



LETTER DECISION

Files OF-Fac-Gas-I017-2004-01 04
OF-EP-FacPipe-I003-MAC 04
2 June 2016

Mr. Rick Gallant
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Dear Mr. Gallant:

Imperial Oil Resources Ventures Limited Mackenzie Gas Project – Request for an Extension of the Sunset Clauses

The National Energy Board (NEB or Board) has considered your letter dated 20 August 2015, requesting an extension to the Sunset Clause in the approvals for the Mackenzie Valley Pipeline (MVP) and the Mackenzie Gathering System (MGS) and has decided to grant the extensions for the following reasons.

Summary

The Request

On 20 August 2015, the NEB received a request from Imperial Oil Resources Ventures Limited (IORVL), on behalf of the MVP proponents and the MGS proponents to extend the sunset clauses for the approvals for the MVP and the MGS from 31 December 2015 to 31 December 2022. The MVP and the MGS are components of the Mackenzie Gas Project (MGP) which is a proposal to construct a total of approximately 1,842 km of pipelines, a processing plant and the development of three natural gas fields located in the Mackenzie Delta area of the Northwest Territories (NWT). The existing sunset clause for the MVP states:

.../2

Unless the NEB otherwise directs, this Certificate shall expire on 31 December 2015 unless construction in respect of the Mackenzie Gas Project has commenced by that date.

Background – the Original MGP Decision

In December 2010, the NEB decided the MGP is in the public interest. The NEB listened to the views of Northerners and other parties and considered the social, environmental and economic effects of the project. The original approval of the MGP included 270 conditions on specific issues related to the design, construction and operation of the MGP. These conditions require the companies to undertake a large number of activities, consultations and additional filings before and during construction and during operation.

NEB Process – Sunset Clause Extension Request

To provide time for the Board to solicit public comments in order to determine the most appropriate assessment process, the Board granted an interim extension of the sunset clause to 30 September 2016. The time provided by the interim extension allowed the Board to:

- gather and analyze public comments
- determine the appropriate assessment process
- consider the extension request and make a decision in the public interest
- seek Governor in Council (GIC) approval of the NEB's decision on IORVL's request

Fourteen parties submitted comments to the NEB during the public comment period. The large majority of the comment letters were from northern organizations including public and indigenous governments that were all in favor of extending the sunset clause. Four other parties expressed opposition to the extension. IORVL provided a written response to the comments received.

The NEB's Decision

Through the public written comment process the Board determined that there was no evidence of new persuasive and relevant evidence that would result in a need for further public proceedings to review and test the evidence. The existing MVP and MGS approvals contain over 115 conditions that require the proponents to submit reports, plans and studies anywhere from one to six months before construction. Many of these reports, plans and studies must be approved by the NEB. In addition, they must be developed by the proponent in consultation with appropriate parties. These conditions will address changes to safety and environment protection aspects that may be required at the time of construction.

The Board is aware that the MGP is currently not economic. A decision to accept the requested extensions to allow for gas prices to strengthen would be consistent with the original NEB MGP decision.

The Board finds that the project is still in the public interest and that the original conditions attached to the approvals will require the project to be designed, constructed and operated in a manner which would be safe and protect people and the environment. The Board grants the extensions for the requested seven years to allow natural gas markets the opportunity to recover and preserve potential future economic opportunities for Northerners.

The Board will vary the certificate and seek GIC approval.

Background

The Request

On 20 August 2015, IORVL, on behalf of the proponents of the MVP and the proponents of the MGS, applied to the NEB for extensions to the sunset clauses for the MVP¹ and the MGS². These clauses provide an expiry date of 31 December 2015 for the certificates for each of the MVP and the MGS unless “the NEB otherwise directs” or “construction in respect of the Mackenzie Gas Project has commenced by that date.” Recognizing that jurisdiction over a portion of the MGS had devolved to the Government of the Northwest Territories (GNWT), IORVL submitted an application dated 29 October 2015 to the Office of the Regulator of Oil and Gas Operations (OROGO) requesting a similar extension to the sunset clause in relation to that portion of the MGS located outside the Inuvialuit Settlement Region (ISR) which is now within the jurisdiction of OROGO.

The Mackenzie Gas Project (MGP)

The MGP is a proposal to produce and transport natural gas and natural gas liquids from the Niglintgak, Taglu and Parsons Lake natural gas fields in the Mackenzie Delta, to Alberta for southern markets. The MGS includes the Inuvik Area Facility (IAF), the upstream gathering pipelines from the three fields to the IAF and the natural gas liquids (NGL) pipeline from the IAF to the existing Enbridge Pipelines (NW) Inc. Norman Wells Pipeline. The MVP would transport natural gas from the IAF to existing NOVA Gas Transmission Ltd. system in northwest Alberta.

