



Loyola G. Keough
Partner
Direct Line: 403.298.3429
e-mail: keoughl@bennettjones.com
Our File No.: 57831-5

November 30, 2022

Canada Energy Regulator
210, 517 - 10th Ave. S.W.
Calgary, AB
T2R 0A8

Att: Ms. Ramona Sladic
Secretary of the Commission

Dear Ms. Sladic:

**Re: Application by Saint John LNG Development Company Ltd. ("SJLNG")
for a Variation of Licences GL-318 and GL-319 (the "Application")**

1. SJLNG received an extensive submission from Eastward Energy Incorporated (formerly Heritage Gas Limited) ("Eastward"), dated November 24, 2022 (received on November 25, 2022), regarding the referenced Application. The submissions of Eastward reflect a fundamental misunderstanding of the CER's legislation, including specifically the requirements of the "surplus test" utilized by the CER in the context of considering whether to approve export licence applications. Eastward is attempting to read into the legislation requirements that simply do not exist and create criteria that have never been used in the application of the CER's surplus test. In addition, much of the context contained in the Eastward submissions is not relevant to the application before the Commission or does not accurately reflect the facts and circumstances underpinning SJLNG's requested variation.
2. Furthermore, Eastward seeks to have the Commission totally ignore the fact that it has already approved the export of the full term volume requested, which is not changing, and has found that it met the surplus test. Likewise, while referring extensively to CER precedents, Eastward ignores the fact that the CER itself confirmed that a change in the sunset date is a "minor" amendment to the existing licence, noting that the terms of the licence and the total term quantity/volume previously authorized for export will not change due to the requested amendment.
3. For the reasons detailed below, SJLNG submits that further evidence and related process is unnecessary and the Commission currently has before it all of the evidence that is required to consider SJLNG's Application and grant the relief requested.

4. At the outset, Eastward asserts, without supporting evidence, that SJLNG's Application has the potential to impact supply and demand within the Maritime region, which in turn impacts Eastward's operations (p. 1). SJLNG notes that the subject LNG export licence will only be utilized if the proposed project to expand its existing LNG facility proceeds. In this regard, the predecessor of Eastward (Heritage Gas), made submissions to the CER in the context of SJLNG's original LNG Export Application in 2015 (see attached Heritage Gas letter dated May 19, 2015), which included comments on natural gas supply. In its reply comments in that proceeding, dated May 27, 2015 (p. 2, see attached), SJLNG observed that the reversal of the M&NP (USA) pipeline "will result in greater access to gas sources not currently directly available in the Maritimes, in particular, gas from various Canadian and United States producing regions". (emphasis added) This factual consequence of a reversal of M&NP (USA) was not refuted. Eastward made no submissions that this result would be any different today. The reality is that, if SJLNG's expansion project proceeds, it will have a beneficial impact on gas supply for the Maritimes region. Eastward ignores this obvious positive consequence and restricts its comments to a general assertion that its operations could be "potentially" impacted. This assertion provides no basis for denying SJLNG's Application and, in fact, confirms that Eastward would be positively impacted, not negatively impacted, if SJLNG's expansion project were to proceed.
5. Furthermore, Eastward makes no assertion that it will not be able to obtain natural gas for its operations if the requested extension to the existing sunset date is granted. This is because any such position would be entirely unsupported. Eastward's ability to obtain gas supply is in no way affected by the granting of this Application. As observed by the CER in its September 3, 2015 Letter Decision approving SJLNG's export licence (p. 5): "Furthermore, since deregulation of Canadian gas markets in 1985, gas markets in North America have functioned efficiently and there is no evidence to suggest that they will not continue to do so in the future." SJLNG submits that this finding remains valid and correct today. Certainly, nothing contained in the submission of Eastward suggests otherwise.
6. In the section of its submissions titled "Overview", Eastward asserts that SJLNG's Application is not supported by updated evidence showing that the surplus criteria under s. 345 of the *CER Act* is met (p. 1-2). As noted above, the positions advanced by Eastward reflect a fundamental misunderstanding of the *CER Act* and its requirements; including specifically as they relate to the "surplus test".
7. As noted in its September 4, 2022 Application (paras. 14-16), the plain language of Section 345 of the *CER Act* lays out the requirements that must be met by an Applicant. Likewise, a review of this Section shows what is not included therein, contrary to what is asserted by Eastward. As stated by SJLNG, the legislation focuses on the quantity of gas to be exported, not the timeframe over which the export takes place. This makes sense, as it is the quantity that is assessed to determine if sufficient supply still remains to meet the reasonably foreseeable requirements for use in Canada, assuming the requested export licence is granted.

