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## LETTER DECISION

File OF-Fac-Gas-M124-2019-01 01  
24 April 2020

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Mr. Rideout:

**Maritimes & Northeast Pipeline Management Ltd. (M&NP)  
Abandonment Hearing MHW-001-2020  
Application to Abandon the Deep Panuke Custody Transfer Station  
(Application)**

The Commission of the Canada Energy Regulator (Commission) has considered the above-referenced application filed with the National Energy Board (NEB) on 22 August 2019 (Application).

The Application was filed prior to the coming into force of the *Canadian Energy Regulator Act* (CER Act). Pursuant to section 36 of the transitional provisions of the CER Act, the Application was therefore considered by the Commission in accordance with the *National Energy Board Act* (NEB Act).

The Application describes activities related to the abandonment of the Deep Panuke Custody Transfer Station ("Station"). Pursuant to paragraph 74(1)(d) of the NEB Act, and taking into account section 50 of the *National Energy Board Onshore Pipeline Regulations* (OPR), the Commission has issued the attached Order ZO-001-2020 (Order), the effect of which is to grant M&NP leave to abandon the Station. The attached Order sets out the conditions the Commission has imposed on the Project.

The Commission's reasons for its decision to issue the Order are set out below. In reaching its decision, the Commission considered all of the submissions on the record related to this matter. The regulatory documents on file for the MHW-001-2020 proceeding are available in the [Project file](#) on the CER's website.

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## 1.0 Project Overview and the Process

### 1.1 Application and Project Overview

M&NP's Application sought leave to abandon the Station (Project). M&NP indicated it would abandon the Project by removing all related surface equipment and below-ground infrastructure at the station site. The existing gravel pad at the station site will be left in place and the area will be maintained as an access site for the M&NP mainline pipeline.

The Project is located on approximately 0.2 ha of land, and M&NP abandonment activities would be confined to the Station footprint and existing M&NP right-of-way. Further details of the Project are outlined in the sections below.

### 1.2 The Process

Under the NEB Act, the Commission must hold a public hearing to consider an application for leave to abandon a pipeline. The Commission issued Notice of Abandonment Hearing MHW-001-2020 for the Project (Notice) on 7 January 2020, which set out how the Commission would consider the Application. M&NP was directed to serve a copy of the Notice on all persons potentially impacted by the Project. The Notice indicated that any person potentially impacted by the Project wishing to participate in the hearing process must file a letter and any supporting documents by 10 February 2020. The Commission received one letter of comment, dated 10 February 2020, from Maw-lukutijik Saqmaq.

## 2.0 Assessment of the Application

### 2.1 Engineering Matters

M&NP submitted that the Station was constructed and placed in service in 2010 for the purpose of measuring natural gas volumes received from Encana's Deep Panuke development offshore Nova Scotia ("Deep Panuke"). However, Deep Panuke ceased production in May 2018, and the NEB approved abandonment of the Deep Panuke NEB-regulated facilities on 2 May 2019.

M&NP stated that it would execute the abandonment by removing all piping and related surface equipment and below-ground infrastructure at the station site.

No participant expressed concerns regarding the engineering of the Project.

#### *Views of the Commission*

The abandonment activities for the Station, as proposed by M&NP, are consistent with the legislative requirements related to the abandonment of piping, equipment and related facilities at stations.

The Commission reminds M&NP that it must conduct all abandonment activities in compliance with the *National Energy Board Onshore Pipeline Regulations (OPR)* and *Canadian Standards Association (CSA) Standard CSA Z662-19*.

## 2.2 Technical Matters

In its Environmental and Socio-Economic Assessment (ESA), M&NP stated that emergency response and contingency measures are outlined in the Enbridge Environmental Guidelines for Construction (Enbridge 2012) and that emergency management during physical abandonment activities will also be governed by the Project-specific Environmental Protection Plan (EPP). Potential accident and malfunction scenarios were identified. In the Abandonment Interactions Table, M&NP indicated that all releases would be immediately reported by the contractor to the Nova Scotia Environment Emergency Line or the Canadian Coast Guard.

### *Views of the Commission*

Notifications of releases are required by various federal and provincial regulations. There is no notification-sharing agreement between the CER and the Nova Scotia Department of Environment or the Canadian Coast Guard, therefore the Commission is of the view that a report to those agencies will not satisfy the requirement to report to the CER.

