia has participated in the latter, and Bear Paw hopes that their participation will continue. Bear Head LNG and Bear Paw reiterate that open dialogue is the most efficient means to ensure that information on opportunities for training and employment can be identified and pursued.
- b) Bear Paw acknowledges that the NCNS APTEC may be an appropriate channel through which training candidates from the community that NCNS represents may be identified. Bear Paw will meet at the appropriate time with representatives from APTEC to discuss the skills required and the training and employment opportunities that may be available.

[Exhibit B-8]

[52] In its evidence, the NCNS addressed the socio-economic impacts of the Bear Paw project on its community's access to, and use of, the land which will be affected by the pipeline, as discussed earlier in this Decision.

[53] The NCNS reiterated in its opening statement and Closing Submission that the Benefits Plan does not provide sufficient evidence that it will bring benefits to the members of its community.

[54] As a result, the NCNS asked the Board to

...attach a condition to this application which would assure the NCNS Community that the Proponent corporation, its assigns, or others who own and/or operate the pipeline and LNG

facility, will fully and meaningfully engage with the Native Council of Nova Scotia to identify, and promote, training and employment opportunities as a benefit of these projects through a formal Memorandum of Understand [sic] to be filed with the NSUARB within four months of the Boards [sic] approval...

[NCNS Closing Submission, p. 4]

[55] The Board asked Bear Paw to provide a copy of the MOU with the Assembly of Nova Scotia Mi'kmaq Chiefs. Counsel for Bear Paw said that the MOU contained a confidentiality clause, and that Bear Paw would seek permission from that organization to provide the copy. In response to Undertaking U-1, however, Bear Paw advised the Board that such permission was denied.

[56] Of the 11 letters of comment received by the Board, ten addressed the benefits of the Bear Paw project to the economy of the regions, especially in terms of employment opportunities. All were supportive of the project.

[57] Additionally, in the evening session, Amanda Mombourquette, Executive Director of the Strait Area Chamber of Commerce, and Marc Dube, Chair of the Chamber's Industrial Committee, spoke about the benefits of the project:

MS. MOMBOURQUETTE: The Chamber and the Industry Committee, in particular, recognize that the energy sector contributes significantly to the region's economy. We also recognize that adequate and reliable pipeline infrastructure is key to developing and diversifying growth opportunities in this region.

...

So the Chamber is absolutely looking forward to the direct economic benefits of this project, whether it be employment during the construction of the pipeline, operation and maintenance jobs, training, or the use of local suppliers. With Cape Breton's unemployment rate reaching 14.7 percent in the last quarter of 2015, this region absolutely needs developments like Bear Paw.

...

MR. DUBE: ...I think the only thing I'd add is certainly the approach taken has been one with the industries here. We have met with the company as they went through their plans, talked about ways that we have synergies together that we can benefit each other. And it's also important to our employees that there's more jobs and opportunities in the Strait area so their schools have enough students in them. So there's certainly the value for homes, the ability for the municipalities to keep up the infrastructure within them. All require people to be here working. So, from an Industrial Committee standpoint, and

certainly the commitment from our owners who are committed to the area, this is a good thing and we're certainly behind it 100 percent.

[Transcript, pp. 104-107]

2.3.1 Findings

[58] The *Pipeline Benefits Plan Regulations* provide:

Approved benefits plan required

- 3 (1) Subject to subsection (2), the Energy Board shall not issue a permit unless
- (a) the applicant has submitted to the Board a benefits plan, respecting the pipeline, together with a written undertaking that if the applicant is issued a permit, the applicant will take all reasonable measures to ensure that the provisions of the benefits plan are carried out; and
 - (b) the benefits plan submitted by the applicant pursuant to clause (a) has been approved by the Board.

...

Form of application

- 4 A benefits plan shall be submitted to the Energy Board in a form and containing such information as the Board may require.

Approval by Energy Board

- 5 (1) The Energy Board shall not approve a benefits plan unless the plan provides that
- (a) the pipeline proponent will establish in the Province an office where decisions are made at a level of authority that the Board considers appropriate;
 - (b) individuals residing in the Province will be given first consideration by the pipeline proponent and its contractors for training and employment respecting the pipeline;
 - (c) where the Board considers appropriate, the pipeline proponent will carry out a program and make expenditures for the promotion of education and training in the Province; and
 - (d) the pipeline proponent and its contractors will give first consideration to services provided from within the Province and to goods manufactured in the Province, where those services and goods are competitive in terms of fair market price, quality, performance and delivery.
- (2) Subject to subsection (1), the Energy Board may approve a benefits plan if, in the Board's opinion, it would be in the public interest to do so.
- (3) The Energy Board may make the approval of a benefits plan subject to such terms and conditions as are specified at the time the benefits plan is approved.

Consultation with Ministers

- 6 The Energy Board shall consult with the Minister and the Minister of Economic Development and Tourism before approving a benefits plan.

[Note: Effective April 9, 2015, the reference to the Minister of Economic Development and Tourism should be read as a reference to the Minister of Business in accordance with Order in Council 2015-116 under the Public Service Act, R.S.N.S. 1989, c. 376.]

...

Permit holder to carry out plan

- 11 If a benefits plan respecting a pipeline has been approved by the Energy Board, it shall be a condition of the permit respecting the pipeline that the permit holder shall take all reasonable measures necessary to ensure that the provisions of the approved benefits plan and any terms and conditions of approval specified by the Board are carried out.

Reporting

- 12 (1) Every permit holder who has had a benefits plan approved shall submit a written report to the Energy Board at least every six months during the planning and construction of the pipeline that sets out how and to what extent it has carried out the provisions of the benefits plan, any pertinent factors affecting the implementation of the plan, and measures taken or to be taken to ensure commitments are being or will be fulfilled.
- (2) The first report required by subsection (1) shall be submitted to the Energy Board within 180 days of the date on which the permit is issued.
- (3) Every licence holder who operates a pipeline for which a benefits plan has been approved shall submit a written report to the Energy Board at least once every 12 months that sets out how and to what extent it has carried out the provisions of the benefits plan.
- (4) The first report required by subsection (3) shall be submitted to the Energy Board within one year from the date on which the licence is issued.

