



File OF-Fac-Gas-N081-2017-04 01
27 October 2017

To: Parties of Hearing GH-002-2017

**NOVA Gas Transmission Ltd. (NGTL)
Application for the Sundre Crossover Project (Project)
Hearing Order GH-002-2017 Ruling No. 3 - Applications to Review Ruling No. 2
Amending Order AO-001-GH-002-2017**

The National Energy Board (Board or NEB) is in receipt of letters from Ms. Dorothy Theng, sent on behalf of Mr. Duane Grace, and Mr. Lance Greer, dated 23 October 2017, requesting that the Board reconsider its decision in Ruling No. 2 not to allow an extension to the timeline of this hearing. The Board decided to treat these requests as applications to review the Board's decision in Ruling No. 2, issued on 19 October 2017 (Review Applications).

The Board provided NGTL and other Intervenors an opportunity to make written submissions on whether or not the Review Applications raise a doubt as to the correctness of Ruling No. 2, and whether the Board should review and vary that decision. Mr. Grace and Mr. Greer were provided an opportunity to reply.

For the reasons that follow, the Board has decided to allow the Review Applications and to vary Ruling No. 2 and the Hearing Order to extend the deadline for Intervenor written evidence to 4 December 2017, allow NGTL to file any supplemental reply evidence on 11 December 2017, and commence the oral portion of the hearing on 18 December 2017.

Review Applications

In his Review Application, Mr. Grace submitted that he disagrees with Ruling No. 2. Mr. Grace noted the importance of water to his farm and his concerns with the potential negative effects of the Project on his operation. He stated that, with only receiving approval for funding and the difficulty of hiring an expert, he feels that the decision in Ruling No. 2 is not fair. He submitted that with sufficient time and gathering of resources and independent information, he would feel more valued in the regulatory process.

In his Review Application, Mr. Greer provided a chronology of facts, covering the time period from when he submits he became aware that the Project would cross his land (2 June 2017), through to the hearing process to date. Mr. Greer noted his efforts to hire an environmental hydrology consultant, his receipt of participant funding on 19 October 2017, and his receipt of Ruling No. 2 also on 19 October 2017.

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He submitted that he did not have a sufficient chance to have professional advice on the long-term impacts of the Project or to gather information for the hearing. Mr. Greer disagrees with Ruling No. 2.

Submissions of NGTL and other Intervenors

NGTL requested that the Board dismiss the Review Applications. It noted the process set out in Part III of the *National Energy Board Rules of Practice and Procedure, 1995* (Rules) for applications to review NEB decisions. NGTL submitted that it is the applicant that carries the burden of persuading the Board that reasonable grounds sufficient to raise a reasonable doubt as to the correctness of the Board's decision exist. NGTL submitted that a disagreement with the Board's decision is not alone a valid ground for reviewing a decision, and that the review process should not be used to re-litigate an issue simply because a party disagrees with a finding of the Board.

NGTL submitted that Mr. Greer first became aware that the Project may be located on their lands in June 2016. NGTL noted that the Hearing Order provided advance notice of the hearing deadlines, and the deadline for funding applications. NGTL further noted that Mr. Greer has acknowledged he had identified a consultant to assist him by 6 October, 2017, and that it is unclear when he was awarded participant funding.

NGTL submitted that it has conducted additional study and filed Reply Evidence specifically addressing the concerns raised by Mr. Grace regarding potential impacts to water availability on his land.

NGTL submitted that Mr. Grace and Mr. Greer have not raised a reasonable doubt as to the correctness of Ruling No. 2, and that they have not alleged any errors of law or jurisdiction, any new facts or circumstances, or any facts that were not reasonably discoverable in the process leading to Ruling No. 2.

Stoney Nakoda Nations (the "Stoney Nakoda") supported the Review Applications, and submitted that the timelines be extended in a manner that is fair and agreeable to all parties. The Stoney Nakoda submitted that the hearing timelines are unrealistic and preclude Intervenors having time to prepare evidence and engage in a meaningful way in the process. The Stoney Nakoda submitted that the timelines do not allow time to perform a Traditional Knowledge study.

ARC Resources Ltd., Tourmaline Oil Corp., and NuVista Energy Ltd. filed letters requesting that the Board dismiss the Review Applications, citing a need for an expedient decision to meet the Project's planned in-service date of 1 April 2018.

