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## LETTER DECISION

File OF-Fac-Gas-N081-2018-19 01  
20 May 2020

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Dear Mr. Karski and Mr. Gent:

**Abandonment Hearing MHW-006-2019  
NOVA Gas Transmission Ltd. (NGTL)  
Application to Abandon the Etzikom Pipelines (Application)  
Decision Letter**

On 31 October 2018, NGTL applied under section 74 of the *National Energy Board Act* (NEB Act) for leave to abandon 84.4 kilometres (km) of pipeline, seven meter stations, and associated facilities including valves and sales taps (the Project). The facilities proposed for abandonment (Project Facilities) include the Etzikom Lateral, and are all part of the NGTL System.

NGTL operates the NGTL System, an extensive natural gas pipeline system consisting of approximately 24,300 km of pipeline and other facilities in Alberta and British Columbia.

Between April 2019 and February 2020 the Project's hearing process provided opportunities for parties to file comments, information requests, responses to information requests, and reply. During the hearing process, the Commission heard from participants who raised concerns with the Project, including parties that were still using the Project Facilities.

With respect to consultation with Indigenous peoples, NGTL notified and engaged with Indigenous communities who have known and asserted traditional territory in the Project area by mail, email, telephone and meetings both prior to and after filing the Application with the National Energy Board (NEB). The NEB also notified the same Indigenous communities of NGTL's application directly on 20 March 2019 through its Notice of Application letter. On 17 April 2019, the NEB sent a letter to each of the Indigenous communities informing them of a general letter from Natural Resources Canada to the NEB dated 25 March 2019, which "clarifies the federal Crown's approach to fulfilling any potential duty to consult" in respect of projects regulated by the NEB. Moreover, the NEB required NGTL to serve the Notice of Hearing MHW-006-2019 on all persons potentially impacted by the Project, including Indigenous communities. The Notice of Hearing set out the NEB's hearing process and required those interested in participating in that process to indicate their intention to do so by 8 April 2019.

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In response to the 20 March 2019 Notice of Application, Tsuut'ina Nation informed the NEB that it was unable to provide comments at the time. Tsuut'ina Nation stated that a site assessment was scheduled for 8 to 12 April 2019, at which time they would be able to provide comments on any potential impacts and mitigation measures for consideration in the regulatory review of the Project. Tsuut'ina Nation did not file any additional letters and NGTL confirmed that the site visit was completed. NGTL indicated that it is not aware of any outstanding issues or Project-specific concerns that have not been addressed or are not in the process of being addressed. No other Indigenous community sought to participate in the hearing.

The Commission of the Canada Energy Regulator (Commission) has considered the Application and the subsequent filings and all submissions filed. For the reasons outlined in this letter decision, the Commission has decided to deny the Application.

### ***Regulatory Framework***

Under section 74 of the NEB Act, there is no legislated test that the Commission must apply when considering whether to grant leave to abandon. In considering the Application, the Commission has been guided by the established regulatory framework, including relevant past decisions of its predecessor, the NEB. The default test is then the public interest test.

The Commission considered the issue of NGTL's rationale for abandonment, or "whether to abandon," as considered by the NEB, in its Reasons for Decision for the Peace River Mainline Abandonment (MH-002-2017). The Commission notes that in MH-002-2017 the question of whether to abandon was unopposed, which was not the case for this Application.

In coming to a determination on whether the Project Facilities should be abandoned, the Commission considered previous NEB findings regarding the termination of existing service. The NEB found in its Reasons for Decision MH-3-2000 (MH-3-2000)<sup>1</sup>, that the consideration of the financial impact of a particular set of facilities on the entire company would be mainly indicative of the size of the facilities relative to the company, and would provide little insight as to whether maintaining the operation of those facilities is reasonable. Thus the NEB was of the view that consideration of the economic viability of the particular set of facilities on their own was required and must be balanced with any public interest considerations that may be present.

