



## LETTER DECISION

File OF-Tolls-Group1-M124-2019-01 01  
6 August 2019

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Dear Mr. Rideout:

**Maritimes & Northeast Pipeline Management Ltd. (M&NP)**  
**Application for Approval of 2020-2021 Toll Settlement (Application)**  
**Letter Decision and Order TG-007-2019**

### Background

On 18 April 2019, the National Energy Board (Board) received an application from M&NP pursuant to Part IV of the National Energy Board Act (NEB Act) and the Board's *Revised Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs* (Settlement Guidelines), for approval of a toll settlement for tolls over the period of 1 December 2019 through 31 December 2021 (2020-2021 Toll Settlement).

M&NP submitted that its system is faced with the unique challenge of essentially losing its domestic gas supply, as well as losing 95 per cent of its firm contract determinants all at one time. The contract commitments currently held by ExxonMobil Canada Properties (ExxonMobil), the lead operator of the permanently shut-in Sable Offshore Project, expire on 30 November 2019. M&NP stated that it engaged with its shipper group in the first half of 2018 to collaborate on solutions to the toll uncertainty resulting from these challenges. The 2020-2021 Toll Settlement is the result of negotiations with the M&NP Tolls and Tariff Working Group (TTWG), which is comprised of representatives of M&NP and other parties interested in M&NP's tolls and tariff matters.

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M&NP submitted that a formal vote was held on a resolution of the TTWG, resulting in an “Opposed Resolution” with the majority of votes in favour of the resolution. M&NP stated that all parties having an interest in M&NP’s tolls and tariffs had a fair opportunity to participate and have their interest recognized and appropriately weighed in the 2020-2021 Toll Settlement.

M&NP indicated that it took the Board’s direction from the RHW-003-2017 Reasons for Decision in structuring the 2020-2021 Toll Settlement. Measures taken included reducing the revenue requirement by 59 per cent, increasing billing determinants through the restructuring of services, and the development of a new service termed Interruptible Transportation Minimum Revenue<sup>1</sup> (MNITMR) service. MNITMR service requires each customer to guarantee revenue of \$12.5 million over the contract term, called the Minimum Revenue Guarantee (MRG). M&NP stated that it has executed three MNITMR Precedent Agreements, which guarantee the pipeline interruptible revenues of \$37.5 million over the 25 month term of the 2020-2021 Toll Settlement.

On 2 May 2019, the Board issued a letter requesting comments from interested parties on the 2020-2021 Toll Settlement. The Board received notices of opposition from Emera Energy Limited Partnership (Emera), and New Brunswick Power Corporation and its wholly-owned subsidiary New Brunswick Energy Marketing (NB Power).

Letters supporting the 2020-2021 Toll Settlement were received from Enbridge Gas New Brunswick (EGNB), Heritage Gas Limited (Heritage Gas), Irving Oil Limited (Irving Oil), J.D. Irving Limited (J.D. Irving) and Nova Scotia Power Inc. (NS Power). Each of the supporting parties asked the Board to approve M&NP’s Application as filed, and expressed no support for the concerns or opposing positions of Emera and NB Power.

## **Summary of Opposition**

### *Emera’s Notice of Opposition*

Emera submitted that it has concerns that the MNITMR service proposed in the Application would not be assignable on a temporary basis and that it will be a “bullet-service”, in which a shipper’s gas will only be delivered to that shipper’s contractual primary delivery points. In Emera’s view, such restrictions on the MNITMR service will negatively impact the efficiency of the Maritimes’ gas market, ultimately resulting in higher prices for consumers in the region, and unduly discriminating against smaller-volume, end-users in the region, contrary to section 67 of the NEB Act. Accordingly, unless those concerns are addressed, Emera submitted that the proposed MNITMR service is not just and reasonable in accordance with the requirements of section 62 of the NEB Act.

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<sup>1</sup> MNITMR service is a 25 month fixed term interruptible transportation service that provides customers with interruptible service at 150 per cent of the 100 per cent load factor MN365 reservation and usage charges in the winter, and 100 per cent of the 100 per cent load factor MN365 reservation and usage charges in the summer.

Emera stated that assignments of firm transportation capacity to third party gas marketers, like Emera, are an essential part of an efficient gas market. Capacity assignments promote liquidity, price discovery, and enable the market to make the most efficient use of capacity. Emera asserted that, despite its name, the proposed MNITMR service is *de facto* a form of firm service. This is because it is highly unlikely that MNITMR service would be subject to any restrictions or any foreseeable interruptions, and M&NP would essentially be receiving a reservation charge in the form of the MRG. Therefore, Emera's view is that MNITMR contracts should be assignable on a temporary basis, just like any firm service agreement would be under M&NP's tariff.