Reply Submissions

Mr. Greer filed a reply submission, in which he clarified that he got approval for his Participant Funding on the morning of 19 October 2017. He indicated that he waited to receive funding to gather evidence for the hearing; that he had no choice. He also submitted that he did not receive a mail out from NGTL about the Project in June 2016. Mr. Greer submitted that he has raised reasonable doubt as to the correctness of Ruling No. 2 and the NEB should extend the date for the hearing so all parties can prepare evidence.

Views of the Board

The process and requirements for applications to review a Board decision are set out in the Rules, Part III and s. 35(7). The Board's power to review its decisions is discretionary, and must be exercised sparingly and with caution. In general, the Board first considers whether the applicant has raised a doubt as to the correctness of the decision and, if so, the Board reviews the decision and considers the merits of confirming, amending or overturning the decision, and of granting the decision sought by the applicant. In this case, the Board requested comments from parties on both the question of whether the Review Applications raise a doubt as to the correctness of Ruling No. 2, and whether the Board should review and vary that decision.

The Board notes that the Review Applications did not speak expressly to all of the items set out in s. 44(2) of the Rules. They generally contain statements of disagreement with the Board's decision in Ruling No. 2, and statements of fact. While disagreement alone does not constitute grounds for a review, the Board has reviewed the statements of fact provided to determine whether they constitute grounds for raising a doubt as to the correctness of Ruling No. 2. In the Board's view, they do, on procedural fairness grounds.

On the merits of varying the Board's decision to extend the hearing deadlines, the Board is persuaded by the Review Applications that, contrary to Ruling No. 2, the current deadlines do not achieve fairness for the applicants. While decisions on Participant Funding are made independently and separately from the regulatory hearing process, the Board does consider the very close proximity of the receipt of funding awards, as stated by Mr. Greer, and the Intervenor written evidence deadline to be relevant in the context of this specific case, and in particular in light of the overall amount of time (approximately six weeks) between the issuance of the Hearing Order (when parties became aware of the formal opportunity to file written evidence) and the written evidence deadline. In this context, the Board does not consider it unreasonable that the applicants could not fully complete their evidence by the 20 October 2017 deadline.

The Board is also of the view that any written evidence that may be filed by Mr. Greer and Mr. Grace may assist the Board in its review of the Project application. The Board notes NGTL's submission that it has conducted additional study and filed Reply Evidence addressing the concerns raised by Mr. Grace. The Board encourages the continued engagement of the parties; however, Intervenors are entitled to prepare and file their own evidence by established deadlines should they wish to do so.

While the Board believes that extensions are warranted, it has not been persuaded that extensions to hearing deadlines into 2018 are necessary to allow the applicants to meaningfully and fairly participate in the hearing. In the Board's view, an extension to the deadline for Intervenor written evidence to 4 December 2017, and to the commencement of the oral portion of the hearing to 18 December 2017 provides a reasonable amount of time for the applicants to be in a position to present their case.

The Board is cognizant of submissions made previously by NGTL regarding the importance of meeting the planned 1 April 2018 in-service date of the Project. However, expediency cannot be achieved at the expense of procedural fairness.

The Board reminds ARC Resources Ltd., Tourmaline Oil Corp., and NuVista Energy Ltd. that, as Commenters, they do not have the right to participate in the hearing, except by filing a Letter of Comment. Regardless, their submissions in response to the Review Applications do not change the Board's views as set out above.

Conclusion

The Board has decided to allow the Review Applications, and to vary Ruling No. 2 to:

- extend the date for Intervenor written evidence to 4 December 2017;
- allow for supplemental reply evidence from NGTL by 11 December 2017; and
- extend the date for the start of the oral portion of the hearing to 18 December 2017.

As stated in Procedural Update No. 1, the Board currently anticipates sitting over the course of two days; however, it will issue Procedural Update No. 2 in due course, providing a tentative schedule of events and details on the daily schedule for the oral portion of the hearing, including the order of witnesses and witness panels.

The Board has issued the attached amendment to the Hearing Order, which contains the revised timetable for the hearing. The Board has also included revised dates for the deadlines set out in Procedural Update No. 1. **Parties should refer to the attached Amending Order for all upcoming deadlines in the hearing.**

If you have any questions regarding this letter or the Board's hearing process, please contact Monica Rodriguez-Galvez, Process Advisor, by calling toll free 1-800-899-1265 or by sending an email to monica.rodriquez-galvez@neb-one.gc.ca.

Yours truly,

Original signed by
Sheri Young
Secretary of the Board

Attachment