The Commission has also applied this methodology for the current Application, where the facilities in question are also small relative to the size of the overall pipeline system. For the Project to proceed it would have required terminating existing remaining contracts on the Project Facilities, where NGTL lacks the explicit authority to terminate the contracts under its tariff (except in cases of shipper default or *Force Majeure*, and neither are applicable here). While NGTL suggested that the Commission follow NEB examples where it had considered statutory service obligations, the Commission notes that these examples were regarding non-abandonment applications. These examples used a test of reasonableness based on the circumstances of each case, rather than viewing obligations as absolute<sup>2</sup>. The Commission notes that the commercial contracts between commercial parties in this case are different than the statutory service requirements considered in the cases cited by NGTL. The Commission, and the NEB before it, do not appear to have considered a similar case in which a pipeline is requesting that the regulator step in to allow the termination of contracts associated with facilities that are no longer economic. Nevertheless, the Commission is of

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<sup>1</sup> Trans-Northern Pipelines Inc. proposal for suspension of service on the Don Valley lateral MH-3-2000 at page 12.

<sup>2</sup> [MH-4-96](#) Reasons for Decision, PDF 21; & [MH-3-2000](#) Reasons for Decision, PDF 14.

the view that contracts between commercial parties on a CER-regulated pipeline cannot restrain the Commission's ability to decide on applications in the public interest, and therefore the Commission has used a test of reasonableness in considering the contractual obligations of NGTL and the specific circumstances of this Application.

### ***Rationale for abandonment and alternatives to abandonment***

The Commission assessed NGTL's rationale for why the Project Facilities should be abandoned. NGTL's rationale included: the need for the Project; the impacts to commercial third parties, including shippers currently using the Project Facilities and those on the broader NGTL System and; the alternatives to the Project.

### *Views of Parties*

NGTL provided a description of its Facility Decommissioning/Abandonment Planning Process that it uses to assess whether facilities can be abandoned. NGTL said that it assesses whether facilities can be abandoned using criteria such as the ability to meet customer requirements, and current and future operating and maintenance costs. Through this planning process, NGTL indicated it has identified a limited number of smaller facilities in addition to the Project Facilities as both having remaining contracts and meeting NGTL's criteria.

NGTL applied to abandon the Project Facilities because it views them as being no longer economic to operate or to return to being economic to operate in the future. In arriving at this conclusion, NGTL reviewed forecasted integrity-related costs, current and historical transportation revenues, as well as production activity in the Etzikom drainage area. NGTL determined that the contracted volumes on the Project Facilities were not sufficient to justify the current and future operations and maintenance costs of the Project Facilities.

NGTL said that it considered options for the Project Facilities, including sale and replacement, but that it was unable to determine a reasonable cost alternative under the current contract profile, even under the assumption of a 100% contract renewal rate. In response to an information request, NGTL undertook analysis of the continued operation of the Project Facilities and stated that the expected Net Present Value (NPV) of the operating and maintenance costs for a further 10 years would be \$10.2 million. Even assuming that current demand for firm and interruptible services continued over those 10 years, NGTL said it would expect NPV revenue of \$4.1 million. NGTL stated that annual transportation revenues associated with the Facilities totaled approximately \$0.69 million in 2018, compared to integrity-related costs which are expected to average \$1.94 million per year in the next five years.

NGTL said that the Project would mean that the Project Facilities would permanently cease operations, resulting in a discontinuance of service. NGTL said that in order to undertake the proposed abandonment, service and contracts on the Etzikom Lateral must be transferred or terminated.

### Firm Transportation Shippers

At the time of the Application, NGTL said that six shippers held firm transportation contracts utilizing the receipt meter stations on the Project Facilities. NGTL stated that as of 17 January 2020 there were two shippers holding firm transportation contracts on the Project Facilities. NGTL stated that all contracts on the Project Facilities are eligible for transfer to another receipt point on the NGTL System.

