



October 25, 2012

Cliff#: 73829

Ms. Sheri Young
Secretary of the Board
National Energy Board
444 Seventh Avenue SW
Calgary AB T2P 0X8

Dear Ms. Young:

Re: Board Consultation concerning review of the *National Energy Board Act (NEB Act) Part VI (Oil and Gas) Regulations: Ad-GA-ActsLeg-Fed-NEBA-Amend 0101*

Thank you for your letter of September 20, 2012 requesting comments from interested parties on aspects of the *NEB Act Part VI (Oil and Gas) Regulations*, the Market Based Procedure and *the National Energy Board Export and Import Reporting Regulations*.

The Province of British Columbia has an interest in regulations that apply to the export of natural gas. On February 3, 2012 the Province released its Natural Gas Strategy and complementary strategy focusing specifically on the development of a new Liquefied Natural Gas (LNG) industry. Through these two strategies British Columbia outlines its vision of becoming a global leader in natural gas investment, development and export to promote economic growth and job creation.

The Ministry of Energy, Mines and Natural Gas (Ministry) on behalf of the Province of British Columbia welcomes the opportunity to provide comments for this regulatory review. The Ministry offers the following responses to questions as outlined in your letter:

1. a) What form should the test take for both oil and gas so that the Board can satisfy itself that there is a surplus of hydrocarbon products to be exported?

Response:

The National Energy Board (Board) continues to be required by section 118 of the NEB Act to satisfy itself that the proposed export of natural gas is surplus to reasonably foreseeable Canadian requirements. The Ministry views the continued use of the Market-Based Procedure (MBP) to assess natural gas export applications, including LNG applications, as being appropriate. The principles inherent in MBP remain relevant and the process therefore can continue to be utilized to assess whether there is a surplus of natural gas to be exported.

.../2

**Ministry of
Energy, Mines and
Natural Gas**

Oil and Gas Division
Phone: (250) 952-0115
Fax: (250) 952-0926

Mailing Address:
PO Box 9323 Stn Prov Govt
Victoria BC V8W 9N3
Website: www.gov.bc.ca/em

Location:
5th Flr 1810 Blanshard
Victoria BC V8T 4J1

While the Board is looking to make the surplus test and the process for assessing surplus similar for both oil and gas, in our view, the current Fair Market Access (FMA) oil surplus test is not appropriate to be applied as a stand-alone test on LNG export applications. In the global LNG market, LNG is indexed to global oil prices, whereas natural gas in North America is priced as its own commodity. The FMA surplus test determines that if no Canadian buyers are interested in purchasing the energy on similar terms to the export option, including price, the energy is deemed surplus. At current market prices, if natural gas was offered domestically at the \$12/mmbtu global price as opposed to the \$3.50 North American price, it could easily be deemed surplus when long-term contracts at the global price may not be a reasonable alternative to Canadians.

Natural gas exported to the United States could potentially use a version of the FMA surplus test as there is ample evidence that the North American market is well supplied and will be so for a long period of time.

1.a) i) If the Board were to retain a form of the MBP, what modifications should be made?

Response:

The amendments to the NEB Act – so that there is no longer a requirement to hold a public hearing when the Board receives an application and the removal of the requirement that the Board have regard to all considerations that appear to it to be relevant – will reduce the administrative burden of the export application process on both the public and private sector and ideally result in a more efficient, timely and predictable regulatory process.

Although a public hearing may not be required, the Board should continue to require an Applicant for natural gas export to provide the key components of the MBP for Board assessment. The process of determining that there is a surplus of natural gas for export may require a broader view (in spite of the new narrowing of scope). For example, the Ministry is of the view that LNG export opportunities will stimulate the ongoing development of shale gas resources in the Western Canada Sedimentary Basin which will ultimately further increase the availability of natural gas for Canadians. As well, technology advancements could result in increased drilling efficiency and well performance to further increase potential gas supplies.

The Ministry views the flexibility with which MBP has been applied in the past in response to changing market conditions as an important feature of the process and encourages this flexibility to continue.