Emera also stated that the preferential MNITMR rates, and corresponding usage credits towards the MRG, would be restricted to deliveries from/to specified contractual primary receipt and delivery points. This limits the MNITMR service to large individual shippers that have enough variable volumes to justify contracting for the MNITMR service on their own. Emera asserted that smaller shippers are left to pay the proposed 175 per cent interruptible rate versus the preferential MNITMR rates, putting them at a material economic disadvantage. It is therefore Emera's view that the proposed MNITMR service would unduly favour larger market participants over small end-users.

Emera submitted that these concerns could easily be addressed by allowing holders of MNITMR service to temporarily assign those contracts to third parties; and by allowing gas scheduled from or to any point on the M&NP system to receive the preferential MNITMR rates and for those charges to be credited towards the MRG.

#### *M&NP's Response to Emera's Comments*

In response to Emera's comments, M&NP submitted that MNITMR service will not negatively impact the efficiency of the Maritimes' gas market or result in higher prices for consumers as claimed by Emera. M&NP submitted that none of the entities that executed MNITMR agreements requested assignability or the ability to specify all receipt and delivery points in their contracts. M&NP received feedback from these shippers that the service allows them to more efficiently utilize their gas transmission service, independent from the need to aggregate and re-sell services. This is counter to Emera's claim that "these restrictions preclude MNITMR service shippers from efficiently optimizing the use of their capacity in the market."

M&NP submitted that MNITMR service is not firm service. It holds a lower priority than firm service, and in fact a lower priority than standard interruptible service. M&NP noted that while the system may have ample capacity as a whole, smaller diameter laterals can at times become constrained. Additionally, the MRG cannot be considered a reservation charge as it provides no guarantee of service to the shipper. Rather, the MRG is an alternative pricing mechanism for discretionary services.

M&NP also stated that MNITMR service does not unjustly discriminate against smaller-volume end-users in the region. M&NP indicated that all shippers have an equal opportunity to contract for firm service. M&NP is not proposing any volume thresholds, revenue guarantee or limits on assignability or access to receipt or delivery points for firm service. M&NP submitted that the Board has stated in previous decisions that shippers can choose to purchase firm service at the

cost-based recourse rate. Alternately, there may be an advantage in using flexible discretionary services. In M&NP's view, it is not unreasonable that discretionary services such as MNITMR service be subject to certain limitations. M&NP stated that the fact that not all shippers are able to avail themselves of all services does not on its own constitute unjust discrimination under section 67 of the NEB Act.

M&NP stated that if the MNITMR service permitted the ability to specify all receipt and delivery points on the system, it is highly improbable that it would have successfully negotiated three MNITMR agreements and in fact may have been left with only one. This is because one entity, such as Emera, could execute a single MNITMR precedent agreement and in turn aggregate the load associated with the three MNITMR precedent agreements now executed.

M&NP submitted that the negotiation of a settlement involves gives and takes on many variables by all parties involved, therefore all components of the 2020-2021 Toll Settlement are linked and must be considered as a package deal. Any revision to the MNITMR service as applied for, including the relief sought by Emera, will have a significant impact on the balance of the settlement.

#### *NB Power's Notice of Opposition*

NB Power submitted that tolls are materially excessive because they have not been reduced to eliminate costs that fall within the ambit of M&NP's fundamental risk responsibility. In NB Power's view, fundamental risk will undoubtedly materialize on 1 December 2019 when the contract commitments with ExxonMobil expire. NB Power requested, among other things, that the settlement tolls not be approved.

NB Power stated that the information provided by M&NP indicate that about 67 per cent of M&NP pipeline assets are now and will continue to be permanently unutilized. In NB Power's view, this high proportion of permanently unutilized assets is not surprising since the primary purpose and sizing of the pipeline system was to carry offshore Nova Scotia natural gas to markets in the U.S. Northeast. Effective 1 December 2019, it would neither be just nor reasonable for M&NP to recover ongoing owning and operating costs of this large portion of permanently idle assets from the remaining shippers on the pipeline.

NB Power submitted that if tolls are not reduced to eliminate costs associated with M&NP's fundamental risk responsibility, then all M&NP shippers and customers of those shippers will suffer the burden of the differential between the settlement and fundamental risk adjusted tolls. NB Power provided an assessment that the differential between those tolls is \$0.50 per MMBtu/d, which would result in an annual burden for the MN365 shippers to be about \$16.6 million.