NGTL said that it had been in communication with the affected customers since the first half of 2017, and NGTL understood that affected customers had made, or were in various stages of making, alternative arrangements for service. NGTL said that it encouraged the commercial parties at that time to assess possible alternatives to meet their gas transportation requirements.

NGTL notified the Tolls, Tariff, Facilities and Procedures Committee (TTFP) on 3 October 2018 of the anticipated filing of the Application. NGTL described the TTFP as a group of over 100 customers and stakeholders that work collaboratively with NGTL to address NGTL System matters. NGTL confirmed that all potentially affected commercial third-parties were notified of the Project.

Pine Cliff Energy Ltd. (Pine Cliff), a shipper holding firm contracts on the Project Facilities, stated that it explored several options to continue to produce from its gas field connected to the Project Facilities following their abandonment. However, all options identified were either uneconomic due to the significant amount of capital required or could not be completed based on NGTL's Project schedule.

Pine Cliff stated that the Eagle Butte gas field has been economically delivering sales quality natural gas for over 15 years and will become a stranded asset with no place to deliver sales gas if the abandonment proceeds. Pine Cliff said that if the Project proceeds it will incur premature abandonment and reclamation expenses for 130 stranded wellbores, plus the loss of long life natural gas reserves, both of which would impact the value of Pine Cliff as a company. Pine Cliff also indicated that the Project would lead to lost jobs, provincial royalties, surface rentals, and municipal taxes.

NGTL submitted that Pine Cliff deemed its identified options to be uneconomic due to the significant amount of capital required and concluded that alternatives are available for Pine Cliff such that the Etzikom Lateral is not the sole market entry point for this Eagle Butte asset.

Pine Cliff responded that the nearest market entry point to the north is located approximately 30 km away whereas the nearest market entry point to the south is approximately 20 km away. Pine Cliff indicated that each of these options would require tens of millions of dollars in new capital as well as at least one year of regulatory lead time. Pine Cliff stated that with the current natural gas price environment, these options are clearly not viable, and even if they were, this work would not be completed by the abandonment date NGTL indicated in its Application.

Pine Cliff said that it evaluated other mitigative measures, including Pine Cliff's preferred option of acquiring ownership of the Etzikom Lateral but Pine Cliff said that NGTL indicated it was not interested in divesting of the asset.

NGTL noted that its understanding of Pine Cliff's original submission was that economic options were indeed available to Pine Cliff, but were constrained by NGTL's Project schedule. NGTL stated its view that Pine Cliff, in a subsequent filing<sup>3</sup>, modified this statement, in the absence of supporting data or further information, to now advise that each of its alternative transportation options are "[...] clearly not viable, and even if they were, this work would not be completed by the abandonment date [...]" NGTL stated that it began discussions with Pine Cliff about the Project in 2017 and that NGTL was only notified of Pine Cliff's interest in purchasing Project Facilities and Pine Cliff's view on impacts to its production field on 3 January 2019.

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<sup>3</sup> Pine Cliff letter dated 23 July 2019 (C00641).

NGTL and Pine Cliff indicated that they were in the process of negotiating the sale and acquisition of Etzikom Lateral facilities; however, no agreement was reached during the Hearing process.

NGTL submitted that in circumstances where maintaining operations of the facilities for limited existing contracts results in prohibitive incremental integrity costs to NGTL and its customers for minimal revenues derived from service on the facilities, that on the balance, the public interest supports approval of the Application. NGTL also stated that continuation of service on the Etzikom Lateral would impose an undue burden on NGTL and its rate payers and that such an outcome would be contrary to the public interest.

NGTL noted Pine Cliff's submissions on significant capital expenditures, but submitted that continued operation of the Project Facilities would itself require substantial integrity spending which is a long-term investment. NGTL also suggested, should the Commission grant approval conditional on the Project Facilities remaining in-service for a period of time beyond that contemplated in the Application in support of Pine Cliff, that any incremental costs incurred by NGTL and its rate payers as a result of such condition should be permitted to be recoverable from Pine Cliff.