[59] The Utility and Review Board has been designated as the Energy Board for the purposes of the *PBP Regs.* In accordance with s. 6 of the *PBP Regs.*, the Board wrote to the Premier in his role as Minister, and the Minister of Business, seeking comments on the Benefits Plan proposed by Bear Paw. The Minister of Business responded on behalf of the Province by letter dated July 14, 2016, in which he stated:

We have had an opportunity to review the proposal, and we are encouraged by the proponent's willingness to engage with local industry and the Aboriginal community as it pertains to the labour, construction, maintenance, and operation of this pipeline.

We would encourage the proponent to continue to engage with the Department of Energy staff for the planning and delivery of industry engagement activities throughout the Province.

[60] The Board is aware that the NCNS has concerns about the number and nature of the jobs which will result from the pipeline project, and the commitment of the Company to education and training, particularly for its community. The Board observes that Bear Paw has committed to work with governments, education authorities, labour and business organizations, and aboriginal groups, including the NCNS to identify programs for training and to enhance opportunities to benefit from the project. The Board expects Bear Paw to honour this commitment. The Board reminds Bear Paw that, pursuant to s. 12 of the *PBP Regs.*, reporting on the manner and extent of the carrying out of the Benefits Plan, any impediments to doing so, and measures to be taken to ensure fulfillment of the commitments, is to be filed with the Board on the prescribed regular basis.

[61] The Board is satisfied that there are socio-economic benefits which will accrue to the Province and to the Strait Area in particular, with employment and training or education opportunities, the provision of goods and services from businesses within the Province, and tax revenues. The Board notes as an aside that, because pipelines are assessed in the municipality where they are located (per s. 32A of the *Assessment Act*, R.S.N.S 1989, c. 23, as amended), Guysborough County, as well as Richmond County which Bear Paw mentioned, would experience an increase in its tax base.

[62] Bear Paw has committed to having an office in Nova Scotia with decision making authority as the Board deems appropriate. The Board directs Bear Paw to amend the Benefits Plan in a compliance filing, taking into account ECI's response to Undertaking

U-6, to be filed with the Board on or before August 30, 2016. Parties will be given an opportunity to make comments thereafter.

[63] The Board finds the Benefits Plan, amended as directed in paragraph [62], will meet the requirements of s. 5(1) of the *PBP Regs.* The Board's approval will include a condition pursuant to s. 11 of the *PBP Regs.*

2.4 Public awareness and consultation

[64] In the Bear Paw opening statement, Mr. Jain noted the consultation the Company had undertaken with communities in the general area of the proposed pipeline corridor. He noted, in particular, discussions with landowners whose property would be directly affected. He also spoke of the consultation with the First Nations of Nova Scotia. Bear Paw's aboriginal consultation, and its discussions with affected landowners are discussed in greater detail elsewhere in this Decision.

[65] Further detail about the consultation was provided in response to ECI IR-3. Bear Paw described "...a comprehensive public consultation program":

...The consultation program was focussed and remains focussed on reaching everyone with interests near the assessment corridor, including property owners, residents, businesses and business groups, community leaders, and elected representatives. Consultation to date has included:

- Public presentations;
- Direct consultation;
- Open houses;
- Meetings with stakeholders;
- Establishment of a local office; and
- Web page.

[Exhibit B-3, Response to IR-3(a), p. 1 of 8]

[66] Bear Paw noted it had made presentations to council members of the municipal units in which the corridor would be located, as well as labour organizations, representatives of First Nations, local fishers, and business, government and education

organizations. From these presentations, the Company had received and responded to feedback on various issues.

[67] The Company also stated its intentions regarding future consultation:

Bear Paw will continue to consult with interested parties and to provide updated information throughout the construction and operation of Bear Paw on a timely basis. Bear Paw expects to form a community liaison committee after receiving environmental assessment approval. The community liaison committee (CLC) will facilitate timely exchange of information and will strive for healthy, two-way communication between Bear Paw and a representative cross section of organizations and citizens from the local community.

[Exhibit B-3, Response to IR-3(a), p. 2 of 8]

[68] Mr. Jain testified that, for the pipeline corridor, the Company plans to engage with the same Community Liaison Committee ("CLC") which has already been established for the Bear Head facility. Mr. MacLean stated that the CLC is composed of representatives from the municipal units, the Strait Area Chamber of Commerce and the Chief of the Waycobah First Nation. He confirmed that there is no representation from the NCNS; however, Mr. Jain said that Bear Paw wants to continue to engage with it.

[69] Bear Paw specifically mentioned its consultation with fishers to explain the project and receive input on any concerns fishers might have. Bear Head LNG had established a Fishers' Group that included representation from the Guysborough Inshore Fishermen's Association and the Strait of Canso Fishermen's Association. This group meets twice yearly to review the status of Bear Head LNG. Bear Paw has been added to the agenda for these meetings. Mr. MacLean said that representation from the NCNS would be welcome at the meetings of the Group. The response to Undertaking U-4 indicates that representatives of Mime 'j Seafoods Limited, which is "the commercial fishing operation of the NCNS", had participated in the last meeting of the Group.

[70] Mr. Hunka confirmed that Mr. McNeely and Ms. Seward had attended that meeting. The NCNS asked the Board to make it a condition of approval of the permit

Bear Paw seeks that express notification be given to it regarding construction of the pipeline. In response to questions from the Board, Mr. Hunka said that this would be the best way to get the information to the community the NCNS represents, particularly harvesters, both on sea and land.