NB Power stated that its materially increased interest in the level of M&NP's tolls stems from its recently completed acquisition of Bayside Power (Bayside). In order to complete the business case for an enhanced level of generation from this newly acquired facility, NB Power stated that it is now attempting to obtain reasonably priced gas transportation service from M&NP.

NB Power submitted that the proposed tolls are not just and reasonable as M&NP asserts, nor are they “market competitive.” For gas users without any option, market competitive means tolls that exclude recovery of M&NP’s fundamental risk responsibility from enduring shippers. For shippers like NB Power, that can seek Board approval for access to alternative Emera Brunswick Pipeline Company (EBPC) transport, the settlement tolls are clearly not competitive. NB Power requested, among other things, that the Board establish a hearing process to determine appropriate toll levels for the 2020-2021 toll period. NB Power also requested that M&NP be directed to bring forward for Board consideration a new toll schedule for long term, large volume firm and/or interruptible service that will allow M&NP to offer negotiated tolls.

#### *M&NP’s Response to NB Power’s Comments*

In response to NB Power’s notice of opposition, M&NP submitted that the applied-for tolls reflect a pipeline system that is nowhere close to fundamental risk. In M&NP’s view, fundamental risk has not materialized, will not materialize during the 2020-2021 Toll Settlement period, and NB Power’s assessment is flawed. M&NP stated that the enduring domestic market is expected to continue to provide demand for an average, consistent with 2018 actuals, of 153,000 MMbtu/d. While utilization has decreased, there is no permanently idle asset on which M&NP is recovering costs from the remaining shippers on the pipeline. As well, excess capacity provides benefits to shippers in higher reliability and increased operational flexibility.

M&NP stated that the tolls in the Application are consistent with the toll levels on the M&NP system over the past several years. M&NP stated that the continued competitiveness of the tolls is best evidenced by the fact that the 2020-2021 Toll Settlement is supported by the majority of shippers on the system. Six precedent agreements were entered into, with shippers who represent 95 per cent of the total 2018 actual measured domestic load on the M&NP system.

M&NP identified that it has taken several steps to ensure that tolls remain at a just and reasonable level for enduring shippers. M&NP stated that it accelerated depreciation such that at the end of the 2017-2019 settlement period, 86 per cent of system gross plant was depreciated. M&NP has also taken steps to dramatically reduce its revenue requirement and has had success in securing new billing determinants following the expiration of the ExxonMobil contract commitments. M&NP has also taken direction from the Board to develop creative new service offerings such as MNITMR service.

### **Views of the Board**

The Board approves the 2020-2021 Toll Settlement and Application as filed. In the Board’s view, the 2020-2021 Toll Settlement is an acceptable negotiated response to significant change on the M&NP system. While confronted with the expiry of contract commitments resulting from the termination of production from Deep Panuke and the Sable Offshore Energy Project, M&NP has taken steps to keep tolls at reasonable levels. This includes accelerating depreciation in the 2017-2019 Toll Settlement, as well as measures taken in the 2020-2021 Toll Settlement such as reducing the revenue requirement by 59 per cent, the introduction of the new MNITMR service to

ensure minimum interruptible revenues of \$37.5 million over the settlement term, and the restructuring of existing services.

The Board finds that the 2020-2021 Toll Settlement complies with the Settlement Guidelines and provided interested parties with a fair opportunity to participate and have their interest recognized and weighed.

The Board is not persuaded by the Notices of Opposition submitted by Emera and NB Power. The Board finds that MNITMR service is an acceptable negotiated service, and that fundamental risk has not materialized on the M&NP system at this time. In the Board's view, the objections raised by Emera and NB Power do not warrant rejection of the 2020-2021 Toll Settlement as a whole, and do not require additional process to adjudicate. The Board provides its reasons as follows.

#### *MNITMR Service*

The Board is not persuaded by Emera's assertions that MNITMR service would unduly discriminate against smaller-volume end-users in the region. MNITMR service provides a relative discount to the standard interruptible (MNIT) toll, and requires a minimum \$12.5 million of revenue, the MRG, to be paid for under each contract. While these revenue commitments may be prohibitive to some smaller shippers, the Board finds that it is just and reasonable given the current circumstances on the M&NP system. The MRG provides a meaningful contribution towards the revenue requirement and helps keep tolls at reasonable levels during a period of major change. Given that each MNITMR shipper is required to guarantee \$12.5 million of revenues, the Board finds that it is reasonable to provide MNITMR service a relative toll discount compared to MNIT, which requires no revenue commitments. Other services, including MNIT, are available for shippers unable to make the MRG commitments. Accordingly, the Board finds that MNITMR service is not unjustly discriminatory.