NGTL acknowledged that the impact on tolls from municipal taxes and integrity-related costs to maintain the Project Facilities is expected to be small in absolute terms and that NGTL anticipates that the impact of continued operation of the Project Facilities compared to NGTL's total annual revenue requirement would not be significant. However, NGTL stated that looking at the Project Facilities on their own, as was done in MH-3-2000, the costs of continued operations of the Project Facilities – which include both the forecast average annual integrity-related costs of \$1.8 million as well as ongoing operational costs – are material relative to the remaining contracts totaling 62 10<sup>3</sup>m<sup>3</sup>/d (2.2 MMcf/d) of gas.

NGTL stated that approving the Application, including the necessary consequence of the termination of service on the Project Facilities, would further and appropriately support and clarify that provision of service by a CER-regulated contract carrier is tempered by a test of "reasonableness." NGTL further stated that, in contrast, denying the Application out of concerns due to the presence of limited existing contracts would effectively impose an absolute obligation on NGTL which NGTL submits would be unreasonable given its customers have a unilateral right to extend their contracts indefinitely. NGTL stated that doing so would require NGTL to make amendments to its Tariff in order to explicitly limit renewal rights and/or add a termination clause in order to ensure NGTL and ratepayers are not exposed to an unreasonable and unlimited service obligation that results in an undue burden, which could over time result in material impacts to NGTL System tolls.

### Tap Users

NGTL stated that it has a Connecting Operator Agreement (COA) with two commercial parties, including AltaGas Utilities Inc. (AUI), to provide access to natural gas from the NGTL System for tap facilities. NGTL stated that the Connecting Operator relationship is not governed by the NGTL Tariff but is a practice that allows tap users to access gas off the NGTL System without the payment of a toll. Under the COA, NGTL can unilaterally terminate service agreements at any time, absent a formal retirement complaint from the tap user, such that no Commission approval is required to terminate the COA.

AUI stated that it is a natural gas distribution utility that delivers natural gas to residential, farm, commercial and industrial consumers, including 1,715 customers that it supplies gas to from taps on the Project Facilities. AUI stated that its primary concern was to ensure safe and reliable service to its customers for the then upcoming (now just ended) winter season. AUI initially requested that the NEB impose a condition that only permits the discontinuance of service upon alternative supply becoming available to AUI and the customers it serves.

AUI said that all options NGTL had identified required AUI and its customers to completely shoulder the burden of NGTL's choice to abandon the Project Facilities. AUI stated that it is reasonable to expect a company proposing to abandon a pipeline being actively used to service customers to participate in the identification of potential options for the continued service of those customers.

AUI stated that given the options presented by NGTL to date, AUI's solution was to construct its own new pipeline approximately 17 km long, connecting four AUI stations to a single NGTL supply point and connecting three AUI stations to Forty Mile Gas Co-op Ltd. supply points. AUI said that the cost of this alternative was estimated at \$10 million.

NGTL noted that AUI pays for only the cost of its interconnecting facilities and makes no toll payments. In the case of taps, for which no tolls are paid, NGTL submitted that it would be unreasonable to impose incremental costs related to alternatives or delays on NGTL and its toll-paying customers for the purpose of reducing costs on AUI. NGTL stated that it merely strives to act in a manner similar to AUI, in the interests of prudent cost management for the customers NGTL serves.

NGTL stated that AUI's proposed condition was inappropriate and unnecessary. NGTL said that, as proposed, the condition would link the timing of any discontinuance of service by NGTL to an uncertain and indeterminant period of time, and to the actions of third parties and regulatory processes that NGTL has no reasonable or meaningful control over.

NGTL said that imposing any public interest-based standard, regarding the development of alternatives by a proponent for parties still using facilities, over and above NGTL's efforts expended as part of the Project is neither reasonable nor appropriate and would place an undue burden on NGTL and any similarly-positioned pipeline.