1.a) ii) If the Board were not to retain a form of the MBP, what should replace it?

Response: not applicable - see previous responses

.../3

1.a) iii) What complaint procedure, if any, should be retained by the Board?

Response:

A complaint based procedure should be maintained. The intent of the complaints procedure has been to provide Canadian market participants with an opportunity to review the market terms of the export proposal. Key information concerning the export proposal should continue to be made available to Canadian gas market participants for their review. Canadians should have the opportunity to purchase natural gas on terms and conditions, including price, similar to those of the proposed export.

Without a complaint mechanism, the Board could miss out on identifying that markets may not be functioning properly or when future energy requirements may not be able to be attained at fair market prices.

1.b) What role should market monitoring play under the new NEB Act?

Response:

The Ministry is of the view that the Board should continue to monitor markets to satisfy itself that Canadian requirements are being met at fair market prices and that North American gas markets are functioning efficiently. The Board should continue to provide on-going assessment of changes in the North American natural gas market including new supply sources, changing natural gas flows in North America and the effect this could have on Canadian production.

2. What modifications, if any, are required to the information that applicants must submit in requesting an export licence?

Response:

In the recent NEB GH-1-2011, the applicant KM LNG Operating General Partnership (KM LNG) sought relief from the following three requirements of section 12 of the *National Energy Board Act Part VI (Oil and Gas) Regulations* (Part VI Regulations).

- pro forma contracts for each type of gas purchase contract (paragraph 12(b)ii);
- details of gas export sales contracts (paragraph 12(c)(i)); and
- details of transportation service contracts (subsection 12(e)).

In its GH-1-2011 decision, the Board recognized that global LNG markets are characterized by long-term bilateral arrangements and exempted KM LNG's from filing details of gas export sales contracts.

The Board also granted KM LNG's request for exemption from filing contracts for each type of gas purchase arrangement and details of transportation service contracts. This decision was based on the issue that Terminal Owners cannot conclude transportation and gas purchase contracts until export market and supply requirements become better defined, and that sufficient incentive exists for the Terminal Owners to acquire marketable gas supplies and sufficient transportation capacity in order to achieve high utilization rates for the Terminal. As these issues will be similar for other LNG applicants, the Ministry suggests that the information requested in paragraph 12 (b)ii, 12(c)(i), and 12(e) may not be relevant for LNG export applications.

3. a) Would it be appropriate to modify the Part VI Oil and Gas Regulations to exempt natural gas imports from Board authorization?

Response: No

3. b) What are the implications, if any, of removing a gas import authorization requirement?

Response:

Gas import authorizations provide the opportunity for the Board to assess changes in new supply sources and natural gas flows in North America and the effect this could have on Canadian production and markets.

4. a) Are there changes to the reporting requirements that should be considered?

If not already in the reporting requirements today, it would be important to know the source of where the natural gas was purchased from in Canada or the U.S. and the date and price paid for it. The amount of LNG processed from the natural gas purchased, the volume and date of when LNG loaded onto the ship at the jetty, the LNG cargo's destination point, date and volume of LNG off loaded at time of unloading. The sales price, sales date and name of the customer purchasing the LNG. Also, reporting on the cargo ship's name, its owner, and its certification should also be considered.

4. b) What changes are required to accommodate exports or imports of gas in the form of liquefied natural gas?

Response:

The Ministry is reviewing this question and may have comments in the future.

5. a) Is there value in applying a two year term to all short-term hydrocarbon export authorizations?

Response: The Ministry has no response at this time.

.../5

5. b) What are the issues that should be considered, market or other in applying a similar term to all short-term hydrocarbon authorizations?

Response: The Ministry has no response at this time.

The Ministry looks forward to continuing opportunities to engage with the Board on energy matters of mutual interest.

Yours truly,

Original signed and sent by mail

Michelle Schwabe
Director, Regulatory Policy Development
Geoscience and Strategic Initiatives Branch