8. Eastward also appears to be of the view that, in the context of a specific export licence, the surplus determination is re-examined again and again. This is simply incorrect. It is a one-time assessment that is conducted at the time the export licence application is requested. Following the granting of an export licence, the total term volume authorized is considered in future surplus test determinations for other future licences. The determination that has already been made is not revisited again and again.
9. Again, Eastward's incorrect and misinformed positions provide no basis for denying SJLNG's requests in the Application. In the context of SJLNG's export licence, there would be no re-examination of the surplus test during the full ten year period covered by the sunset period. Exports could commence the day before it was set to expire on May 20, 2026 and no re-examination of the surplus test would occur.
10. In this regard, Eastward is also incorrect in its unsupported assertion regarding the purpose of the sunset date provision in an export licence (p. 5). There is no re-examination of the surplus test during this period and such action has never been taken by the Commission. There is no provision requiring a periodic review of the surplus test for a specific, approved export licence. Rather, a sunset date is included in export licences to recognize the commercial reality that, after a licence is obtained, the applicant must still complete a number of tasks before actual exports can occur. These typically include actually building the project that underpins the requested export, as well as, any required pipeline capacity needed to actually deliver the natural gas to the export point. Eastward is simply making up positions that have no basis or support.
11. Eastward also asserts (p. 2) that SJLNG's Application does not consider how the planned expansion to its facility would impact the surplus criteria. This is incorrect. To the contrary, the evidence filed in support of SJLNG's existing export licence specifically addressed how the export of the full term quantity would impact the surplus test. That is the very purpose of the surplus determination that has already been made. The evidence filed in support of the original export licence confirmed that the surplus criterion was met and, therefore, the requested licence was granted. SJLNG successfully demonstrated that the surplus test requirements were met and that has not changed. Again, Eastward's assertions are simply wrong.
12. Eastward goes on to assert (p. 2) that the CER has the obligation to ensure that the surplus criteria are met. We agree. This was precisely what the CER did when approving SJLNG's export licence application. This determination has not changed and there is no basis for revisiting it.
13. Eastward then proceeds to assert that the CER would benefit from updated evidence that takes current market conditions into account (p. 2). Notably, Eastward provides no comment on why the previous assessment of the surplus criteria is suddenly invalid, particularly when the term quantity of gas to be exported (which has already been examined and approved) has not changed. SJLNG has provided comments on the purported changes

in market conditions above, and reiterates the position that Eastward has not shown how these changes or current conditions have anything to do with its ability to obtain gas supplies or how this would be impacted by the granting of the requested extensions to the current sunset dates. There is simply no link between the current SJLNG Application and Eastward's ability to adjust to current market conditions.