The Commission reminds M&NP of the requirement under the CER Act to report incidents to the CER in accordance to the NEB Event Reporting Guidelines (<https://www.cer-rec.gc.ca/bts/ctr/gnrb/rprtngdlns/index-eng.html>).

## 2.3 Economic and Financial Matters

M&NP stated that Encana will be funding the full cost of M&NP's abandonment activities and that, in light of this third-party cost coverage, the Project would have no material impact on M&NP's overall abandonment funding or tolls. M&NP stated that no commercial third-parties indicated they had unresolved concerns relative to these matters.

### *Views of the Commission*

The Commission accepts that Encana will be funding the full cost of the Project and based on the submissions provided by M&NP agrees that there will be no impact to M&NP's toll as a result of the Project. Further, the Commission is of the view that M&NP's Abandonment Trust could be drawn upon in the case of unforeseen liabilities or other obligations created by or arising from the Project. In light of the foregoing, the Commission is satisfied that the Project will have no impact on MN&P's tolls and that M&NP has the ability to finance the Project abandonment work.

Improving the future accuracy of the CER's Abandonment Cost Estimates is an ongoing process which benefits from the accumulation of data related to Projects such as this one. Therefore, the Commission imposes Condition 5, Quarterly Physical Abandonment Activity Cost Reports, which requires M&NP to provide actual cost data broken down by abandonment activity.

## 2.4 Lands, Consultation and Socio-Economic Matters

The Station is located entirely on private lands owned in fee simple by MN&P in Guysborough County in eastern Nova Scotia, in Goldboro County Industrial Park west of the community of Goldboro and southeast of Paqtnkek Mi'kmaw Nation. The lands around the Project are zoned for either industrial use or rural use. There are no homes within 25 kilometers of the site, and access is by private road.

The Project consists of abandoning the facility, including removal of all infrastructure above and below ground, while leaving the existing gravel pad in place. The facility covers an area of 0.2 ha of land, with no need for additional temporary workspace anticipated for the Project. M&NP stated it expects to continue using the gravel pad as an access point to its Mainline pipeline.

M&NP carried out a consultation program for the Project including sending notifications to Indigenous communities and organizations, the general public, and other stakeholders. It also noted its commitment to follow up regarding matters raised by any of those parties, and has provided written responses to concerns raised by the Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO) with the CER. M&NP has demonstrated awareness of KMKNO's concerns and explained its plans for mitigation of potential impacts from the Project.

With respect to Indigenous consultation, apart from M&NP's original notifications to Indigenous communities, the CER directed M&NP to serve Notice of Abandonment Hearing on potentially impacted Indigenous communities and persons by 10 January 2020. KMKNO, through Maw-lukutijik Saqmaq, was the only participant who expressed an interest in the hearing<sup>1</sup>.

In both its ESA and its Interactions Table, M&NP reiterated that the Project would be located on privately owned land within existing site boundaries. In addition, M&NP submitted it anticipated no changes to access restrictions or land use as a result of the abandonment activities, and therefore it did not anticipate impacts on Indigenous traditional land and resource use. Since the land is already disturbed, M&NP does not anticipate interaction with heritage resources, and none were identified within the footprint of the Project. M&NP stated it anticipates no significant effects as a result of the Project due to its plans to use low-risk abandonment methods, standard mitigation, and the contingency measures in the Project-specific EPP.

#### *Views of Maw-lukutijik Saqmaq*

Maw-lukutijik Saqmaq filed a response to the Notice of Abandonment hearing on 10 February 2020, noting its ongoing general interest in lands and resources in Nova Scotia that in its view the Mi'kmaw Nation has never surrendered, ceded, or sold title to. It raised specific concerns related to environmental matters and to potential effects on heritage resources.

Maw-lukutijik Saqmaq questioned M&NP's plans to keep the site as a gravel pad used for Mainline access after completion of the Project, focusing especially on its view that the site should be returned to natural landscape instead. It also expressed concerns about delineated wetland at the southwest corner of the existing facility, and asked further questions to learn more about steps taken to mitigate impact on a wetland temporarily disturbed by construction in 2010. These environment-specific matters are discussed in the Environmental Matters section below.