The Board is also not persuaded by Emera's assertions that the service will negatively impact the efficiency of the Maritimes' gas market. None of the MNITMR shippers requested assignability or alternate receipt and delivery point rights in their negotiations with M&NP. M&NP also explained that those shippers gave feedback that the service allows them to more efficiently utilize their transmission service, and to do so independently from the need to aggregate and re-sell services. Given the above, the Board is not persuaded by Emera's assertions.

While Emera requested several changes to MNITMR service that would resolve its concerns, the Board notes its practice of treating settlements as packages. The Board's decision is accordingly to either approve or reject the settlement as a whole, including the proposed MNITMR service. The Board is of the view that MNITMR service provides benefits to the system and shippers in guaranteeing a total of \$37.5 million of revenue over the settlement period, providing a level of toll certainty and a significant contribution toward the overall revenue requirement. This contribution will benefit all shippers using the MN365 and MNIT services.

### *Fundamental Risk*

In the Board's view, fundamental risk<sup>2</sup> has not materialized on the M&NP system at this time. M&NP has taken steps to manage its potential exposure to fundamental risk that, in the Board's view, are appropriate in the current circumstances. This includes the accelerated depreciation of the system in the 2017-2019 Toll Settlement, which will recover a significant amount of capital costs prior to the expiry of the ExxonMobil contract commitments. While NB Power asserted that 67 per cent of M&NP assets are now permanently unutilized, M&NP identified that at the end of the 2017-2019 Toll Settlement period, 86 per cent of system gross plant will be depreciated. The Board is of the view that M&NP has succeeded in aligning system depreciation with the term of the ExxonMobil transportation contract and other export contracts.

Additionally, toll levels are largely in line with those of previous years, and are evidently not more than the market can bear, as evidenced by the support for the 2020-2021 Toll Settlement. It is supported by Heritage Gas, NS Power, Irving Oil, J.D. Irving and EGNB. Six shippers entered into contractual commitments for M&NP service, including three precedent agreements for the new MNIMTR service. The Board notes that no other party raised concerns similar to those raised by NB Power, and all interested parties had an opportunity to do so within the Board's comment process.

In the RHW-003-2017 Reasons for Decision, the Board stated:

“The Board expects M&NP to take steps to actively manage its risks going forward, including fundamental risk. Possible steps could include reducing costs, increasing billing determinants, and exploring opportunities to develop new service offerings<sup>3</sup>.”

The Board finds that the 2020-2021 Toll Settlement is responsive to that expectation. M&NP's revenue requirement for the settlement period has been reduced by approximately 59 per cent from the revenue requirement for the 2017-2019 settlement period, services have been restructured to increase billing determinants, and M&NP has developed the new MNITMR service.

The Board notes that NB Power indicated that it is seeking a shipper-specific negotiated toll, in consideration of its recently acquired Bayside plant's proximity to M&NP's potential competitor, the EBPC pipeline. The Board reminds NB Power that, as stated in the RHW-001-2017 Reasons for Decision, the evidence on the record in that proceeding suggested that an application by EBPC for the section 58 facilities that would accompany the reversal and repurposing of EBPC's system would not be eligible to use the Board's section 58 Streamlining Order (A43203).

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<sup>2</sup> The Board, in its RH-003-2011 Reasons for Decision, described fundamental risk of the TransCanada Mainline in the following way: “The Board previously characterized the situation where the Mainline's fundamental risk materializes as the point at which Mainline throughput has declined to a level where the resulting tolls exceed what the market could bear. If this were to happen, the Board noted that it would no longer be able to protect the Mainline and the Mainline may not be able to recover all of its costs.”

<sup>3</sup> RHW-003-2017, Letter Decision, M&NP Toll Settlement, page 19 of 21, [A90339-3](#).

## **Disposition**

The Board finds that the 2020-2021 Toll Settlement results in tolls that are just and reasonable, tolls and services that are not unjustly discriminatory, and that the 2020-2021 Toll Settlement meets the requirements of the Settlement Guidelines. The Board approves the 2020-2021 Toll Settlement and Application as filed. The Board issues Toll Order TG-007-2019 that gives effect to this decision.

The Board directs M&NP to provide a copy of this letter decision and the attached Order to its TTWG and interested parties.



Steven Kelly  
Presiding Member



Philip Davies  
Member



Shane Parrish  
Member

Calgary, Alberta  
August 2019

Attachment