14. Whether Eastward can obtain natural gas supplies, and on what terms and conditions, is in no way impacted by SJLNG's requested extension to the existing sunset date. As noted above, should SJLNG's expansion project proceed, Eastward's gas supply options will actually increase, not decrease.
15. Eastward's incorrect and misinformed views of the surplus test are further demonstrated in its submissions (p. 3) that the evidence filed by SJLNG in support of its original application (by Ziff and Priddle) did not contemplate the changes that have occurred over the intervening years. The surplus test is a one-time, point in time, examination of the status of forecast natural gas supply and demand. Based on the best information available at the time, an assessment is made regarding whether the quantity of gas to be exported exceeds the surplus remaining after allowance is made for the reasonably foreseeable requirements for uses in Canada. This is what the CER has already done.
16. The changes that have occurred in the intervening period are irrelevant. These changes may be a valid consideration for the CER when considering new export licence applications, to the extent they actually impact natural gas supply and demand and the ability of Canadians to meet their reasonably foreseeable requirements. However, such changes are not relevant to SJLNG, which has already met the surplus test requirements. Eastward is seeking to insert a requirement into the surplus test that simply does not exist. To the contrary, subsequent surplus test assessments take into account the term quantities that have already been approved for export – including those authorized for SJLNG.
17. In its submissions (p. 4), Eastward observes that the CER's Filing Manual, Guide Q, confirms that the onus is on the applicant to show that the surplus test has been met. SJLNG agrees. In fact, this is exactly what SJLNG did in its 2015 export licence application. In the CER's Decision regarding export licence GL-318, the CER explicitly found that its surplus test was met, when taking into account the full term quantity to be exported under the licence. As noted in SJLNG's Application, the term quantity is not changing and neither is the factual determination that the volumes can be exported and the surplus test still satisfied. SJLNG has met the surplus test – period. The market changes alluded to by Eastward does not change this at all.
18. Eastward then seeks to introduce information regarding the offshore gas production in Nova Scotia (p. 6). While this information may be of general interest in some contexts, it is totally irrelevant to whether SJLNG has met the surplus test, which again, it already has done. Furthermore, as already noted, the evidence that the supply options for the Maritimes will increase, not decrease, if SJLNG's expansion project proceeds is uncontroverted. The

speculation of Eastward regarding the gas supply circumstances for the Maritimes and the US Northeast has nothing to do with the extension to the sunset dates requested in SJLNG's Application and whether it has met the surplus test, which again, it already has done.

19. Eastward also makes reference to earlier CER applications for extensions to sunset dates granted to CEDAR 1 and LNG Canada. These applications were also referenced by SJLNG in its Application (p. 4) and their relevance addressed. While Eastward seeks to rely on these cases as establishing some mandatory requirement that an updated surplus test determination be provided, these cases and the related CER Decisions, and in fact the legislation, create no such requirement.
20. Ironically, the information from these cases provided by Eastward actually supports SJLNG's request in the Application and confirm that there have been recent demonstrations that the CER's surplus test is fully satisfied, including the term quantity previously approved for SJLNG. Likewise, while Eastward makes repeated references to changed market conditions, the information regarding LNG Canada cited on page 7 of its submissions confirms that the LNG gas market has become increasingly competitive and that natural gas production capacity has outpaced demand growth. (emphasis added)
21. The information cited goes on to suggest that this has led to lower natural gas prices and increased competition among global LNG export projects. These conclusions support the view that the natural gas market is, in fact, working and consistently responds to market forces. It certainly does not support a view that there is insufficient Canadian supply to meet the reasonably foreseeable needs of Canadians.
22. While Eastward seeks to read into a statement made by the CER in its decision regarding LNG Canada (at p. 7-8) something that the CER simply does not say, this does not detract from the fact that both the LNG Canada and CEDAR 1 Decisions made no findings that Canadians will have difficulty meeting their reasonably foreseeable requirements or that natural gas markets are not functioning in a robust manner and in accordance with market forces. Contrary to the unsupported positions advanced by Eastward, the true value of these prior cases is the recognition that a request to extend a sunset date is a minor variance and that the approval of the Minister is not required. As submitted by SJLNG in its Application (paras. 24-25), SJLNG submits that the same reasoning is directly applicable here.
23. Eastward also asserts that, failing a ruling by the CER that SJLNG be directed to file evidence on an updated surplus determination and provide it with a further opportunity to present evidence, it will be denied procedural fairness in this case. This is simply wrong. The CER considered SJLNG's September 14, 2022 Application and established the full process it felt was required to deal with this Application. SJLNG was required to serve the Application on Eastward/Heritage Gas and it did so. Eastward was provided a full opportunity to file submissions regarding SJLNG's Application – notably without any constraints placed on the context of such submissions. It did so.

