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Ms. Sheri Young  
Secretary of the Board  
National Energy Board  
444-7<sup>th</sup> Avenue SW  
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**Re: Board Consultation Concerning, inter alia, Crude Oil and Natural Gas Export Licence Applications**

File Ad-GA-ActsLeg-Fed-NEBA-Amend 0101

Ref: Your letter to interested parties of 20 September 2012

**Summary of comments:** Retain the MBP; afford licence applicants again the option of using an NEB-produced EIA; in assessing the impact of exports, treat Canada as a subset of an integrated North American market; replace the Complaints Procedure by a procedure to Challenge, within predetermined time limits, the Board's or an applicant's EIA; maintain at least the current level of market monitoring giving attention to regional aspects; minimize information required of licence applicants; retain a level of exports reporting that enables longstanding statistical series to be continued and, to support analysis of North American trends, provides information flows comparable to those available respecting USA exports; consider applying relevant elements of the foregoing to oil export licensing in substitution for the present Fair Market Access test.

Your page 3, item 1.a)

1. **a) What form should the (surplus) 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?** [The following comments relate only to natural gas, but there is no reason why an essentially similar procedure should not apply to crude oil and therefore replace the Fair Market Access test.]
  - i. **If the Board were to retain a form of the Market-Based Procedure (MBP), what modifications should be made?**

Comments:

- For natural gas export licensing, the MBP (GHR-1-87) has proven to be a remarkably durable, flexible instrument for regulatory-policy implementation, acceptable to public and private interests, consuming and producing, right across the country.
- Durability, flexibility and national acceptability are important continuing goals for the Board's energy-trade regulation procedures.
- The MBP has "decontroversialized" the issue of long term gas exports, in striking contrast to the industry and public response to multiple, essentially mechanistic approaches, modelled on Alberta practice which were used by the Board in the period 1959-86.
- It is therefore recommended that a form of the MBP should be retained comprising an **Export Impact Assessment (EIA)** and an **EIA Challenge Procedure**.
- However, the Board should take responsibility for the EIA as it in effect did throughout the 1990s (*NEB Proposed Amendments to the EIA Filing Requirements*, November 1989 and GH-3-94 4.1.2 *Export Impact Assessment*), while granting licence applicants the option either to adopt the Board's EIA or submit their own EIAs. Recall in this context that the Board's EIAs were relied on by almost all export licence applicants in the 1990s through the last significant cross-border pipeline gas export licence application to be formally adjudicated by the Board (GH-1-99).
- The Board's EIA should be published biennially, and that could logically be done as part of the Board's valuable, well-regarded and frequently-cited, long-continuing assessments of energy, gas and oil supply and demand outlooks.
- The Board's and applicants' EIAs in conformity with s.118 of the NEB Act should explicitly address "trends in the discovery of...gas in Canada".
- However, recognizing the integrated nature of the continental gas market, the EIA must be based on analysis of North American trends with Canada as a subset thereof: given the degree of integration of energy, gas and oil markets, it is probably impossible to assess the impact only of exports from Canada only on Canadians.
- Such an approach will *for licence applicants* reduce costs and, more importantly, shorten lead times and *for the Board* eliminate dealing with EIAs produced by the consulting sector which will tend to be essentially similar and repetitive in nature and which are unlikely to surpass the Board's EIAs in terms of analytical depth, technical competence, extent of related consultation

and continuity over time (cf. EIAs submitted in relation to GH-1-2011, GH-3-2011 and the LNG Canada application dated 2012-07-27).

ii) **Not applicable**

iii) **What complaint procedure, if any, should be retained by the Board?**

- It is recommended to discontinue the present **Complaints Procedure**, for two reasons.
  - First, because if the Board's analysis of North American energy supply and demand finds that markets are functioning effectively and can adjust to incremental gas exports without causing Canadians difficulty in meeting their energy needs at market prices, then it surely follows that Canadians must have had an opportunity to buy gas for their needs on terms and conditions similar to those contained in the export application. This is because either the export applicant as a gas buyer will have had to acquire its gas on those same terms or the export applicant as a gas producer will have foregone the opportunity to sell its gas on those same terms, in both cases in the North American market.
  - Second, although the following seems not so far to have happened, because the Complaints Procedure has the potential to be used by a commercial competitor of the gas export licence applicant as a tactic to delay or otherwise interfere in the timely completion of the applications commercial arrangements.
- It is instead recommended to institute a new **"EIA Challenge Procedure"** as follows. Parties should be allowed to challenge the Board's EIA or an applicant's EIA within, say, one month of publication of either. Such an approach would turn the focus away from whatever particular export licence applications may be in hand at the time and towards the analytical underpinnings of the EIAs which enable the Board to satisfy itself (or not) that the quantity of...gas to be exported does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada.

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

- The Board should maintain *as a minimum* its current level of energy, gas and oil market monitoring. This is important from the standpoints of generating the EIAs as above and of maintaining visibility and public confidence in the Board's management of energy trade activities under its jurisdiction.

- The Board's monitoring of Canadian energy markets undoubtedly already recognizes the influence of continental energy trends, but possibly more may need to be done and to be made explicit in the Board's future monitoring studies.
- There is a case for the Board to do more in the area of *regional market monitoring*. Despite the increasing integration of the Canadian and North American energy, gas and oil markets, there are from time to time regional issues that require the Board's attention. For example, the gas market situation in the Maritimes presently seems to merit the Board's timely monitoring and public reporting.

## **2. Information to be Furnished by Export Licence Applicants:**

It is not necessary to obtain anything more than the term applied for and the annual and term volumes and perhaps the port of export--even though that may be or become public knowledge, it should probably be specified in the application. If the applied-for licence is issued and the exports eventuate, other elements of the related project will come to public light as a result of such things as regulatory proceedings and routine reporting of international trade data.

## **3. Authorization for Natural Gas Imports:** No comments

## **4. Reporting Requirements:**

Partly for reasons of extending existing lengthy statistical series and also for market monitoring purposes, there is a good case for maintaining the present modest requirements for reporting exports to the NEB. The Board should not be reluctant to obtain information from its licensees which do not duplicate data separately collected and published by Statistics Canada. As well, the Board should command data streams comparable with those available about USA energy trade as an aid to its integrated monitoring of North American trends and activities for EIA and other purposes.

All of which is respectfully submitted

R. Priddle