



Canada Energy
Regulator

Régie de l'énergie
du Canada

Suite 210
517 Tenth Avenue SW
Calgary, Alberta
T2R 0A8

517, Dixième Avenue S.-O.
bureau 210
Calgary (Alberta)
T2R 0A8

DECISION LETTER

File OF-CDH-2019 0101
15 April 2020

Mr. Lesly Shurtliff
President and Owner
Peace River Greenhouses Ltd.
P.O. Box 324
Taylor, BC V0C 2K0
l.shurt@shaw.ca

Ms. Rachel Kolber
Senior Legal Counsel
Westcoast Energy Inc.
200, 425 – 1st Street SW
Calgary, AB T2P 3L8
rachel.kolber@enbridge.com

Dear Mr. Shurtliff and Ms. Kolber:

**Application for a compensation hearing under section 327 of the
Canadian Energy Regulator Act between Peace River Greenhouses Ltd. (PRG)
and Westcoast Energy Inc., carrying on business as Spectra Energy
Transmission (Westcoast)**

On 10 October 2019 PRG filed an application (Application) for a compensation hearing under section 327 of the *Canadian Energy Regulator Act* (CER Act) with the Commission of the Canada Energy Regulator (Commission). The Application seeks compensation from Westcoast regarding two of its pipelines across PRG's property. On 19 November 2019 Westcoast filed a response to the Application. PRG filed additional letters on 19 November 2019, 20 November 2019, 22 November 2019, 18 December 2019, and 15 January 2020.

In August 2009, PRG served the Minister of Natural Resources (Minister) a notice to arbitrate under subsection 90(1) of the former *National Energy Board Act* (NEB Act). The Minister appointed a three-member Arbitration Committee to consider the matter (Arbitration Committee).

PRG's position is that the arbitration has been concluded since 2012, or in the alternative, PRG seeks to terminate the arbitration now, vis a vis its submissions to the Commission.

Westcoast requests the Commission dismiss the Application. Westcoast's position is that the arbitration remains assigned to the Arbitration Committee and is extant. Therefore, in accordance with section 41 of the transitional provisions associated with the CER Act, Westcoast argues that the Commission lacks jurisdiction to consider the Application.

The Commission dismisses the Application for the reasons below.

The CER Act came into force on 28 August 2019. Section 41 of the transitional provisions associated with the CER Act provides that any request for which a notice to arbitrate was served on the Minister under subsection 90(1) of the NEB Act is continued in accordance with those subsections.

.../2

Under section 96 of the NEB Act the Minister may terminate the appointment of the Arbitration Committee if the Minister is satisfied that the Committee has no arbitration work to carry out. There is no evidence on the record that the Minister has terminated the appointment of the Arbitration Committee.

Westcoast states that in 2012, the Arbitration Committee held that PRG repeatedly failed to comply with the Arbitration Committee's directions and orders regarding document and expert report disclosure. As a result, the Arbitration Committee stayed the arbitration until PRG completed its document disclosure obligations. PRG does not dispute this in its submissions.

Westcoast states that in fall 2014, the Arbitration Committee responded to the parties after receiving correspondence from PRG. The Arbitration Committee noted that the arbitration remains assigned to the Arbitration Committee and that before the arbitration could resume, PRG must comply with the outstanding orders of the Committee. Again, PRG does not dispute this in its submissions.

The Commission is of the view that the arbitration remains assigned to the Arbitration Committee. As a result, the arbitration provisions under the NEB Act continue to apply, pursuant to section 41 of the transitional provisions associated with the CER Act.

Insofar as PRG seeks, in its Application, to terminate its involvement with the Arbitration Committee, the Commission finds that it has no authority to terminate the appointment of the Arbitration Committee or to otherwise conclude its mandate.

The Commission has determined it is without jurisdiction to consider the Application. The Application is dismissed.

It remains open to the parties to resume the arbitration or seek to have the Minister terminate the appointment of the Arbitration Committee. PRG may file an application for compensation with the Commission under section 327 of the CER Act if the Commission attains jurisdiction to hear such a matter, for instance if the arbitration is concluded or the Arbitration Committee's appointment is terminated. However, the Commission does not have the jurisdiction to determine an appeal from a decision of the Arbitration Committee, pursuant to section 101 of the NEB Act which provides that an appeal lies to the Federal Court.

Yours sincerely,

Original signed by S. Wong for

L. George
Secretary of the Commission

c.c. Pipeline Arbitration Secretariat, Natural Resources Canada,
nrcan.pas-sap.nrcan@canada.ca