24. Establishing a record in accordance with the CER's directed process does not result in a lack of procedural fairness. To the contrary, parties were provided a full opportunity to present their positions to the CER and this process has provided the CER with all of the information it needs to render a decision herein. No further evidence or process is required.
25. SJLNG submits that the totality of the record supports its position that the requested extension to the sunset dates should be granted. As noted, SJLNG has already demonstrated, as was approved by the CER, that the surplus test was fully met regarding the total term quantity currently authorized under Licence GL-318. These determinations have not changed and will not change if the relief requested herein is granted.
26. SJLNG submits that there is simply no basis for denying its request. To the contrary, the record herein supports the granting of the Application, as filed. SJLNG requests that the CER move forward with its decision making as expeditiously as possible, as the requested extensions are key to SJLNG moving forward with its proposed expansion in a commercially reasonable manner.
27. Finally, SJLNG notes that none of the comments made by Eastward relate to natural gas Import Licence GL-319. The requested extension for this licence should be granted as filed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of November, 2022.



Loyola G. Keough
Counsel for SJLNG

cc: Michael P. Simms,
McInnes Cooper



200-238 Brownlow Avenue
Dartmouth, NS B3B 1Y2
Tel: (902) 466-2003
Fax: (902) 466-2140

www.heritagegas.com

Call Before You Dig

1-866-313-3030

May 19, 2015

Ms. Sheri Young
Secretary of the Board
National Energy Board
517 10 Ave SW
Calgary, Alberta T2R 0A7

Dear Ms. Young:

**RE: Saint John LNG Development Company Ltd. (St. John LNG)
Application for a Licence to Export Liquefied Natural Gas (LNG) and Import Natural Gas pursuant to
Section 117 of the *National Energy Board Act* (Act)**

Heritage Gas Limited ("Heritage Gas") is a Nova Scotia-based company, formed for the purpose of providing natural gas distribution service to Nova Scotia residents and businesses. Heritage Gas hereby requests formal Intervenor status in the referenced National Energy Board ("NEB" or "Board") proceeding to present evidence and make submissions, as required.

Heritage Gas' interest in the proceeding is to understand St. John LNG's Application and the potential impact the project will have on natural gas pipeline capacity on the Maritimes & Northeast Pipeline ("M&NP"), sources of natural gas supply to the Maritimes and the development of gas infrastructure in Nova Scotia. Heritage Gas provides specific information on each of these items below:

- Impact on MN&P pipeline capacity

Currently MN&P is the only pipeline connecting the Maritimes with the natural gas production basins in other parts of North America. Heritage Gas relies on MN&P to transmit natural gas to its distribution system. Heritage Gas' understanding of St. John LNG's Application is that their plan to source and transport natural gas to their proposed facility will have an impact on capacity available on the MN&P.

- Sources of natural gas supply to the Maritimes

As a result of the decline in domestic offshore natural gas supplies, it is expected that the Maritimes will be required to source their natural gas supply needs from other North American production basins. St. John LNG's gas procurement plan may affect how, and from where, natural gas flows into the Maritimes.

- Development of gas infrastructure

Depending on St. John LNG's natural gas procurement plan, it may also call for gas infrastructure development in Nova Scotia which may have an impact on the gas procurement of other natural gas users in the province, including Heritage Gas.

Heritage Gas requests to receive all material filed with the Board and wishes to use the English language in correspondence with respect to this proceeding.

Contact information for Heritage Gas representatives is below.

Attention: Michael Johnston
Direct: 902-404-8951
Fax: 902-466-2140
Email: mjohnsto@heritagegas.com

John Hawkins
Vice-President of Engineering, Construction & Operations
Fax: 902-466-2140
Email: jhawkins@heritagegas.com

Jason Haynes
Fax: 902-466-2140
Email: jhaynes@heritagegas.com

Heritage Gas Limited
Park Place 1, 200
238 Brownlow Avenue
Dartmouth, NS
B3B 1Y2

Please advise if you require any additional information.

