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File OF-Fac-Gas-N081-2018-03 03
27 October 2021

Jaron Dyble
Regulatory Project Manager
Regulatory Facilities, Canada Gas
NOVA Gas Transmission Ltd.
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Calgary, AB T2P 5H1
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Dear Jaron Dyble:

NOVA Gas Transmission Ltd. (NGTL)
2021 NGTL System Expansion Project (Project)
Certificate of Public Convenience GC-129, as amended (Certificate)
Condition Compliance
Certificate Condition 22 – *Fisheries Act* Authorizations

On 23 October 2020, the Commission of the Canada Energy Regulator (**Commission**) issued Certificate GC-129 ([C09098](#)) pursuant to section 52 of the *National Energy Board Act (NEB Act)*. On 5 November 2020, the Commission provided Order XG-001-2020 as amended by AO-001-XG-001-2020 ([C09385](#)) pursuant to section 58 of the NEB Act¹. The Project includes the construction and operation of approximately 344 kilometres of new gas pipelines in eight pipeline section loops and related facilities in Alberta, and the construction and operation of three compressor station unit additions, a control valve, launcher and receiver facilities, and related infrastructure including tie-ins, and temporary infrastructure required for pipeline construction.

Part a) of Condition 22 of the Certificate requires NGTL to file, at least 10 days prior to commencing instream activities, any copies of authorizations it has received for any instream activities that require authorization under paragraph 35(2)(b) of the *Fisheries Act*. The full text of Condition 22 can be found in Appendix A.

On 8 October 2021, NGTL filed a letter requesting the Commission grant timing relief, pursuant to Condition 1 of the Certificate, from NGTL's requirement to file copies of *Fisheries Act* authorizations at least 10 days prior to commencing instream activities to allow such activities to commence immediately upon receipt of the authorization(s) from Fisheries and Oceans Canada (**DFO**) ([C15041](#)). NGTL has been advised by DFO that authorizations for watercourses along the Project's Brewster, Robb, Dismal Creek, Deep Valley South, and

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¹ On 28 August 2019, the *Canadian Energy Regulator Act* (CER Act) came into force and the National Energy Board (NEB) became the Canada Energy Regulator (CER). Pursuant to section 36 of the transitional provisions associated with the CER Act, the assessment of the Project was taken up by Commission and continued in accordance with the NEB Act.

Colt sections will be issued in a phased approach. NGTL indicated the instream activities are on the critical path for the overall timeline of the Project's construction schedule and the timing relief will ensure construction can be completed this construction season and prior to the applicable restricted activity period of the Little Smoky caribou range.

NGTL confirmed that, if the relief is granted, it will file copies of the authorizations with the Commission as otherwise required by part a) of Condition 22 and comply with parts b) and c) of Condition 22.

NGTL submitted that the Commission's granting of the relief requested would not meaningfully impact or prejudice other parties, including potentially affected Indigenous peoples. NGTL stated that as a part of its consideration of the authorizations, DFO is undertaking consultations with potentially affected Indigenous peoples to address issues and concerns with the instream activities.

Commission analysis and findings

The Commission has considered NGTL's request and notes that NGTL has confirmed it will still file copies of all authorizations with the CER as required by part a) of Condition 22. The Commission further notes that NGTL confirmed, as part of its consideration of the authorizations, that DFO is undertaking consultations with potentially affected Indigenous peoples to address issues and concerns with the instream activities. NGTL also confirmed it will comply with part b) and part c) of Condition 22.

Given that NGTL will still meet the requirements of Condition 22, the Commission grants the requested timing relief. Pursuant to Condition 1 of the Certificate, the Commission grants relief from the required commencement of instream activity timing requirements set out in Condition 22 of the Certificate by abridging the respective timing requirements of Condition 22 to the date of this letter. The Commission reminds NGTL that it must file any *Fisheries Act* authorizations with the CER expeditiously once received from DFO.

The Commission directs NGTL to serve a copy of this letter on all interested parties to the GH-003-2018 hearing including Indigenous peoples who expressed an interest in receiving a copy.

Yours sincerely,

Signed by

Jean-Denis Charlebois
Secretary of the Commission

Attachment

Appendix A – Certificate Condition 22

22. Authorizations under paragraph 35(2)(b) of the *Fisheries Act*

- a) For any instream activities that will require Authorization under paragraph 35(2)(b) of the *Fisheries Act*, NGTL must file with the Commission, at least 10 days prior to commencing the respective instream activities, a copy of the Authorization under paragraph 35(2)(b) of the *Fisheries Act*.
- b) NGTL must confirm, within 30 days after commencing operations, that any required *Fisheries Act* Authorizations were obtained from Fisheries and Oceans Canada and were filed with the Commission pursuant to a), or notify the Commission if no Authorizations were required.
- c) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, within 7 days of the filing in a), provide confirmation to the Commission that it has provided those copies.