¹ Condition 74, GH-1-2004 Reasons for Decision, Volume 2, Appendix K, p. 264.

² Condition 74, GH-1-2004 Reasons for Decision, Volume 2, Appendix M, p. 284.

The Joint Review Panel and the National Energy Board Hearing Process for the Mackenzie Gas Project (MGP)

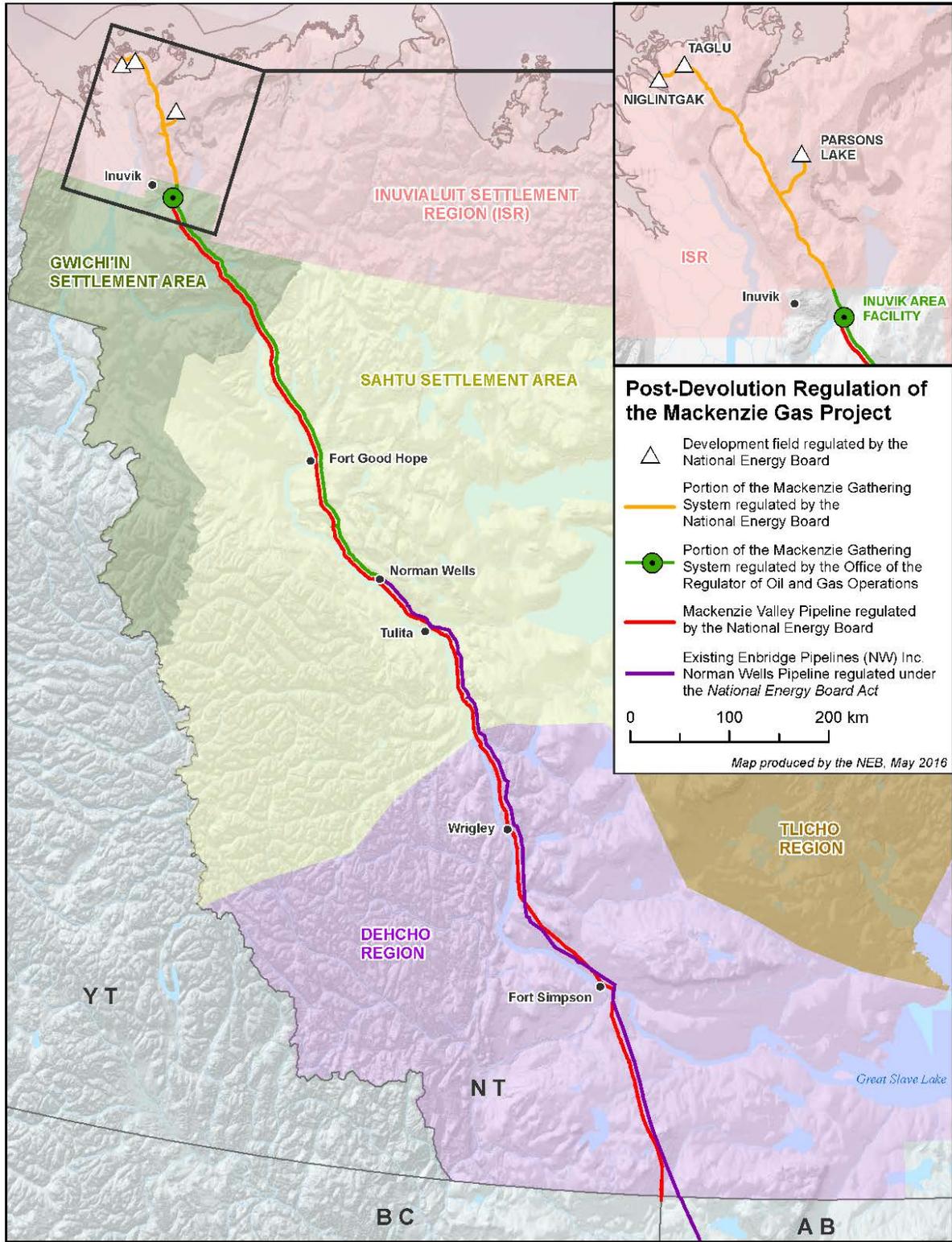
The Mackenzie Valley Environmental Impact Review Board, the Inuvialuit Game Council and the federal Minister of the Environment established the Joint Review Panel (JRP) to evaluate the potential impacts of the MGP on the environment and the people in the project area. Rowland Harrison, an NEB Board Member, was a member of the JRP and was authorized under section 15 of the NEB Act to report and make recommendations on the project to the NEB. Collectively the NEB and the JRP held 173 days of hearings in 27 communities between 2006 and 2010. On 31 December 2009 the JRP issued its report and 176 recommendations which were considered by the NEB as part of its hearing process.

