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REASONS FOR DECISION

File OF-Tolls-Group1-N081-2019-04 01
13 November 2019

NOVA Gas Transmission Ltd.
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Attn: Mr. Bernard Pelletier, Director, Regulatory Tolls and Tariffs, Canadian Natural Gas Pipelines

Dear Mr. Pelletier:

**NOVA Gas Transmission Ltd. (NGTL)
Application for Approval of Amendments to the NGTL Gas Transportation
Tariff - Temporary Service Protocol (Application)
Hearing RH-002-2019 Reasons for Decision**

This letter provides the reasons for decision in respect of NGTL's Application for approval of amendments to the NGTL Gas Transportation Tariff for the Temporary Service Protocol (Protocol). The Commission of the Canada Energy Regulator (Commission) released its decision on 26 September 2019 with reasons to follow, approving the Application as filed, effective 30 September 2019.

1. Procedural Summary

On 26 August 2019, NGTL filed the Application pursuant to Paragraph 60(1)(b) of the *National Energy Board Act* (NEB Act) for amendments to the NGTL tariff to incorporate the Protocol. More particularly, NGTL submitted in the Application that:

- The effect of the Protocol would be to provide NGTL with flexibility to prioritize interruptible delivery and storage injection over receipt services (interruptible or firm) to manage system constraints during planned outage/maintenance periods at and upstream of Clearwater Compressor Station and Woodenhouse Compressor Station.
- The Protocol would be utilized only in the summer periods of 2019 (from date of Commission approval through October) and 2020 (April through October). NGTL requested an effective date of the Protocol of 3 September 2019, or as soon as possible thereafter.

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On 28 August 2019, the *Canadian Energy Regulator Act* (CER Act) came into force. Section 36 of the transitional provisions states that applications pending before the National Energy Board (NEB) immediately before the commencement day are to be taken up before the Commission and continued in accordance with the NEB Act.

Between 26 August 2019 and 9 September 2019, the Commission received a number of comment letters submitted by parties. Numerous parties requested an expedited review process of the Application by the Commission.

On 18 September 2019, NGTL filed responses to the Commission's Information Request No. 1. NGTL filed minor corrections to the responses on 20 September 2019.

On 20 September 2019, the Commission issued a Notice of Hearing, scheduling an expedited oral hearing process, which took place in Calgary on 25 September 2019. Following the Notice of Hearing, the Commission received 23 written submissions and nine parties (including NGTL) appeared to provide oral argument.

On 26 September 2019, the Commission approved NGTL's Application as filed and ordered that tolls may be charged in accordance with the amended tariff effective 30 September 2019, with reasons to follow.

2. Evidence and Submissions

The Commission considered all the submissions filed in respect of the Application as well as the evidence and arguments tendered at the hearing.

Views of NGTL

NGTL's key submissions included the following:

- The Protocol had been discussed by the Tolls, Tariff, Facilities and Procedures Committee (TTFP) before the Application was submitted. While unanimous or unopposed resolution was not achieved, NGTL submitted that there was nonetheless broad support for the Protocol. Further storage challenges had been a topic of discussion from at least 2017 at the TTFP.
- The additional flexibility under the Protocol to first restrict upstream receipt services prior to restricting downstream delivery services would facilitate the management of short-term events of supply and market imbalances during planned outages in the summers of 2019 and 2020. Further, the Protocol would enhance access to storage injection downstream of capacity constraints, providing an additional delivery market during these events and relief from key capacity bottlenecks.
- One of the expected outcomes of enhanced access to storage would be reduced commodity price volatility during planned outages in the summers of 2019 and 2020. The NEB previously recognized that promoting price stability was consistent with the goal that Canadians benefit from efficient energy infrastructure and markets¹. NGTL submitted that it was reasonable for the Commission to consider price stability in addition to the cost-based/user-pay and economic efficiency principles that are reflected in NGTL's operational philosophy. NGTL clarified that it was not asking the

¹ NGTL referenced the GH-1-2006 Reasons for Decision, page 37.

Commission to look at price volatility as a principle in and of itself, but as one of the many factors to be taken into consideration with respect to the public interest and other tolling principles.