Concerning heritage resources, Maw-lukutijik Saqmaq noted that M&NP's ESA stated both that no archaeological or heritage sites had been identified in the Project footprint and that M&NP had no plans to carry out on-the-ground archaeological research there prior to abandonment activities. In response, Maw-lukutijik Saqmaq requested that on-the-ground archaeological research be carried out prior to any abandonment activities, and that such

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<sup>1</sup> Also known as the Assembly of Nova Scotia Mi'kmaw Chiefs.

research include sub-surface testing. Failing that, Maw-lukutijik Saqmaq asked for photo documentation by a qualified archaeologist to verify lack of archaeological potential or concern or to help explain why no testing was done.

Finally, Maw-lukutijik Saqmaq submitted M&NP had not seriously dealt with its concerns more generally, and in response it has passed a resolution to terminate its benefits agreement with M&NP. It requested that the CER “stipulate that M&NP engage with the M’ikmaq of Nova Scotia and satisfy the CER” that the matters Maw-lukutijik Saqmaq raised have been resolved.

#### *M&NP’s Reply to Maw-lukutijik Saqmaq*

With respect to heritage resources, specifically archaeological considerations, M&NP is of the view that its ESA appropriately addressed Maw-lukutijik Saqmaq’s concerns. M&NP received provincial clearances for heritage and archaeological resources prior to construction of the Station in 2010. No discoveries of such resources were made during initial Station construction. In light of that, M&NP stated it did not plan to sponsor any new on-the-ground archaeological research at the Project site in advance of Project execution, as it did not believe there was any practical need for sub-surface testing or photo documentation by an archaeologist. M&NP stated it would adhere to standard protocols in the unlikely event that heritage or archaeological resources were found, ensuring that they would be mitigated and the province notified as required.

#### *Views of the Commission*

The Commission has reviewed M&NP’s application and is satisfied that M&NP has addressed the guidance and requirements outlined in the Filing Manual for its public consultation for this Project. It is also satisfied with M&NP’s Indigenous consultation regarding the Project, considering that M&NP notified potentially interested Indigenous communities and organizations prior to applying for the abandonment. The Commission recognizes that public and Indigenous involvement are important components during each phase in the lifecycle of a project, and reminds M&NP of the importance of maintaining strong relationships during the operation of all of its facilities, including that with Maw-lukutijik Saqmaq.

The Commission finds that the Project would have negligible environmental or socio-economic effects on Indigenous interests due to its small scale and localized nature on previously disturbed privately held industrial land, with no associated potential for traditional use activities to be affected.

The Commission is satisfied that the socio-economic and lands impacts of the Project are not likely to be significant due to the small scale, short duration, and location of the Project within the original Station footprint with access by private road, and the application of standard mitigation measures.

The Commission notes the concerns raised by Maw-lukutijik Saqmaq regarding potential disturbance of heritage resources during the completion of physical abandonment activities. It notes that M&NP received the necessary heritage and archaeological resources clearance from the province prior to the original Station construction in 2010, and that no archaeological or heritage resources were found or disturbed at the site at that time.

The Commission finds M&NP’s view, namely that no new on-the-ground archaeological testing would be carried out as a result for this Project as these measures had taken place

already prior to the original construction of the Station and no heritage resources were found at that time, to be reasonable. The Commission further agrees with M&NP's intent to adhere to standard protocols in the event that heritage or archaeological resources were found as a result of this Project, ensuring that they would be mitigated and the province notified as required.

While M&NP has indicated that it has prepared an EPP for the Project, the Commission notes that a copy of the EPP was not included in its Application. In order to ensure that mitigation measures to protect previously unidentified heritage resources are adequately implemented, the Commission imposes Condition 3 which requires M&NP to file its EPP with the CER and to serve a copy on Maw-lukutijik Saqmaq. The EPP must include a contingency plan to be implemented in the event that previously unidentified heritage resources are encountered, including measures implemented in accordance with the Nova Scotia *Heritage Property Act*.

Considering the nature and scope of the Project, M&NP's proposed mitigation measures, and the implementation of Condition 3, the Commission finds the likelihood of any potential negative impacts of a socio-economic nature or related to the lands from the Project to be remote, and in any event that it would be limited in extent, short term, and reversible, and therefore not likely to be significant.

## 2.5 Environment Matters

The Project's abandonment activities are proposed to be conducted in conjunction with abandonment work being conducted at Encana's adjoining Deep Panuke onshore facilities<sup>2</sup>. M&NP indicated that the work is planned to be conducted in either 2019 or 2020, pending regulatory approval. Abandonment activities are expected to take approximately two months.