On 14 December 2010 the NEB issued the GH-1-2004 Reasons for Decision. Appendices K to Q of the GH-1-2004 Reasons for Decision Volume 2 contained a total of 270 conditions for MVP, MGS and the Niglintgak, Taglu and Parsons Lake Development Plans. Condition 74 of appendices K and M specified a sunset clause with an expiry date of 31 December 2015 for MVP and MGS, respectively. Following GIC approval, the NEB issued a certificate to Imperial for the MVP on 10 March 2011.

Devolution

Pursuant to the Devolution Agreement between Canada, the GNWT and several indigenous organizations on 1 April 2014, the OROGO assumed responsibility for the regulation of onshore oil and gas activities in the NWT outside of the ISR and federal areas. As a result the OROGO regulates the portion of the MGS located outside of the ISR under the Territorial mirror legislation, the *Oil and Gas Operations Act* (OGOA). The NEB regulates the portion of the MGS located in the ISR under the same Territorial legislation. The MVP continues to be regulated by the NEB under the NEBA (see Figure 1 – Post-Devolution Regulation of the Mackenzie Gas Project).

Figure 1: Post-Devolution Regulation of the Mackenzie Gas Project



Request for Extensions to the Sunset Clauses for MVP and MGS

On 20 August 2015, the NEB received a request from IORVL, on behalf of the MVP proponents and the MGS proponents to extend the sunset clauses from 31 December 2015 to 31 December 2022. On 2 November 2015, IORVL submitted a letter to the OROGO requesting a similar extension to the Sunset Clause for the portion of the MGS that it regulates that is located outside the ISR.

In its application, IORVL said that construction of the MGP would not begin before 31 December 2015, the date set in the sunset clauses. IORVL says that the North American natural gas market conditions make the project uneconomic and that the extensions would provide time to see if market prices will sufficiently recover. If the natural gas markets recover, IORVL estimates that construction could not start before 2022.

IORVL states the MGP proponents do not see any material changes to the project and that anticipated impacts from the project will be consistent with those identified in the original application. IORVL noted that the original approvals provided Mackenzie Delta gas with the opportunity to compete and that an extension to 2022 would maintain that opportunity.

On 9 November 2015 the NEB, as authorized by the sunset clauses, directed that they “be extended until 30 September 2016 to allow the Board to properly consider the IORVL applications.” Similarly on 10 November 2015 the OROGO issued a direction to extend the Sunset Clause to 30 September 2016 to allow for more time to properly consider the request.

Written Comment Process

On 17 November 2015 the NEB and the OROGO issued a joint Procedural Notice of their coordinated review of IORVL’s application to extend the sunset clauses. The Procedural Notice directed IORVL to provide a copy of the Procedural Notice to all intervenors in the NEB MGP hearing process and the JRP process, as well as to any other Aboriginal groups in the project areas. IORVL was also directed to publish a notice in eight English Northern publications and one French Northern publication. The Procedural Notice asked parties to submit written comments to a joint NEB–OROGO public registry by 16 February 2016. IORVL had until 8 March 2016 to submit a reply to the letters of comment.

On 7 December 2015 IORVL submitted a list of persons and groups it contacted as required by the Procedural Notice. IORVL was able to contact 121 persons or groups on the list. Twenty-five persons or groups on the list were either not able to be contacted or were inactive. IORVL also confirmed that it had published the notices of the coordinated review as required by the Procedural Notice.

On 15 December 2015 the Northern Project Management Office (NPMO) of the Canadian Northern Economic Development Agency sent letters to 31 Aboriginal groups located in the project area. The NPMO asked the Aboriginal groups to express their views on the MGP extension in writing to the NEB before 16 February 2016.