- Providing access to a market and a source of demand at a time of low demand that the NGTL customers would not otherwise have access to would be, in itself, a form of enhancing economic efficiency.
- Other options to improve access to storage had been considered by NGTL, including firm storage service and firm service transfers. NGTL stated that new firm storage service could not be implemented for at least three years, and anticipated that other options were likely to result in a negative impact on tolls and may have extended service restriction periods.
- All similarly situated storage sites would be similarly treated, and storage injection upstream of capacity constraints were not expected to be constrained during the 2019 and 2020 summer periods.

NGTL submitted that when considering any toll or tariff issue, the Commission must comply with section 62 and section 67 of the NEB Act, which require that tolls must be just and reasonable and that a pipeline not make any unjust discrimination in its tolls, services or facilities. In addition, NGTL submitted that the Commission is also guided by its public interest mandate under section 12 of the NEB Act, meaning that all of its decisions must be consistent with the overall public interest.

Views of Parties in Support of the Application

The Commission received a number of submissions in support of the Application, including from Advantage Oil and Gas Ltd., the Alberta Department of Energy, AlphaBow Energy Ltd., Bellatrix Exploration Ltd., Birchcliff Energy Inc., Birchill Canada Corp., Black Swan Energy Ltd., Bonavista Energy Corporation, BP Canada Energy Group ULC, Canlin Resources, Ember Resources Inc., ENMAX Energy Corporation, Hammerhead Resources Inc., Jupiter Resources Inc., Kelt Exploration Ltd., Lynx Energy ULC, Modern Resources Inc., NAL Resources Limited, Painted Pony Energy Ltd., Paramount Resources Ltd., Petrus Resources Ltd., Peyto Exploration and Development Corp., Pine Cliff Energy Ltd., Ridgeback Resources Inc., Shell Canada Energy, TAQA North Ltd., TORC Oil & Gas, Torxen Energy Ltd., Tourmaline Oil Corp., Vermilion Energy Inc., and Westbrick Energy Ltd.

The Commission considered all the submissions from parties in support of the Application. Many of these submissions expressed strong support for the Application. While many of the letters of support did not include detailed submissions, the Commission understood that the letters of support generally affirmed the submissions advanced by NGTL in its Application.

Submissions of parties in support of the Application included that:

- The Protocol would restore market access, provide greater stability to Western Canadian natural gas markets and encourage capital investment.
- NGTL's existing policies since the summer of 2017 resulted in extreme AECO² pricing volatility and had been extremely disruptive.

² AECO is the natural gas hub in Alberta establishing a commodity price for natural gas.

- The Protocol would be a more effective and less disruptive approach for reducing receipts during outages.
- The Protocol could, and perhaps should, apply across the NGTL system on a permanent basis.

Views of Parties Not in Support of the Application

The Commission received submissions not in support of the Application from ARC Resources Ltd., Canadian Fertilizers Limited, Centra Gas Manitoba Inc., Dow Chemical Canada ULC, Freepoint Commodities LLC (Freepoint), Iberdrola Canada Energy Services Ltd. and Amphora Canada Gas Storage ULC, the Industrial Gas Consumers Association of Alberta, and Sequent Energy Canada Corp. (Sequent).

The Commission considered all the written and oral arguments tendered by all the parties who were not in support of the Application. Their key submissions included the following:

- NGTL did not explore alternatives, and opportunities for discussion were limited.
- There was not broad support for the Protocol. In any event, the quantity of support should not be a determinative factor of the Application (in other words, approval of the amendment should not depend on a popularity contest).
- The true intent of the Application was to raise natural gas prices, which would be an inappropriate interference in the deregulated natural gas market.
- Commodity price stability should not be a consideration in toll and tariff applications.
- The Application should be decided based on tolling principles, not on a public interest test which applies to facility applications.
- The Protocol would degrade the value of firm service contracts and discourage shippers from entering into new long term, firm service contracts.
- The Protocol would be inconsistent with the cost-based/user pay principle because it prioritizes interruptible delivery and storage injection services over firm receipt services.
- The Protocol would not be justified by the economic efficiency principle, as there would be no impact on throughput at a particular capacity restraint on the system.
- Constraint issues were caused by NGTL's overbuilding of upstream capacity.
- Certain storage operators would be arbitrarily preferred over others.
- There should be more notice of planned interruptions.
- The Protocol did not fully address recommendations from the Alberta Natural Gas Advisory Panel.
- Implementation of the Protocol should be delayed until 1 April 2020 to allow sufficient time to adapt to the change in service priority.