Later in the Hearing, AUI stated that given the time it takes to plan, prepare, and execute a pipeline project and NGTL's stated abandonment schedule, AUI commenced construction of its pipeline project in order to ensure that it would be in service by the end of 2019 so that there would be no risk of disruption of gas supply for AUI's customers for the then upcoming winter season. As a result, AUI stated that it would no longer require service from the Project Facilities.

Also late in the Hearing, NGTL stated that in accordance with its prior commitments, NGTL had continued to work with AUI to facilitate transition to alternative supply arrangements. NGTL coordinated with AUI to provide a relocated interconnection that will replace existing interconnections proposed to be abandoned. NGTL confirmed that all interconnecting tap users on the Project Facilities have alternative arrangements in place.

### ***Views of the Commission***

In applying to abandon the Project Facilities, the Commission expects NGTL to demonstrate that its Project is in the public interest.

The Commission finds that the evidence suggests that abandonment of the Project Facilities as proposed in the Application would likely lead to real negative impacts to Pine Cliff. The Commission notes that producers and other parties have made significant investments tied to specific facilities on the NGTL System, and that shipper contracts have ongoing renewal rights. Given these renewal rights, the fact that NGTL does not have an explicit right to terminate contracts, other than in cases of force majeure or shipper default, and the apparent lack of established history of such rights being terminated by NGTL, the Commission finds it reasonable that shippers would not generally expect that their contracts may be terminated by NGTL. Accordingly, while the Commission does not view NGTL's contractual obligations as absolute, the Commission views the proposed Project-related termination of

contracts as a significant matter. The significance of this matter must be overcome by evidence demonstrating that the Project as proposed would be in the public interest.

NGTL's primary rationale in applying to abandon the Project Facilities is that they are no longer economic and are not expected to become economic in the future based on their expected costs and revenues. The Commission agrees that consideration of the economic viability of the Project Facilities *on their own* is required and must then be balanced with any public interest considerations (consistent with the NEB's finding in MH-3-2000).

However, the Commission finds that NGTL's assessment of whether the Project Facilities should be abandoned is flawed. NGTL's comparison of future costs and revenues fails to account for the disconnect between the toll revenues associated with the Project Facilities and the value of the services they provide. As a result, NGTL's calculations fail to capture some important public interest considerations, which raises a doubt about NGTL's overall assessment of and decision to abandon the Project Facilities.

NGTL also submitted that it and its rate payers would be subjected to an undue burden if the Commission denied the Project. While the expected future revenue-to-cost deficiency appears significant relative to the size of the Project Facilities, NGTL provided no evidence of how or when it determines the point at which a deficiency is no longer acceptable, and no evidence of how the deficiency in question compared with those of other facilities on the NGTL System. Further, there was no evidence of NGTL having explored alternative tolling arrangements for the Project Facilities which might have reduced the burden on NGTL and its rate payers (and improved the aforementioned economics of the Project Facilities), while at the same time providing shippers on the Project Facilities with an outcome preferable to their proposed abandonment.<sup>4</sup> Accordingly, the Commission is not persuaded that denial of the Application would lead to an undue burden on NGTL or its rate payers.

In the case of AUI, given that it has now constructed and commissioned its replacement pipeline project, AUI will no longer be materially impacted by whether the Project proceeds. Nonetheless, the Commission finds the circumstances of AUI noteworthy. Because of NGTL's zero tolling for tap services, NGTL received no revenue from the services it provided to AUI with the Project Facilities; this zero revenue is what went into NGTL's assessment of the economics of the Project Facilities. Despite the zero revenues, AUI clearly derived material value from the service provided by the Project Facilities, evidenced by the fact that the prospect of that service being terminated led AUI to undertake a pipeline project with an expected cost of approximately \$10 million (a material amount as compared to NGTL's NPV of expected future costs of operating the Project Facilities). While it is too late to prevent the impacts to AUI from abandonment of the Project Facilities, the Commission finds this fact-pattern demonstrative of NGTL's failure to firstly, meaningfully factor in the value of service provided by the Project Facilities when deciding to abandon them, and secondly, attempt to reduce the burden on itself

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<sup>4</sup> The only such consideration appears to have been NGTL's suggestion late in the hearing process, without supporting evidence, that if the Commission required that the Project be delayed on account of Pine Cliff's interests, Pine Cliff should be required to pay for all incremental costs caused by the delay.

and its shippers through toll changes to capture some of this value of service. This reduced the Commission's confidence in NGTL's assessment and process that led to its decision to submit the Application.