Letters of Comment

The following fourteen parties submitted letters of comment:

1. Tulita District Land Corporation
2. Russ Duncan / Sky Hunter Corporation
3. Gwich'in Tribal Council
4. Fort Simpson Chamber of Commerce
5. Mackenzie Valley Aboriginal Pipeline LP (APG)
6. Yukon Government Minister of Energy Mines and Resources (YG)
7. Alternatives North
8. Ecology North
9. Greg Mcmeekin
10. World Wildlife Fund of Canada (WWF)
11. Inuvialuit Regional Corporation (IRC)
12. GNWT - Ministry of Industry, Tourism and Investment (ITI)
13. NWT Chamber of Commerce
14. Environment and Climate Change Canada (ECCC)

Eight parties submitted letters of comment supporting the applied-for sunset clause extensions including: the Tulita District Land Corporation, the Gwich'in Tribal Council, the Fort Simpson Chamber of Commerce, the APG, the YG, the IRC, ITI and the NWT Chamber of Commerce.

Parties supporting approval of the extensions most often cited the following reasons for granting the extensions in their letters of comment:

- a) The MGP will bring economic benefits to the region.
- b) A significant amount of work and effort was done during a thorough and lengthy environmental review and regulatory process.

Three letters of comment were submitted by Russ Duncan / Sky Hunter Corporation. In the first two letters Mr. Duncan stated the extensions should be granted with the condition that IORVL build a liquefied natural gas (LNG) plant. In the third letter, Mr. Duncan said that he was still in favour of the MGP with an LNG plant.

ECCC indicated the extension of the sunset clauses would not impede it from performing its regulatory duties. ECCC has regulatory authority over the Kendall Island Bird Sanctuary (KIBS) located in the ISR. A portion of the MGS is located within KIBS.

With respect to the Aboriginal groups that NMPO sent its letter to, no group indicated there would be any adverse impacts on their established or asserted Aboriginal or treaty rights as a result on the MGP extensions. Two of the Aboriginal groups on the NMPO distribution list, the Gwich'in Tribal Council and the IRC, submitted letters of comment supporting granting the sunset clause extensions.

Four parties, Alternatives North, Ecology North, Greg Mcmeekin and WWF, submitted letters of comment expressing opposition to IORVL's requests to extend the Sunset Clauses.

Greg Mcmeekin argued that an extension of the sunset clauses allowed the proponents to tie up resources which should be opened up to other investors.

Alternatives North, Greg Mcmeekin and WWF submitted letters of comment stating that IORVL has had ample time to commence the project, but has made little or no progress.

Alternatives North and Ecology North indicated there should be a public hearing to review the applied-for extensions to the sunset clauses.

Alternatives North, Ecology North and WWF identified issues that they say have changed significantly in five years. Those issues include:

1. Climate change
2. Lower water in the Mackenzie River
3. Caribou population decline
4. NWT devolution
5. Low energy prices making the project uneconomic

IORVL Reply to the Letters of Comment

On 7 March 2016 IORVL submitted a reply to the letters of comment. It noted that most commenters support the application and preserve the benefits that would be realized if the project proceeds.

IORVL stated that the NEB recognized that there might be environmental changes when it approved the project. It addressed this by requiring IORVL to acquire further baseline and other information before making its final designs and mitigation measures.

IORVL said that there is no reason to conduct a public hearing on the application as the NEB and OROGO will see that environmental impacts are minimized and mitigation measures are put in place.

IORVL noted that the approvals are permissive and are not exclusive. They do not require IORVL to construct any facilities nor do they preclude others from applying for other facilities.

Views of the Board

The Board recognizes that the MGP is not economically feasible under current North American natural gas market conditions and is of the view that it will take many years for the market to recover. During this period circumstances may change. Generally, the existing conditions attached to the MGP approvals address the environmental issues identified by commenters. The MVP and MGS approvals contain over 115 conditions that require the proponents to submit reports, plans and studies anywhere from one to six months before construction. IORVL will be expected to ensure these submissions reflect current and relevant information, data and policies.

Climate Change

The impacts of climate change were considered in the JRP environmental review and the NEB regulatory process. In addition to three conditions related to the EPPs both the MVP and MGS have a number of conditions relating to the impacts of climate change and permafrost. The Board is of the view that these conditions are robust and adequately address the impacts of climate change. For example Condition 6 (below) requires IORVL to submit a report on the effects of climate change following consultation with appropriate parties:

To confirm consideration of the effects of climate change on specific geohazard mitigation, slope and stream crossing designs and terrain stability for the overall design life of the project, the Proponent shall file a report six months prior to the start of pre-construction activities which includes:

- a) an analysis of the impacts of climate change and variability on permafrost and terrain stability for a series of representative locations and conditions using potential upper limit temperature scenarios which may occur along the Mackenzie Valley;*
- b) a description of how these upper limit temperature scenarios may impact precipitation and stream flows along the Mackenzie Valley;*
- c) a description of how the Proponent will account for the potential change in precipitation patterns in the detailed design of slopes and water course crossings for the project; and*
- d) the results of consultation with other appropriate regulators and government departments.*

Low Water Levels in the Mackenzie River

In addition to the three EPP conditions, MVP and MGS both have a number of conditions that relate to watercourses, watercourse crossings, horizontal directional drills, fish habitat, stream flow mitigation, sediment mitigation, frost bulbs, aufeis and stream flow mitigation. The Board is of the view that these conditions adequately address issues related to low water levels in the Mackenzie River.