3. Views of the Commission

Regulatory Framework

Pursuant to section 36 of the transitional provisions associated with the CER Act, the Commission has assessed the Application in accordance with the NEB Act. The Commission's mandate to consider the Application in respect of traffic, tolls and tariff matters is set out in Part IV of the NEB Act, particularly sections 62 and 67:

62. All tolls shall be just and reasonable and shall always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons at the same rate.

67. A company shall not make any unjust discrimination in tolls, service or facilities against any person or locality.

In addition, in previous decisions³, the NEB has articulated a number of tolling principles that assist in the interpretation and application of these statutory provisions. These fundamental tolling principles include cost-based/user-pay, no acquired rights and economic efficiency.

The NEB also clearly established in prior decisions that not all discrimination is prohibited, only that which is "unjust"⁴. If discrimination is shown, the burden of proving that the discrimination is not unjust lies with the company, as set out in section 68 of the NEB Act.

Further, under section 63 of the NEB Act, the Commission may determine as questions of fact whether traffic is or has been carried under substantially similar circumstances and conditions, as referred to in section 62, or whether there is unjust discrimination within the meaning of section 67.

The Commission has considered the Application and evidence on the record having regard to these legislated requirements and fundamental tolling principles, particularly whether the Protocol will result in unjust discrimination or promote economic efficiency. The Commission finds that the Protocol does not result in any unjust discrimination, will promote economic efficiency, and otherwise meets the requirements of sections 62 and 67 of the NEB Act.

No Unjust Discrimination

The Commission finds that the Protocol does not result in any unjust discrimination. In making this determination, the Commission considered whether shippers that share substantially similar circumstances are being treated equally. The Commission acknowledges that the Protocol may curtail upstream receipt services prior to curtailments of downstream delivery services and, as such, system users will not be treated identically. For example, a Firm Transportation – Receipt shipper may be subject to curtailments while a Firm Transportation – Delivery shipper may not. However, this discrepancy does not result in unjust discrimination as described in the NEB Act. The Commission is satisfied that, based on the evidence tendered by NGTL, users under substantially similar circumstances will be treated equally. Receipt shippers that share geographic and operational circumstances, such

³ A summary is found in the RH-1-2007 Reasons for Decision dated July 2007, Chapter 3, pages 21-23.

⁴ MH-4-96 Reasons for Decision, page 12.

as receipt shippers upstream of constraints, will be treated similarly under the conditions of the Protocol.

The Commission is of the view that, in this case, it is reasonable to distinguish between receipt and delivery services during curtailments as receipt and delivery services are predominantly situated in different locations of the NGTL system and are impacted differently by constraints on the system.

The Commission's findings apply equally to the argument that some storage operators would be favoured over others. The Commission is not persuaded that storage operators upstream of the constraints identified in the Protocol operate under similar circumstances as those that exist at East Gate storage locations. NGTL identified that storage injection upstream of capacity constraints is not expected to be constrained during the 2019 and 2020 summer periods. Given the different operational circumstances that apply to storage facilities upstream of constraints, the Commission finds any discrepancies in access that may arise from the Protocol are not unjustly discriminatory.

The Commission also considered the support of affected parties. Although, in some cases, support for an application can be informative, the Commission concurs with the submission that a tariff amendment should not be a popularity contest. However, the Commission notes that several parties who will be directly impacted, such as Firm Transportation – Receipt shippers who may have their service curtailed, expressed strong support for NGTL's proposal. Moreover, the Commission notes that the parties supporting the Application represented diverse interests, including producers who could be negatively impacted by curtailments, delivery customers, and an end user.

Economic Efficiency

The Commission finds that the Protocol is consistent with established tolling principles, particularly the principle of economic efficiency. The Commission views economic efficiency to include the optimization of system use and delivery choices to system users. The Commission acknowledges the evidence of NGTL that the Protocol will not increase throughput at the physical constraints. However, the Commission accepts NGTL's evidence that the Protocol is likely to enhance usage of East Gate facilities, especially storage, and provide optionality to shippers on that part of the system. In this case, the Commission accepts that enhancing access to storage in the summer during planned maintenance events is key to achieving the efficient use of the NGTL system.

In the Commission's view, the existing approach to simultaneously curtail both interruptible receipt and delivery services is a more disruptive method of curtailment. The evidence before the Commission was that the tariff, without amendment, had the effect of curtailing services in parts of the system not in proximity to the physical constraints and contributed to periods of supply and demand distortions. The Commission accepts this evidence and finds that efficient system use and services to customers has not been achieved using the current system of curtailments.

