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February 8, 2018

National Energy Board
517 Tenth Avenue SW
Calgary, AB, T2R 0A8
Attn: Ms. Sheri Young, Secretary of the Board
By electronic filing

Dear Ms. Young:

Re: File OF-Fac-Gas-N081-2013-10 06
Hearing MH-031-2017
NOVA Gas Transmission Ltd. (NGTL)
North Montney Mainline (NMML) Project - Certificate GC-125
Application for Variance and Sunset Clause Extension (Variance Application)
Supplementary Argument by Michael Sawyer

Pursuant to the Board's Ruling 5 and Procedural Update No. 5, this is Mr. Sawyer's written argument addressing points that could not be covered during the time permitted for oral summary final argument.

Mr. Sawyer endorses his oral submissions to the Board in Dawson Creek on February 1, 2018.¹

Mr. Sawyer makes the following additional points, focusing on the arguments by counsel for NGTL reported at paragraphs 10143 to 10160 of Volume 8 of the transcript.

First, NGTL's overarching approach is to ask the Board to ignore the argument and cross-examination by Mr. Sawyer and others regarding impacts on caribou, greenhouse gases and cumulative effects on the grounds that the environmental effects of the Variance Facilities are out of scope. Counsel for NGTL even claimed that "Specifically with respect to caribou, Mr. Sawyer spent a fair bit of time yesterday asking questions about this topic..."²

With respect, this argument is incorrect and misleading and should be rejected. Mr. Sawyer has been very clear that his argument and cross-examination are about the environmental and socio-economic impacts of the proposed new meter stations, the Section 58 Projects.

These issues are expressly within the scope of the proceeding. The October 26, 2017 Hearing Order, MH-031-2017, defines the issues that are within scope. It states "The Board has identified, but is not obliged to limit itself to, the following issues for consideration in the hearing..." and in Issues List B, for the Section 58 Projects, states:

"2. The potential environmental and socio-economic effects of the [Section 58] Projects, including any cumulative environmental effects that are likely to result

¹ A89753-1 18-02-01 - Volume 8 - A5Z9A4.pdf, paras. 10517 to 10626.

² Transcript Volume 8, para.10150.

from the Projects and comprising of those required to be considered by the NEB's Filing Manual."³

Second, NGTL argues that in Mr. Sawyer's January 31, 2018 cross-examination of the NGTL witnesses he "failed to establish any nexus between the new proposed meter stations and the potential for incremental effects on caribou beyond what was previously assessed in the original proceeding."⁴ In response, this argument should be rejected for the following reasons:

1. NGTL's concept of 'establishing a nexus' between the proposed new meter stations and impacts on caribou is arcane and legalistic in this context. Both the Hearing Order and the Filing Manual require the Board to consider the potential environmental and socio-economic effects of the proposed new meter stations, including any cumulative environmental effects that are likely to result from the Projects. While the mechanisms by which 'cause' leads to 'effect' may be multiple and complex, 'cause and effect' is a straightforward concept. It is fundamentally a matter of evidence, not law. Mr. Sawyer submits that the Board should resist NGTL's invitation to divert the focus of the examination of environmental and socio-economic effects away from real-world effects.
2. There is no onus on Mr. Sawyer to establish any "nexus" or otherwise. NGTL is required to provide information on the environmental and socio-economic effects of the proposed new meter stations, including cumulative effects. It has failed to do this. And, NGTL bears the onus of establishing that upon consideration of the required information and other factors approval of the proposed new meter stations is in the public interest. Again, it has failed to do this.
3. Specifically, the onus is on NGTL to show, among other things, that relocating the subject meter stations will not relocate the upstream development for feeding the meter stations to areas that are particularly environmentally sensitive. On this crucial point, NGTL's position is simply that in the original proceeding it assumed that development of the North Montney Play would be distributed uniformly on a geographic basis over the long term regardless of the location of the NMML pipeline, and that it continues to maintain this assumption in the current proceeding. In effect, NGTL is arguing that it doesn't matter that the relocation of the meter stations will induce near- and medium-term development within the critical habitat of the Graham caribou herd because gas development will inevitably occur in this area eventually as a result of the Board's approval of the original pipeline.
4. In response, Mr. Sawyer stresses that the Board's original NMML decision does not mean that the Board has determined for all time that upstream gas development in any and all areas of the North Montney Play due to future facilities for which Board approval is sought is acceptable and beyond examination.
5. Furthermore, the notion that the relocation of the meter stations will have no effect on the location of upstream development is counterintuitive. Mr. Sawyer asked the NGTL witnesses, if the assumption is uniform distribution of development then "why did you