M&NP indicated that all waste produced from demolition of the facilities, including hazardous wastes, will be disposed of in accordance with applicable regulatory requirements and at approved facilities.

The Project is located within the Goldboro Industrial Park which is mostly forested. Forested areas within the industrial park have been subject to recent harvesting activities, including clearing associated with the Goldboro LNG Project. There are no watercourses or waterbodies within 30 m of the Project and Project activities are not anticipated to interact with surface water, including fish and fish habitat, or with groundwater. A small wetland is located adjacent to the southwest corner of the Project site, but no direct alteration of the wetland is expected as a result of the Project.

M&NP filed a copy of its Phase I Environmental Site Assessment conducted at the Project site in July 2019. The Phase I assessment revealed no evidence of environmental contamination associated with the site. No further environmental investigations were recommended as a result of the Phase I assessment.

M&NP indicated that, in consideration of the habitat within and immediately adjacent to the Project site, four species listed under the *Species at Risk Act* may be found within or adjacent to the Project site: Canada warbler, common nighthawk, olive-sided flycatcher and short-eared owl. M&NP stated that, as Project activities will be limited to the Project site, no

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<sup>2</sup> NEB Letter Decision and Order ZO-E112-001-2019

long-term changes to wildlife habitat are expected. As the Project may cause sensory disturbance to wildlife and an increase in wildlife mortality risk, M&NP committed to undertaking nest searches prior to physical abandonment activities (if the activities occur during breeding season for migratory birds) and applying species-specific setback distances to active nests, if discovered.

M&NP indicated that an EPP was developed for the Project which identifies the measures to be implemented during the abandonment activities to mitigate effects to the environment, including environmental inspection and monitoring. The EPP includes an erosion and sedimentation plan with best management practices to avoid or mitigate any potential environmental effects of the Project to sensitive areas (e.g., wetlands).

With the implementation of its proposed mitigation, M&NP predicts that any residual environmental effects associated with the Project's activities, including cumulative effects, would not be significant.

#### *Views of Maw-lukutijik Saqmaq*

Maw-lukutijik Saqmaq noted M&NP's intent to keep the Project site graveled following completion of the physical abandonment activities and are of the view the site should be returned to a natural landscape that provides habitat for wildlife and watershed ecosystem services. Maw-lukutijik Saqmaq maintained that the best time to do this is upon abandonment and not at a future juncture such as upon the terminal abandonment of the overall pipeline, as suggested by M&NP.

Maw-lukutijik Saqmaq also raised concerns related to the wetland which borders the southwest corner of the Project site. Maw-lukutijik Saqmaq requested that M&NP clarify whether construction of the Station disturbed a previously larger wetland, and if so, rehabilitation of the Project site footprint should reflect this. As well, Maw-lukutijik Saqmaq maintained that a more comprehensive understanding of the potential impact of the Project to wetlands and the effectiveness of M&NP's proposed mitigation measures is required.

#### *M&NP's Reply to Maw-lukutijik Saqmaq*

With regards to Maw-lukutijik Saqmaq's concerns for leaving the site graveled, M&NP stated that it owns the Station site in fee simple within the boundaries of an industrial park and is planning to retain ownership of the land area for potential future use and ongoing operational purposes. M&NP noted that a Mainline side valve will remain available at this location, following abandonment of the site facilities, for applicable operational use or for use as a future connection point. M&NP indicated that future complete reclamation of this site could be appropriately addressed at a later juncture, such as upon the terminal abandonment of its overall pipeline system.

With regards to Maw-lukutijik Saqmaq's concerns regarding the wetland to the southwest corner of the Project site, M&NP indicated that the wetland was initially delineated in 2008 as part of the environmental assessment for the construction of Encana's Deep Panuke Development and measured 0.03 hectares (ha). The vegetation in the wetland was cleared by Encana prior to construction of the Project and used as temporary work space for that project. M&NP stated the original plan was for this wetland to be located entirely within the temporary work room outside of the Station pad. However, due to design revisions, it was necessary to extend one corner of the pad into the wetland which resulted in approximately 0.006 ha of the wetland being permanently altered. M&NP indicated that the remaining 0.024 ha of wetland was located in temporary work room and was cleared of vegetation during construction. After construction, M&NP indicated that the wetland was restored by

Encana in accordance with its provincial Water Approval conditions. As no trenching occurred within the temporary work room, the wetland was left to re-establish naturally. Post-construction vegetation monitoring confirmed that vegetation within the wetland was comprised of native species characteristic of wetland habitats.