[71] ECI stated in its evidence that it had not participated in any of the public consultations undertaken by Bear Paw, and offered no view on the adequacy of the consultations.

[72] The project has generated substantial community support. The Board received 11 letters of comment in favour of the Application, six of which were from representatives of labour unions, and three of which were from municipalities. Another was from the Cape Breton Partnership. Encana Corporation also wrote to the Board on another topic. Representatives of the Strait Area Chamber of Commerce also made a presentation at the hearing.

2.4.1 Findings

[73] The Board is satisfied that there is ample evidence of public awareness of the Bear Paw pipeline project, taking into account the information sessions undertaken by the Company, the letters of comment received by the Board, and the participation of the NCNS and the Chamber of Commerce in this proceeding.

[74] With respect to public consultation generally, the Board is satisfied that it has been adequate to date. Aboriginal consultation is discussed in section 2.5 of this Decision.

[75] The Board expects Bear Paw to undertake all necessary communication with landowners as referred to elsewhere in this Decision.

[76] The Board welcomes Bear Paw's commitment to set up a community liaison committee which will facilitate timely exchange of information and two way communication between Bear Paw and a representative cross-section of organizations in the local community. Bear Paw may wish to include representation from the NCNS and Fishers Group as part of the CLC. Whether or not Bear Paw does so, the Board directs Bear Paw to continue its proposed consultation and sharing of information with the public, and specifically directs the Company to communicate directly with aboriginal groups, including the NCNS, and the Fishers Group about its proposed route and construction of the pipeline, and makes this a condition of the Permit to Construct.

2.5 Aboriginal consultation

[77] In response to ECI IR-3, Bear Paw described First Nations' engagement:

First Nation Engagement

Bear Paw has been proactive in its intent to keep First Nations informed about Bear Paw. It proposes to build on the work that has been undertaken for Bear Head. On March 27, 2015, a Memorandum of Understanding was signed between Bear Head LNG and the KMKNO, and steps are presently being undertaken to establish a Mutual Benefits Agreement between the parties for the active involvement of First Nations in the development and operation of Bear Head. Bear Paw expects to follow Bear Head's lead in development of a mutual benefits agreement with First Nations.

Bear Paw representatives have had meetings with KMKNO, the Native Council of Nova Scotia, and the Nova Scotia Office of Aboriginal Affairs to discuss the Bear Paw Project, the regulatory process being followed, and the studies being undertaken as part of the environmental assessment. As part of the latter work, Membertou Geomatics has been contracted to undertake a Traditional Ecological Knowledge study.

[Exhibit B-3, (ECI) IR-3, pp. 4-5]

[78] Mr. MacLean indicated that Bear Paw intended to communicate both with the NCNS and the KMKNO and share with them the training and job opportunities as information becomes available. He went on to say:

MR. MACLEAN: With First Nations, we've been meeting with local bands from the ... prior to and starting with the first elements of the Bear Paw Pipeline project and sort of continuing on with the dialogue that we opened on them on the Bear Head project. We made, we've also made presentations for the 13 chiefs of the KMK to give them detailed

information on the pipeline and we continue to stay in touch with the KMK to provide information as the project evolves.

THE CHAIR: Have you had discussions with the Native Council?

MR. MACLEAN: We have also had direct discussions with the Native Council and had several meetings with the Native Council to keep them apprised of the development of the project and we intend to continue to do so as well.

THE CHAIR: How would you characterize all of your First Nations discussions?

MR. MACLEAN: It's been very positive. I think we've been quite fortunate in that we were in very early in the discussion and opening up the dialogue early, I think has been very helpful, and staying in communication with them as we have information to share. It's been key and critical to the relationship and we continue, we intend to continue to have an open dialogue with both the Nova Scotia Native Council as well as with the community.

[Transcript, pp. 45-46]

[79] In its closing submission, Bear Paw submitted the project would have little impact on the exercise of rights by aboriginal persons. Bear Paw went on to say:

No actual impacts of the two existing pipelines have been identified in evidence. In the circumstances, Bear Paw submits that its engagement with the aboriginal peoples has been fair and open.

[Bear Paw Closing Submission, May 26, 2016, p. 6]

[80] The NCNS was an active participant in the hearing filing direct evidence, including substantial background on land and treaty rights, aboriginal ancestry, hunting and fishing, and socio-economic issues.

[81] The NCNS was also concerned that the Board had not been provided with sufficient technical evidence with respect to construction of the pipeline.

[82] The NCNS indicated that there has been an extensive food, social, and ceremonial treaty fishery within the Strait of Canso area and along the length of the pipeline.

[83] The Board observes there seemed to be more evidence with respect to an ocean fishery rather than fishing and hunting along the proposed pipeline route.

MR. OUTHOUSE: Okay. What about the other species that I look at here? I don't see, other than with respect to mackerel where there was a harvest of 200 mackerel in Guysborough County, I don't see any reference to Guysborough County.

MR. HUNKA: The commercial fleet for snow crab sails out of Canso.

MR. OUTHOUSE: The commercial fleet, okay, and that's the next section of your report.

MR. HUNKA: But for food social ceremonial purposes, we have a small population in this area and the harvesting is voluntary reporting, is voluntary. So the clams ...

MR. OUTHOUSE: When you say ... In the small population in this area, this area ...

MR. HUNKA: As far as actual harvesting sort of in this Guysborough area.

MR. OUTHOUSE: Okay. When you say "small population," can you give me any numbers?

MR. HUNKA: You have in the back there's a map, the population is in the hundreds. Is in the hundreds and of all those that actually participate in the harvesting activities, I would say you're talking maybe about 90 or a hundred, 110 at the most. That's along the shorelines, clams, lobster, the fisheries up the different streams, trout and so forth in the streams. It's a small proportion compared to other areas.

MR. OUTHOUSE: As far as your members go, are any located along, do they live along the corridor that currently exists?