Caribou Population Decline

Caribou populations were considered in the JRP environmental review and the NEB regulatory process. Conditions 29, 30 and 31 for MVP and MGS require IORVL to submit Wildlife Protection and Management Plans pertaining to caribou for NEB approval. Given that IORVL will be expected to develop these plans using data, information and policies that are relevant at the time of construction, the Board is of the view that the conditions adequately addresses caribou population issues.

Devolution

Following NWT devolution, the MGS is regulated under the Territorial OGOA. The NEB regulates the portion within the ISR and OROGO regulates the portion outside the ISR. Some of the MVP and MGS conditions require IORVL to consult with specific parties in developing its plans, reports or programs. The Board is of the view that following devolution those parties remain appropriate, and that continued consultation will keep project designs and plans relevant and responsive.

With respect to the regulation of the MGP following devolution, continuity is ensured through the Memorandum of Understanding and the service agreement between the NEB and the OROGO. The agreements allow for coordination between the regulators on how they regulate projects that overlap jurisdiction within the NWT.

Low Energy Prices Make the Project Uneconomic

The rationale IORVL provided in their requests to extend the Sunset Clauses for MVP and MGS is that due to low energy prices the MGP is currently not economic and that the extensions are needed to allow for energy prices to recover. A decision to accept the requested extensions to allow for gas prices to strengthen would be consistent with the original NEB MGP decision. When the MGP Reasons for Decision were issued in 2010 gas prices were weak and the decision to approve MGP with a five year Sunset Clause was to give an opportunity for natural gas from the Mackenzie Delta to compete with other gas supply such as shale gas and tight gas.

The following is from NEB GH-1-2004 RFD Volume 1:

Natural gas markets are still recovering from recession. Other forms of natural gas - including shale gas, tight gas, coalbed methane and liquefied natural gas - are competing in the markets that would be served by the Mackenzie Gas Project. Natural gas price trends remain uncertain. We do not agree with those who say these are reasons to deny the project. Our approval gives Mackenzie Delta gas an opportunity to compete. Denial would block that opportunity.

Request for a Public Hearing

Two parties indicated there is a need for a public hearing on the sunset clause extension requests. The Board does not consider that the comments received show a need for a new public hearing on the requests.

Other Matters

One commenter suggested that the extension would allow the MGP proponents to tie up resources. The Board agrees with IORVL that approvals do not require IORVL to construct any facilities nor do they preclude others from applying for other facilities.

Decision on the Sunset Clause Extension Requests

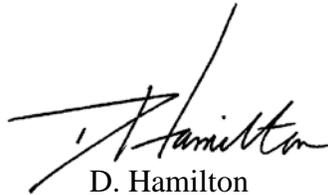
As shown by the comments in favour of the application, there is significant support in the North for allowing the additional time requested by IORVL for it to commence construction of the MGP. The Board recognizes that circumstances change over time which could result in the approval being stale. However, the existing MVP and MGS approvals contain over 115 conditions that require the proponents to submit reports, plans and studies that would include up-to-date information regarding the project. These reports must be filed before construction can begin. Many of these reports, plans and studies must be approved by the NEB. In addition, many of these reports, plans and studies are to be developed by the proponent in consultation with appropriate parties. These conditions will deal with changes to safety and environment protection aspects that will be required at the time of construction.

The Board finds that the project is still in the public interest and that the original conditions attached to the approval will require the project to be designed, constructed and operated in a manner which would be safe, and protect people and the environment. The Board decision is to grant the extensions by varying condition 74 for both the MVP

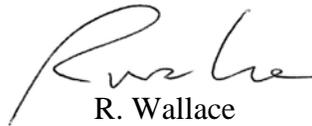
and the MGS so that the date in each sunset clause is 31 December 2022. The Board will vary the certificate for the MVP and pursuant to section 21 of the *National Energy Board Act* will seek approval from GIC for the variance. If approved, this will allow an opportunity for natural gas markets to recover and preserve potential future economic opportunities for Northerners.



P. Watson
Presiding Member



D. Hamilton
Member



R. Wallace
Member

June 2016
Calgary, Alberta