M&NP stated that a more recent delineation of the pipeline by its environmental consultant in 2019 indicated that, notwithstanding the small scale permanent alteration that occurred at the southwest corner of the meter station in 2010, the wetland has naturally expanded beyond the 0.03 ha size that prevailed in 2008 to a size of 0.09 ha.

M&NP noted that its environmental assessment for the Project indicated that the Project will have no direct effects to the wetland, and that the specified mitigation measures are expected to be effective in limiting the potential for indirect effects.

#### *Views of the Commission*

The Commission notes that the Project is not subject to the requirements of an Environmental Assessment under the *Canadian Environmental Assessment Act, 2012*, as it does not include physical activities listed in the *Regulations Designating Physical Activities*.

The Commission has reviewed M&NP's application and is satisfied with the abandonment activities proposed. The Commission is of the view that the mitigation measures proposed will appropriately avoid and/or minimize any effects of the Project to the environment.

The Commission notes the concerns raised by Maw-lukutijik Saqmaq regarding leaving the Project site as graveled following the completion of the physical abandonment activities. However, the Commission notes that M&NP owns the Project lands in fee simple within the boundaries of an industrial park and is planning to retain ownership of the land area for ongoing operational purposes and potential future uses. As previously noted in Section 2.4 of this Decision, the Commission reiterates the importance of M&NP's continuing relationship with the Maw-lukutijik Saqmaq.

Regarding the concerns raised by the Maw-lukutijik Saqmaq about the wetland located adjacent to the southwest corner of the Project site, the Commission has reviewed information in the Environmental Screening Final Report<sup>3</sup> ("ESFR") submitted by M&NP in its application to the NEB to construct the Project in 2009, as well as the 2012 Post-Construction Monitoring Report filed with the NEB by Encana for the Deep Panuke Project in 2012<sup>4</sup>. The ESFR indicated that the Project site is located within lands formerly owned by Encana and that water approvals were issued by Nova Scotia Environment to Encana for wetland alterations during construction of the Deep Panuke Project, including the Station site. As a condition of those approvals, Encana committed to restoring and compensating wetland loss to ensure no net loss of wetland function. Encana's Post-Construction Monitoring Report ("PCMR") confirmed that a small area of permanent alteration occurred in the wetland of concern to the Maw-lukutijik Saqmaq. In its PCMR, Encana did not identify any outstanding issues regarding wetlands but did confirm that a report would be prepared and submitted to Nova Scotia Environment and Environment Canada summarizing the results of the wetland monitoring program.

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<sup>3</sup> [A1R1C1](#), PDF pages 3, 12-13, 19 and 22 of 24

<sup>4</sup> [A3E6C2](#), PDF page 2 of 23



Based on the information contained in the reports noted above, as well as the information provided by M&NP in its Application and related filings as part of this proceeding, the Commission is of the view that, in the event that there are still any outstanding issues relating to this wetland, the responsibility for them lies with Encana and Nova Scotia Environment, and not M&NP. The Commission is also satisfied that any historical residual effects of constructing the Project site on the wetland located adjacent to the southwest corner of the site were addressed by Encana as part of the Deep Panuke Project.

The Commission notes that, while M&NP indicated it has prepared an EPP for the Project, a copy of the EPP was not included in its Application. To ensure that the mitigation measures to protect the wetland and other environmental features on and adjacent to the Project site are adequately implemented, the Commission imposes Condition 3 which requires M&NP to file its EPP with the CER and to serve a copy on Maw-lukutijik Saqmaq. Considering the nature and scope of the Project, M&NP's proposed mitigation measures, and the implementation of Condition 3, the Commission is of the view that any potential adverse environmental effects arising from the Project would not be significant, as they would be of limited geographic extent, short-term, and reversible.

### 3.0 Decision

Based on the foregoing consideration and reasons, the Commission grants M&NP leave to abandon the Project as set out in Schedule A of the attached Order.

Yours sincerely,

*Original signed by S. Wong for*

L. George  
Secretary of the Commission

Attachment