MR. HUNKA: Yes.

MR. OUTHOUSE: Where would they be located along the corridor, can you say?

MR. HUNKA: I don't have the map here but we did go over the map with the proponents and we went through an area of the corridor and we had the corridor maps and we have a few members that are living around where the corridor goes through.

[Transcript, pp. 72-74]

[84] A number of the issues raised by the NCNS will be or are being dealt with as part of the environmental assessment, including issues related to species at risk. With respect to employment the NCNS stated:

MR. HUNKA: ...

And, at the same time, we're not asking for a commitment that says Thou shalt hire a Native Council applicant or a First Nations applicant. We're saying it should not be hard and cannot be hard for a proponent to leave as a legacy to this Board and all of us that, yes, we will make every effort possible to ensure that an applicant from the Native Council, APTEC, or one of its agencies, or anyone else. Even in your benefits plan, you said even from the Band, even from a reserve community will at least be given that option and

assurance that, okay, we would talk to you, we'll look at you, and we will help you as much as possible. ...

[Transcript, p. 63]

[85] In the end, while calling the Application “a deficient filing” requiring more complete answers, the NCNS indicated that as an alternative, should the Board be prepared to approve the Bear Paw pipeline project, the Board should attach conditions to such approval to ensure it is in the public interest.

[86] In their final submission the NCNS stated as follows:

Accordingly, based on our letters, interventions, evidence, answers and the proponents attitude, we request that the NSUARB attach a condition to this application which would assure the NCNS Community that the Proponent corporation, its assigns, or others who own and/or operate the pipeline and LNG Facility, will fully and meaningfully engage with the Native Council of Nova Scotia to identify, and promote training and employment opportunities as a benefit of these projects through a formal Memorandum of Understand to be filed with the NSUARB within four months of the Boards approval of the Bear Paw Pipeline Project and Facilities Permit to Construct with the requested conditions.

To close, the Native Council of Nova Scotia supports responsible developments for progress which are well thought out and forward looking. We support plans and projects, works, activities and undertakings which do not significantly alter, destroy, impact or effect the conservation, and sustainability of the natural living ecosystems, nor the natural eco-scapes of woodlands, meadows, wetlands, lakes, rivers, streams, shores, beaches and waters with their multitude of *in-situ* natural biodiversity, and which do not impact nor effect the Native Council of Nova Scotia Community of Off-Reserve Status and Non-Status Indian/Mi'kmaq/Aboriginal Peoples Treaty, Aboriginal and Other Rights of access and use of natural life resources, and prospects that benefit the socio-economic situation of the NCNS Community.

[NCNS Closing Submission, May 18, 2016, p. 4]

2.5.1 Findings

[87] The Board appreciates the constructive participation in this hearing by the NCNS. The Board is confident that the conditions imposed in this Decision, as recommended by ECI, if satisfied by Bear Paw, will respond to the concerns the NCNS has with the design, engineering and construction of the pipeline.

[88] The Board was surprised that Bear Paw did not file any reply argument responding to the NCNS's request for a Memorandum of Understanding. However, in

cross-examination, Mr. Jain indicated that, while Bear Paw would undertake meaningful consultation, it would not agree to a Memorandum of Understanding.

[89] The Board questions its ability to order, and the utility of ordering, two parties to enter into an agreement where only one party is prepared to enter that agreement. The Board will not order a Memorandum of Understanding. The Board, however, believes it is appropriate to order as a condition that there be regular consultation with the NCNS with respect to construction work in areas where natives have traditionally hunted and fished and with respect to employment opportunities as the project proceeds.

[90] Indeed, the NCNS indicated that it would be prepared to communicate information provided by Bear Paw to its members, with respect to construction planning, to caution members to be careful with respect to fishing and hunting in areas where work is being undertaken. In other words, they would send safety notices to their members based on information received from Bear Paw.

[91] Finally, the NCNS asked that it be a further condition that any mishaps or incidents which pose a threat to native harvesters in the area be reported to the NCNS. The Board considers this a reasonable request and so orders.

2.6 Compliance with Pipeline Act and Regulations

[92] In Section 1.1 of the Application, Bear Paw stated that its Application was made “Pursuant to s. 7 of the *Pipeline Act*. R.S.N.S. 1989, c.345, and s.3(1) of the *Pipeline Regulations* (Nova Scotia Regulation 66/98) ...”

[93] Section 9.1 of the *Pipeline Regulations* (“*Regulations*”) states:

9 (1) Where a company designs, constructs, operates, maintains or abandons a pipeline, or contracts for the provision of such services, the company shall ensure that the pipeline is designed, constructed, operated, maintained or abandoned in accordance with,

- (a) the applicable provisions of these regulations; and
- (b) the applicable provisions, as determined by the Board, of
 - (i) CSA-Z341, "Storage of Hydrocarbons in Underground Formations", and
 - (ii) where the pipeline transports liquid or gaseous hydrocarbons,
 - (A) CSA-Z662, "Oil and Gas Pipeline Systems" ...

[94] In Section 3.1 of the Application, Bear Paw said "Bear Paw has been and will continue to be designed in accordance with the requirements of CSA Z662 (latest edition) and applicable supplemental regulatory requirements."

[95] In Section 3.2 of the Application Bear Paw similarly stated:

The compression unit and metering stations will be designed in accordance with CSA Z662 (latest edition). Compressor equipment will be industrial gas turbine driven centrifugal compressors designed and built in accordance with API 616/617. All pressure vessels associated with the compression facility will be designed in accordance with CSA B-51 and ASME Sect. VIII Div. 1 (latest edition). CSA-B149.1 "Natural Gas and Propane Installation Code," as required by s. 9(1)(b)(ii)(B) of the Pipeline Regulations for all pipelines that transport liquid or gaseous hydrocarbons will be used as applicable.