Yours truly,



Michael Johnston
Manager of Regulatory Affairs
Heritage Gas

Copied:

Attention: Mr. Loyola Keough
Bennett Jones LLP
4500 Bankers Hall East
855-2nd Street S.W.
Calgary, Alberta T2P 4K7
Facsimile: 403-265-7219

Attention: Ms. Cassia Prentice
Bennett Jones LLP
4500 Bankers Hall East
855-2nd Street S.W.
Calgary, Alberta T2P 4K7
Facsimile: 403-265-7219

Attention: Ms. JannaLyn Allen
Senior Legal Counsel
Repsol Energy Canada Ltd.
2001 Timberlock Pl/ Suite 3000
The Woodlands, Texas 77380
Facsimile: 832-442-1771

Loyola G. Keough
Partner
Direct Line: 403.298.3429
e-mail: keoughl@bennettjones.com
Our File No.: 74126.2

May 27, 2015

National Energy Board
517 10th Ave SW
Calgary, AB T2R 0A8

Att: Ms. Sheri Young
Secretary of the Board

Dear Ms. Young:

Re: Application by Saint John LNG Development Company Ltd. ("Saint John LNG"), dated 10 February 2015 for a Licence to Export Liquefied Natural Gas and Import Natural Gas pursuant to Section 117 of the *National Energy Board Act* (the "Application")
NEB File No.: OF-EI-Gas-GL-S834-2015-01 01
Saint John LNG Response to Letter of Heritage Gas Ltd. ("Heritage Gas"), filed May 19, 2015

Saint John LNG is in receipt of the letter filed by Heritage Gas with the National Energy Board ("**Board**" or "**NEB**") on May 19, 2015 requesting Intervener status in the referenced proceeding.

Saint John LNG observes that a similar letter was filed by Heritage Gas in respect of each of the Bear Head LNG Corporation and Pieridae Energy (Canada) Ltd. Applications to export liquefied natural gas ("LNG") presently before the Board. As such, Saint John LNG understands that the comments made by Heritage Gas are common to all LNG export projects presently proposed in the Maritime region. In its letter, Heritage Gas identified three potential impacts on it that, in its view, could relate to the Saint John LNG Application. As detailed below, Saint John LNG does not consider that these matters should impact the granting of the subject LNG Export Application.

In its letter, Heritage Gas has indicated that it wishes "to understand" the Application, including, more particularly:

... the potential impact the project will have on natural gas pipeline capacity on the Maritimes & Northeast Pipeline ("M&NP"), sources of natural gas supply to the Maritimes and the development of gas infrastructure in Nova Scotia.

May 27, 2015

Page Two

As indicated in the Application, Saint John LNG is evaluating the prospect of sourcing feed gas supply from Western Canada and/or the United States. Given the location of the Saint John LNG Project, it does not anticipate that its natural gas sourcing plan will "call for gas infrastructure development in Nova Scotia" as referenced by Heritage Gas. Saint John LNG will transport natural gas on the M&NP (USA) and Brunswick Pipeline systems. As indicated in the Application, SJLNG has entered into preliminary discussions regarding the potential reversal of the Emera Brunswick and M&NP (USA) pipelines.

Heritage Gas also commented that "As a result of the decline in domestic offshore natural gas supplies, it is expected that the Maritimes will be required to source their natural gas supply needs from other North American production basins". It is Saint John LNG's view that reversal of the M&NP (USA) pipeline will result in greater access to gas sources not currently directly available in the Maritimes, in particular, gas from various Canadian and United States producing regions.

Regarding M&NP (USA) capacity, Saint John LNG observes that an open season is already in progress in respect of the reversal project. The open season provided Heritage Gas and any consumer or shipper the opportunity to demonstrate their interest and to secure capacity on the reversed pipeline.

Saint John LNG submits that to the extent that Heritage Gas has concerns relating to a potential reversal of the M&NP pipeline, those concerns are more appropriately raised in a future pipeline reversal proceeding itself, rather than in the context of this LNG Export Application. The Saint John LNG Project will not utilize the M&NP pipeline in Canada and will not negatively impact the development of natural gas infrastructure in Nova Scotia.

In light of the foregoing response to the comments of Heritage Gas, Saint John LNG submits that no further process is required in this proceeding and that the Board can and should proceed to render a decision on Saint John LNG's Application without any further process, as expeditiously as possible.

Please do not hesitate to contact the undersigned should you have any questions arising in relation to the foregoing.

Yours truly,

BENNETT JONES LLP


Loyola G. Keough