The Commission notes that no party contested NGTL's submission that storage plays a critical role in natural gas markets, notably during summer periods, by providing access to a delivery market and a source of demand at a time of seasonally lower demand. Similarly, no party challenged that storage access was constrained under the current operational framework for the NGTL system. Most of the parties before the Commission concurred that system constraints, storage access and bottlenecks were problems that needed to be addressed. Most of the parties highlighted or acknowledged a correlation between reduction

of storage access in 2017 and increased commodity price volatility. In the Commission's view, no party provided a credible argument to rebut the NGTL submissions that economic efficiency would be enhanced by the Protocol.

Accordingly, the Commission finds that the Protocol, by enhancing access to storage, will promote economic efficiency and is consistent with the goal that Canadians benefit from efficient energy infrastructure and markets⁵.

It is unnecessary for the Commission to make any findings as to the likely impacts of the Protocol on natural gas prices or the broader relevance of price stability within an adjudication of tariff terms. A number of parties argued that the Protocol may enable more efficient use of the system which in turn would contribute to greater commodity price stability. However, the Commission notes that there was no expert evidence tendered in respect of the commodity price issues associated with the Protocol. Both NGTL witnesses confirmed that they were not experts in any economic discipline and no other party tendered expert evidence on the issue of price volatility. As discussed in the findings above, there is ample evidence that economic efficiency is likely to be enhanced by the Protocol, even without considering potential commodity price impacts.

On a final note regarding economic efficiency, the Commission notes that, typically, pipeline inefficiencies such as capacity constraints are resolved by market dynamics. While NGTL is endeavouring to expand its system to address current system constraints, major capital expansions cannot address inefficiencies quickly and in the short-term. In this case, the Commission is persuaded that the Protocol is a reasonable short-term solution to enhance storage access during planned summer maintenance events, prior to proposed capacity additions in 2021.⁶ In the Commission's view, the proposal will enhance access to storage, which will help contribute to the efficient functioning of the NGTL system. That outcome, on balance, is likely to contribute positively to price stability and the efficient operation of Canadian natural gas markets.

NGTL and a number of other parties raised the issue of whether the Protocol was in the public interest pursuant to section 12 of the NEB Act. No detailed, compelling arguments were advanced, nor relevant evidence adduced, to establish that the Protocol was not in the public interest.

Other Issues Raised

Several parties referred to the Alberta Natural Gas Advisory Panel Report, but no party provided that report as evidence on the record. Accordingly, the Commission did not directly consider that report.

The Commission acknowledges the request to extend the notice of planned maintenance events to five days from two days. This is not a matter central to the Application filed by NGTL. To the extent that a shipper would like tariff amendments to the definitions of planned and unplanned maintenance, this would appropriately be subject to a separate process, which would likely include stakeholder consultations.

Finally, regarding the effective date of the Commission's decision, the Commission finds that parties became aware of the Protocol before NGTL's Application was filed. Specifically, NGTL submitted that the Protocol was presented to the TTFP on 22 August 2019. In

⁵ GH-1-2006 Reasons for Decision, page 37.

⁶ NGTL has proposed a 2021 system expansion which is currently before the Commission in Hearing GH-003-2018.

response to Commission questions, counsel for Freepoint and Sequent indicated that at least a month of notice would have been needed to adapt to the risks associated with the Protocol. The Commission finds that the initial discussions at the TTFP and filing of the Application in August of 2019 provided awareness of a potential change. To the extent any residual uncertainty may have caused some prejudice to Freepoint and Sequent, the benefits of the implementation on 30 September 2019 outweigh any such prejudice, given the ongoing system constraints and significant number of planned maintenance events for October 2019. On that basis, the Commission found it appropriate to approve the implementation of the Protocol effective 30 September 2019.

The Commission notes that approval of the Application sets no precedent for how curtailments may be treated after 31 October 2020. The Commission expects NGTL and its customers to continue to explore alternative long term solutions that will meet system needs, enable continued access to storage during periods when it is critical, and ultimately enhance the efficient functioning of the NGTL system thereby supporting market stability.

Conclusion

For these reasons, the Commission approved the Application on 26 September 2019, with an effective date of 30 September 2019.

NGTL is directed to immediately serve a copy of this correspondence on all shippers, interested parties, and TTFP members.

Yours sincerely,

Original signed by

L. George
Secretary of the Commission