[96] The Board engaged ECI as its Certifying Authority under the *Regulations*.

[97] ECI's role pursuant to s. 63 of the *Regulations* "is to determine if the pipeline will be, has been or is being constructed, operated and maintained in accordance with the *[Pipeline] Act* and these regulations."

[98] In section 1.0 of its evidence, ECI stated:

Bear Paw has not yet performed the detailed design and engineering for the proposed pipeline. ECI was thus not able to confirm Bear Paw's compliance with the legislation and industry standards in the absence of the detailed designs and specifications. Bear Paw committed to completing the detailed design and engineering according to the legislation and industry standards, which will be verified by the Certifying Authority in due course and in advance of the Board issuing Bear Paw a Licence to Operate ("Licence") the pipeline. ECI proposes to make a final recommendation whether the Board should issue a Permit to Bear Paw in ECI's final reply submission in this proceeding. On a preliminary basis, ECI recommends the Board issue a Permit to Bear Paw with a number of conditions that are listed in section 7.0 of this evidence.

[99] The information provided to date by Bear Paw is insufficient for ECI to make a final determination. The Board expects ECI to recommend specific conditions that

should be attached to a Permit to Construct to ensure that, as the project moves through the design, construction and eventual operational phases, ECI will be able to provide ongoing assurance to the Board that regulatory requirements are being met.

[100] In its opening statement, Bear Paw said “Bear Paw will work closely with the Board’s Certifying Authority to ensure and demonstrate compliance with all applicable standards and regulations.”

2.6.1 Findings

[101] The Board accepts that it is Bear Paw’s intention to comply with the *Pipeline Act* (“*Act*”) and *Regulations*.

2.7 Compliance with CSA Z662 - Oil and Gas Pipeline Systems and other related standards and codes

2.7.1 Technical Specifications and Engineering Design

[102] Bear Paw noted throughout its Application and in IR responses that many design details are not yet available but will be addressed as the project proceeds to the detailed design phase.

[103] In its evidence, section 4.4.4 ECI stated:

Section 12 of the Pipeline Regulations requires companies to submit to the Board, on request, detailed designs of the pipeline. ECI recommends that as a condition of the Permit that Bear Paw submit its detailed designs to the Certifying Authority in advance of construction and in a timely fashion to allow the Certifying Authority to review the designs.

2.7.1.1 Findings

[104] The Board accepts ECI’s recommendation.

2.7.2 Materials

[105] In Section 4.1 of the Application Bear Paw stated “All materials will be manufactured in accordance with CSA Z662 (latest edition)”. The accompanying Table

1 entitled "Pipeline Material" provided further information regarding pipe and pipe coating specifications.

[106] In section 4.4.7 of its evidence, ECI stated:

Bear Paw has not completed the detailed material specifications, but has provided a representative table of contents that outlines the pipeline material specifications. Section 17 requires that Bear Paw prepare, and on request submit to the Board, the detailed specifications for the pipe and components. ECI recommends that the detailed material specifications be submitted to the Certifying Authority in advance of procurement as a condition of the Permit.

2.7.2.1 Findings

[107] The Board accepts ECI's recommendation.

2.7.3 Risk assessment and integrity management

[108] Section VIII of the *Regulations* and CSA Z662 require a number of manuals related to operations and maintenance be submitted to the Board before operations commence. In Section 8.0 of the Application, Bear Paw committed to provide the manuals and listed other programs and procedures that the *Regulations* require be developed.

2.7.3.1 Findings

[109] The Board accepts Bear Paw's commitment.

2.7.4 Construction methods and quality assurance

[110] In Section 5.0 of the Application, entitled "Quality Assurance", Bear Paw stated:

A project-specific Quality Assurance program will be developed during detailed design, materials procurement, and construction stages. This program will include inspection of materials at the manufacturing site, installation inspection, and final testing prior to placing the system into service. All quality assurance measures will be in accordance with CSA requirements and industry practice and will conform to all conditions imposed by the NSUARB.

Construction quality procedures will include non-destructive examination (NDE) of welds as required by the codes and standards.

Additional examples of testing and Quality Assurance are provided in the Line Purchase Specifications (Appendix F).

[111] Section 6.0 of the Application, entitled "Construction", again states that the pipeline and compressor and metering facilities will be constructed and tested in accordance with the *Regulations* and related requirements. This section provides further details regarding pipeline site preparation, installation methods, watercourse crossings, right-of-way restoration and maintenance, pipeline pressure testing, commissioning and start-up, and similar details for the compressor station.

[112] In response to ECI IR-16, Bear Paw stated "The quality program of the EPC [Engineering, Procurement and Construction] contractor will govern the procurement of all material associated with the pipeline and facilities. At this stage of the project, the EPC contractor has not been selected.

[113] In its evidence, at section 4.4.8 ECI stated:

Section 18 requires the company to establish a quality assurance program to the ISO 9000 series standard or a standard that is equivalent in order to ensure that the pipe and components meet the specifications referred to in s.17. At this time, Bear Paw states that the EPC contractor ultimately selected for this project will have a quality assurance program that will comply with s.18.4 In ECI's view, it is acceptable for Bear Paw to establish the quality assurance program through the EPC contractor.

ECI recommends that the details of the quality assurance program, especially if the program is purported to be equivalent to the ISO 9000 series standard, be submitted to the Board and the Certifying Authority prior to procurement and commencing construction in order to demonstrate compliance with s.18.

[114] Additionally, regarding construction inspection, ECI said in section 4.4.19 of its evidence:

ECI expects Bear Paw to have a sufficient number of construction inspectors that are independent of the EPC contractor for all aspects of pipeline construction. Section 55 requires that Bear Paw retain construction inspection services that are independent of the EPC contractor and any other subcontractors. ECI's interpretation of "independent" is that the inspectors or inspection services report to and receive remuneration directly from Bear Paw and not the EPC contractor. The Board may wish to consider whether clarifying the definition of "independent" is required. Such clarification can be included as a condition of the Permit.