Given the above, the Commission was not persuaded that the Project as proposed in the Application is in the public interest at this time. The Commission has therefore decided to deny NGTL's Application. The Commission notes that this decision does not prevent NGTL from re-applying to abandon the Project Facilities in the future.

#### *Guidance for future consideration*

As indicated above, NGTL submitted information on its process for assessing and identifying facilities to be abandoned. In light of the Commission's various concerns identified above, when NGTL submits future abandonment applications involving matters such as contract terminations and potentially negative impacts on users of the facilities, the Commission expects NGTL to demonstrate that a more effective process was carried out to identify and assess the facilities for abandonment.

The Commission provides the following guidance to NGTL, based in part on existing CER filing guidance and previous decisions of the Commission and NEB, and in part on the novel circumstances of the Application.

In cases where there are matters such as contract terminations and potentially negative impacts on users of the facilities, NGTL's process for assessing and identifying facilities for abandonment should include characteristics such as the process:

- being conducted in a predictable, transparent, and fair manner;
- ensuring equitable treatment of shippers across the NGTL System;
- being responsive to the needs, inputs, and concerns of all impacted parties;
- factoring in the relative impacts of abandonment versus continuation of service on all impacted parties;
- considering all options for reducing future revenue-to-cost shortfalls prior to filing an application for leave to abandon with the Commission;
- providing shippers with the ability to meaningfully plan for and mitigate the impacts of the potential termination of service;
- allowing impacted parties to make more informed decisions, by including criteria for identifying instances where the abandonment construction schedule should be established so as to avoid creating uncertainty that may require parties to make costly, irreversible choices to continue their business operations prior to a Commission decision on the abandonment application<sup>5</sup>; and,
- having been informed by meaningful TTFP consultations.

As part of such a process, the Commission would expect that the criteria for identifying facilities and how NGTL considers alternatives to abandonment would be documented and available to, at a minimum, NGTL's shippers. The Commission strongly encourages NGTL to develop such a process, given NGTL's submission that there are currently a limited number of smaller facilities on the NGTL System identified as both having remaining contracts and meeting some of NGTL's criteria

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<sup>5</sup> The Commission notes that NGTL's Application and intention to abandon the Project Facilities was enough to result in material impacts to AUI, in particular, as AUI had to make an irreversible decision to build new facilities as it could not wait for the Commission's decision.



for abandonment, and that NGTL expects that the number of facilities with significant integrity costs relative to their associated revenues will increase over time.

**Conclusion**

As abandoning the Project Facilities is not in the public interest at this time, the Commission determined that it was not necessary to provide views on the methods of abandonment proposed by NGTL nor on any other considerations that would need to be assessed prior to leave to abandon being granted, including environment, safety, and consultation considerations.

The Commission notes that NGTL is required to continue suitable integrity management activities while continuing to operate the Project Facilities, pursuant to the *Canadian Energy Regulator Onshore Pipeline Regulations* and CSA Z662. The Commission acknowledges that NGTL identified that further integrity work may be required to continue operation of the Project Facilities. The CER will continue its role as a regulator, tasked with ensuring the safe operation of facilities it regulates, and will monitor NGTL's performance on ensuring the continued, safe operation of these and all NGTL facilities.

NGTL is directed to serve this letter on its shippers and interested parties to this proceeding.

Yours sincerely,

*Original signed by*

L. George  
Secretary of the Commission