³ Hearing Order MH-03-17, Appendix 1, p.24. A87245-3 Hearing Order MH-031-2017 NGTL North Montney Mainline Variance and Sunset Clause Extension Request - A5W1L5.

⁴ Transcript Volume 8, para.10150.

move your meter stations to different locations?”⁵ In response, the NGTL witness admitted that “On a near-term basis we are connecting to different plants...”⁶ Different plants means different impacts on caribou habitat, and yet NGTL refused to provide any information on the effect of, among other things, locating the Mackie Creek North and Altares South meter stations immediately adjacent to, if not in, critical habitat for the Graham caribou herd.

6. NGTL attempts to have the Board somehow ‘subtract’ from the potential effects of the proposed new meter stations the potential effects of the NMML pipeline that were “previously assessed.” This is a sleight of hand. By definition, the potential effects of the proposed new meter stations are what the Board is required to consider in the current proceeding. No effects of the proposed new meter stations were assessed in the original proceeding. Effects of the proposed new meter stations could not possibly have been assessed in the original proceeding, because the proposed new meter stations were not even contemplated in the original proceeding.
7. NGTL’s position is effectively that the Board’s approval of the NMML pipeline gives NGTL *carte blanche* to put meter stations in whatever new locations NGTL desires, regardless of where meter stations were located in the pipeline plan that was originally proposed, evaluated and approved. Mr. Sawyer asks the Board to reject NGTL’s position on the grounds that it is unfounded in fact or in law.

Third, NGTL mischaracterizes Mr. Sawyer’s argument that NGTL has not proven its assertion that the Mackie Creek North and Altares South meter stations are located outside Graham caribou range. NGTL describes this as an incremental effect argument that it says was previously assessed in the original proceeding.⁷ In fact, as the Chairman pointed out during Mr. Sawyer’s cross-examination of the NGTL witnesses,⁸ the topic concerns the potential direct effect of the proposed new meter stations, not the cumulative effect of upstream development.

Substantively, I refer to Mr. Sawyer’s oral submissions on this point. However, in response to NGTL’s argument that “NGTL’s witnesses were clear that the best available information today shows no overlap between the meter stations and caribou range,”⁹ I would note that the NGTL witnesses specifically relied on the 2014 Recovery Strategy document, acknowledged that more recent studies exist, and disavowed any knowledge of the findings of the more recent studies.

Fourth, NGTL attempts to deflect from NGTL’s failure to comply with the requirements of the Filing Manual regarding the direct and cumulative effects of the proposed new meter stations by stating that “the Variance Application and Section 58 applications in this proceeding are unique because they form part of the record of the original North Montney proceeding and rely on the original filings that were made in that proceeding.”¹⁰ In response, the Section 58 Applications, and the proposed new meter stations, were not part of the original filing. And, in the current proceeding NGTL’s reference to evidence from the original proceeding is limited to its generic

⁵ Volume 7, para.9999.

⁶ Volume 7, para.10000.

⁷ Volume 8, para.10150-10151.

⁸ Volume 7, para.9719.

⁹ Volume 8, 10153.

¹⁰ Volume 8, paras.10175-10176.

argument that the proposed new meter stations do not require a cumulative effects assessment because the pipeline right of way has already been approved.

In conclusion, for the reasons articulated by Mr. Sawyer in his oral submissions to the Board on February 1, as well as the reasons set out here, Mr. Sawyer respectfully requests that the Board dismiss the Variance Application and the Section 58 Applications.

All the above is respectfully submitted.

Yours truly,

A handwritten signature in black ink, appearing to be 'WJ Andrews', written over a horizontal line.

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