2.7.4.1 Findings

[115] The Board accepts the ECI recommendations and agrees with its interpretation of the term “independent”.

2.7.5 Compression facilities

[116] ECI stated in its evidence at section 5.6:

Though the final head compressor station detailed engineering design has not yet been completed, Bear Paw asserts that its facilities will be designed to the requirements of the applicable codes, standards, regulations, and industry best practices. Examples of minimum design codes include:

- CSA Z662-2015 Oil and Gas Pipeline Systems
- CSA-B149.1, Natural Gas and Propane Installation Code
- National Building Code of Canada, as amended by the *Building Code Act* RSNS 1989, NS Reg 176/2014
- CSA B51, and ASME Boiler and Pressure Vessel Code Section VIII
- Canadian Electrical Code, as referenced by the Electrical Installation and Inspection Act, NS, Reg 95/2015
- API 616 and API 617

Once detailed design and engineering are complete and the designs submitted to the Board, the Certifying Authority will review the designs and confirm compliance with the applicable codes, standards, and regulations. As with the pipeline designs and specification, ECI recommends that it be a condition of the Permit that Bear Paw file the head compressor station designs, drawings, specifications, and construction procedures with the Board in advance of construction.

2.7.5.1 Findings

[117] The Board accepts ECI’s recommendation.

2.8 Health, security, and safety issues including emergency response to incidents

[118] Section 7.0 of the Application refers to Appendix H, “Preliminary Contingency Plan for Construction” which provides details of potential hazards, personnel training requirements and emergency response plan.

[119] Section 4.4.10 of ECI’s evidence stated:

Section 21 requires the company to inform the construction contractor of any special conditions or special safety practices and procedures necessary or specific to the construction. There are many features of the Bear Paw project that could require special

conditions, practices, and procedures, including but not limited to: topography, soil conditions, water and road crossings, adjacent pipelines, proximity to the public, and remoteness to emergency responders. ECI expects that these special conditions, practices, and procedures will be identified during the detailed design phase and will be communicated in advance of construction to the EPC contractor. ECI recommends that communication of the special conditions, practices, and procedures to the Board as well as to the construction contractor be a condition of the Permit.

[120] Additionally, regarding safety and loss management, ECI said in section 5.2 of its evidence:

There are many more requirements in CSA Z662-15 Clause 3.1.2 that Bear Paw has yet to address. The bullets above provide a partial listing of these requirements. Bear Paw stated that detailed plans and procedures for safety and loss management will be developed during the detailed engineering and construction stages of the project. However, safety and loss management requirements apply to all stages of the pipeline lifecycle, including design. A safety and loss management system must be in place before detailed design and engineering are substantially commenced. Accordingly, ECI recommends that a condition of the Permit be that Bear Paw must develop a safety and loss management system that complies with CSA Z662-15 by December 31, 2016, and to file same with the Board and the Certifying Authority by that date. This will ensure that the safety and loss management system is in place prior to the start of detailed engineering in 2017.

2.8.1 Findings

[121] The Board accepts ECI's recommendations.

2.9 Public safety during construction and operation including third-party damage prevention

[122] In response to ECI IR-5, Bear Paw stated:

- i. Bear Paw is committed to the protecting the health and safety of the public and our environment. During the detailed design phase of the pipeline and related facilities, a comprehensive risk mitigation and safety plan will be developed to identify the risks associated with each step of the construction and commissioning phases of the pipeline development. Risk mitigation measure will be identified for each identified risks to make sure that all risk are adequately address and mitigated to industry acceptable levels.
- ii. The Bear Paw pipeline will be designed and constructed by a qualified and experienced engineering and construction contractor. All design and construction features of the pipeline will conform to the requirements of all applicable codes, standards and industry best practices. During the detailed design phase a comprehensive process hazard analysis (PHA) employing Hazard and Operability Assessment (HAZOP) techniques will be executed to confirm the likelihood and consequences of harmful events are identified and mitigated through engineering design features, business controls and applicable procedures. This assessment places public safety as paramount and known industry best practices and design features will be applied to minimize or eliminate the frequency and consequence of any public safety related harmful event.

[123] ExxonMobil, in its IR-4 asked what measures Bear Paw would take to protect the existing natural gas liquids pipeline when Bear Paw construction activity encroaches upon its right-of-way. Bear Paw responded:

Bear Paw will adhere to all CSA and company-specific measures agreed upon between it and the pipeline owner to minimize the impact to the adjacent pipelines. Bear Paw will consult with the owners before commencing construction to get crossing and encroachment agreements that are acceptable to the owners and Bear Paw. Also, Bear Paw will work with the owner's field staff when executing the work to meet the spirit and the letter of these agreements.

Post-construction, Bear Paw will monitor the right-of-way condition and work with the other owners to maintain the lands and keep issues from one right-of-way from impacting the adjacent one. This cooperation may include a common emergency response protocol and cooperation in monitoring, maintenance, and reclamation efforts.

[124] Regarding pipeline alignment and proximity, ECI said in section 5.5.6 of its evidence:

Typical ROW profiles are provided in Appendix C of the Application. Bear Paw also indicated there will be a minimum separation from the existing M&NP and SOEP pipelines of approximately 15 m although this is based on early conceptual designs. Exact dimensions will be determined during detailed engineering design. ECI expects to review the final alignments during review of the detailed designs. ECI will also confirm the detailed designs consider adequate separation from pipelines and other existing infrastructure.

2.9.1 Findings

[125] The Board finds that provisions for public safety during construction and operation will be included in the Permit to Construct.

2.10 Permit to Construct – Conditions

[126] In addition to those noted above, ECI had further recommendations for Permit to Construct conditions. All of ECI's recommended conditions were listed in section 7 of its evidence as follows:

1. Bear Paw shall ensure that the proposed works are carried out and completed in accordance with:
 - (a) all federal, provincial and municipal laws, and in particular the Nova Scotia *Pipeline Act*. R.S., c. 345, s.1, the Pipeline Regulations (Nova Scotia), the

Land Acquisition Regulations, the Pipeline Benefits Plan Regulations, CSA Z662 - Oil and Gas Pipeline Systems, as amended from time to time;

- (b) all applicable codes and standards, as amended from time to time;
 - (c) this Permit, as may be amended; and
 - (d) the Application.
2. Bear Paw shall develop and submit to the Board and Certifying Authority a safety and loss management system that complies with CSA Z662-15 by December 31, 2016.
 3. Bear Paw shall submit to the Board and the Certifying Authority, on a timely basis sufficient to facilitate review in advance of construction, all design and materials specifications relating to the pipeline, head compressor station, valve stations, components and systems required by the applicable codes, standards, and regulations referenced therein.
 4. Bear Paw shall submit to the Board and the Certifying Authority, on a timely basis sufficient to facilitate review in advance of construction and in complete system packages, all construction specifications and procedures relating to the pipeline, head compressor station, and components and systems required by the applicable codes, standards, and regulations referenced therein.
 5. Bear Paw shall submit to the Board and the Certifying Authority the details of the quality assurance program required by s.18 of the Pipeline Regulations in advance of procurement of any materials.
 6. Bear Paw shall submit to the Board and the Certifying Authority the details of the field joining program required by s.20 of the Pipeline Regulations in advance of construction.
 7. Bear Paw shall communicate the special conditions, special safety practices, and procedures related to construction of the pipeline and head compressor station as required by s.21 of the Pipeline Regulations to the Board, Certifying Authority, and the construction contractor in advance of construction.
 8. Bear Paw shall submit to the Board and the Certifying Authority the interface management plan in respect of construction adjacent to existing pipelines and utilities.
 9. If Bear Paw determines that thicker wall pipe segments are required to facilitate crossings of heavy equipment at locations other than road crossings, these segments should be aligned with existing designated crossing locations for the SOEP and M&NP pipelines.
 10. Bear Paw shall submit to the Board and the Certifying Authority the pressure testing program compliant with s.26 of the Pipeline Regulations.
 11. Bear Paw shall submit to the Board and the Certifying Authority a construction contingency plan that complies with CSA Z731 at least two months in advance of

commencing any construction activities. The construction contingency plan shall be approved by the Board prior to the commencement of construction.

12. The Certifying Authority shall verify, in advance of the installation of the proposed works, that the specific materials to be used comply with all applicable codes, standards, and regulations are suitable for their intended purpose, and that all materials have been certified in accordance with the applicable codes.
13. Bear Paw shall provide reasonable notice to the Certifying Authority of its intended schedule of activities for the proposed works and shall permit a representative from the Certifying Authority to be on site to observe the pipeline construction and commissioning activities.
14. Bear Paw shall provide a copy of required permits and approvals, including but not limited to those from federal, provincial and municipal Departments, Boards and Agencies, to the Board and the Certifying Authority prior to commencing construction of those portions of the proposed works which would be subject to such permits and approvals.

[127] ECI also recommended the Board give further consideration to “Bear Paw’s stated intentions with respect to its EPC contractor, as opposed to the permit holder (Bear Paw), carrying personal injury, property damage, and third party liability insurance for losses suffered in the construction of the pipeline.”

[128] However, in its reply evidence, Bear Paw stated “Bear Paw can now confirm that the insurance will be procured by Bear Paw, outside the EPC arrangements.” This is compliant with s. 4 of the *Regulations*.

[129] In its opening statement, ECI agreed that the proposed insurance arrangement was acceptable.

[130] Regarding ECI’s Recommendation 2 above, Bear Paw said in its reply evidence:

When the next phase of the project starts, Bear Paw and ECI will jointly develop a document review plan, which include list of documents to be reviewed, review cycles, budgets, field inspection requirements etc.

With respect to ECI Recommendation 2, Bear Paw requests that submission date of Safety and Loss Management System (SLMS) be changed to “before the commencement of detailed engineering” rather than a firm date of 31 December 2016.

[131] In its opening statement, ECI indicated that it had “no issue“ with the proposed wording.

[132] Regarding ECI’s Recommendation 9, Bear Paw said:

With respect to ECI Recommendation 9, there may be locations identified during detailed engineering where the Bear Paw pipeline will not be adjacent to the existing SOEP and M&NP pipelines. Bear Paw proposes this recommendation to be amended to the following:

Except where the Bear Paw Pipeline may deviate from the SOEP and M&NP pipelines, if Bear Paw determines that thicker wall pipe segments are required to facilitate crossings of heavy equipment at locations other than road crossings, these segments should be aligned with existing designated crossing locations for the SOEP and M&NP pipelines.

[133] In its opening statement, ECI disagreed with the proposed change.

[134] This was further addressed at the hearing:

MR. DOEHLER: And then my final question relates to the little bit of disagreement, apparently, between you and ECI on the heavy equipment alignments between the two.

MR. JAIN: Yes.

MR. DOEHLER: And I'm just trying to understand why there's a difference of opinion.

MR. JAIN: Well, actually we, after reading ECI's evidence, we fully support their recommendation that we can finalize the alignment during detailed, during the next phase.

MR. DOEHLER: So there was be ...

MR. JAIN: It's not a ... It was a concern expressed in case there was no ... if the alignments were a way off but we fully agree that this is a part of a discussion that can happen and our intent would be to align them, anyhow, to minimize impact on the landowners.

[Transcript, pp. 35-36]

[135] This was further explored by Board Counsel:

MR. OUTHOUSE: Just to be specific on that last comment, Mr. Ryall, you heard the testimony of the witnesses from Bear Paw this morning and, as I understand it, they agreed with your recommendation and accepted that that alignment was consistent with what they intend to in any event and what they ...

MR. RYALL: That is correct. That's our understanding and that Bear Paw and the existing pipeline operators, the adjacent pipeline owners and operators will work with Bear Paw to come up with a mutually agreeable way for landowners to cross the pipeline.

[Transcript, pp. 94-95]

2.10.1 Findings

[136] Bear Paw agreed to the conditions recommended by ECI, subject to minor changes to which they mutually agreed. The Board directs ECI to file revised conditions with the agreed changes by August 30, 2016, to be included in the Permit to Construct. The parties will have the opportunity to comment on the revised conditions.

2.11 Construction timetable

[137] Bear Paw had indicated the pipeline detailed design activities would begin in 2017, construction activities in 2018, with commissioning commencing mid-2019. ECI noted the need to continually work with the Board and the Certifying Authority to monitor and coordinate project schedules to ensure timely reviews of the applicable project details. Bear Paw also asked for “a determination under Section 10(1) of the *Pipeline Act* that the date by which construction of the pipeline is to be commenced is December 31, 2019.”

2.11.1 Findings

[138] The Board agrees to the December 31, 2019, commencement date for construction. The Board also stresses, as noted by ECI, the need to coordinate project schedules to ensure timely reviews by ECI as the Certifying Authority.

2.12 Abandonment

[139] ECI, in its evidence, noted that the Application does not include any references to abandonment costs. Bear Paw responded that it is premature for the Board to consider this eventuality. In fact, the Company has not considered the issue at all. As stated by Mr. Jain:

... But, from our standpoint, we would not be planning to create a fund of some sort, funding. We would not want to have a funding mechanism which would require us to maintain a pool of funds for abandonment. If that makes sense.

MR. DOEHLER: It does. It implies to me then if, and tell me if I'm wrong, is that if there's no abandonment commercial aspects put together that for whatever reason the pipeline is no longer needed, it's left there for someone else to pick up the clean-up costs, if there are any.

MR. JAIN: What we respectfully submit is that we would submit a plan. I mean we would not ... First of all, abandonment of this pipeline would be only considered if we, as we said, it's tied to the Bear Head LNG project and the need for abandonment would only be considered if the Bear Head LNG project is not going through.

[Transcript, pp. 32-33]

[140] Mr. Ryall elaborated on the issue saying:

ECI has no issue with considering potential abandonment costs at the licensing phase of the process prior to operation. There is presently no requirement that ECI is aware of to pre-fund abandonment costs. We brought this to the Board's attention in the event that the Board would prefer to address this sooner rather than later.

[Transcript, p. 93]

[141] Bear Paw commented that the abandonment costs are a National Energy Board requirement and not fully established for provincial pipelines. In its closing submission, it stated:

Pipeline Abandonment

25. Bear Paw submits that any policy with respect to funding of the cost of abandonment of pipelines should not be made in an application with respect to one pipeline. The policy should apply to all pipelines within the Board's jurisdiction, and should be made in a proceeding with appropriate consultation. The first question to be explored would have to be the jurisdiction of the Board under the *Pipeline Act* or under the *Public Utilities Act* to impose such a requirement.

[Closing Submissions of the Applicant, pp. 7-8]

2.12.1 Findings

[142] It is unlikely that the pipeline will proceed if the "...Bear Head LNG project is not going through...". Therefore, the issue of a need for an abandonment fund can be deferred. ECI has also stated they have no knowledge of any requirement to pre-fund abandonment costs.

[143] The Board finds that there is no need for the establishment of an abandonment fund at this time.

[144] The Board is concerned about funding the cost of any eventual abandonment once the pipeline is operational. The Board directs that Bear Paw, upon making an application for its License to Operate, include a plan for funding the eventual abandonment costs.

3.0 SUMMARY OF BOARD FINDINGS

[145] Bear Paw applied to the Board for a Permit to Construct a pipeline and related facilities, which will deliver natural gas from receipt points near Goldboro, Nova Scotia, to the proposed Bear Head LNG export facility located near Point Tupper, Nova Scotia.

[146] ECI has been appointed the Board's Certifying Authority, pursuant to the *Pipeline Act*, for purposes of overseeing, on the Board's behalf, the design and construction of the pipeline.

[147] The Board held a public hearing on May 9, 2016, in Port Hawkesbury.

[148] The Board approves the Application, but imposes the conditions, as recommended by ECI, related to the permitting, design and construction of the pipeline [see para. [126]].

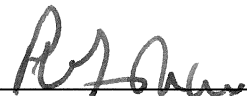
[149] The Board imposes additional conditions, largely at the request of the Native Council of Nova Scotia, and those are contained in paras. [76], [89] and [91] of this Decision, with respect to pipeline routing, consultation, and safety.

[150] The Board also approves Bear Paw's Benefits Plan, subject to Bear Paw amending it to comply with ECI's response to Undertaking U-6, concerning having an office in Nova Scotia with appropriate decision making authority.

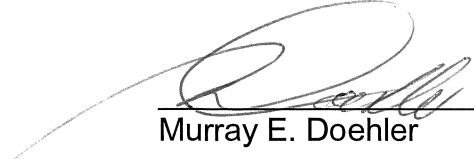
[151] The revised conditions and amended Benefits Plan are to be filed on or before August 30, 2016.

[152] An Order will issue accordingly.

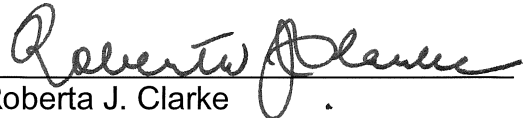
DATED at Halifax, Nova Scotia, this 29th day of July, 2016.



Peter W. Gurnham



Murray E. Doehler



Roberta J. Clarke