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Dear Loyola Keough, Tim Myers, Michael Blackier, and David Seely:

**Saint John LNG Development Company Ltd.**  
**Application dated 14 September 2022 for a variation of Liquefied Natural Gas**  
**Export Licence GL-318 and Import Licence GL-319**

**Before: M. Watton, Commissioner; K. Penney, Commissioner;**  
**T. Grimoldby, Commissioner; W. Jackknife, Commissioner;**  
**S. Luciuk, Commissioner; M. Chartier, Commissioner**

On 14 September 2022, Saint John LNG Development Company Ltd. (**Saint John LNG**) applied to the Commission of the Canada Energy Regulator to vary Condition 3 of its liquefied natural gas (**LNG**) export Licence [GL-318](#) and import Licence [GL-319](#) (the **Licences**), pursuant to section 348 of the *Canadian Energy Regulator Act* (**CER Act**), to extend the expiry date in Condition 3 of the Licences by six years: from 20 May 2026 to 20 May 2032 (**Application**) ([C20930-2](#)).

Condition 3 of Licences GL-318 and GL-319 (also referred to as a **sunset clause**) states:

*This Licence shall expire 10 years from the date of Governor in Council approval of its issuance, unless natural gas [exports/imports, as applicable] have commenced on or before that date, or the [National Energy Board] otherwise directs.*

The National Energy Board (**NEB**) issued the Licences on 20 May 2016, following approval by the Governor-in-Council. Accordingly, Licences GL-318 and GL-319 will expire on 20 May 2026, if exports or imports, as applicable, have not commenced on or before that date. Saint John LNG seeks to extend the expiry date in Condition 3 of Licences GL-318 and GL-319 by six years: from 20 May 2026 to 20 May 2032.

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The Commission approves the Application for the reasons that follow.

### **Process**

On 9 November 2022, Saint John LNG filed its response to the Commission's Information Request No. 1 (**IR No. 1**) ([C21970-1](#)). The Commission also established a comment

process inviting comments from Heritage Gas Limited, now Eastward Energy Incorporated (**Eastward Energy**), which was the only party to submit comments in the original proceeding for the Licences. Eastward Energy filed a letter of comment on 24 November 2022 ([C22227-1](#)). Saint John LNG responded to the letter of comment from Eastward Energy on 30 November 2022 ([C22297-1](#)).

### **Submissions**

#### *Application and IR No. 1*

In its Application, Saint John LNG submitted that no further process was needed to vary the import Licence, GL-319, as no issues were raised regarding this Licence in the original proceeding, and Condition 3 of the import Licence expressly leaves the sunset clause in the Canada Energy Regulator's (**CER**) discretion.

Saint John LNG also submitted that no re-examination or reconsideration of the surplus criteria (section 345 of the CER Act) was required by the requested variation of the export Licence, GL-318. Saint John LNG took the position that the sole focus of section 345 was the quantity of gas to be exported, not the timeframe over which the export occurs. The NEB has already found that the quantity of gas to be exported under the Licence met section 118 of the *National Energy Board Act* (**NEB Act**) (now section 345 of the CER Act). Given that Saint John LNG is not seeking to vary the volume of gas for export, and no quantity of gas can be exported during the sunset period (as this would "activate" the 25-year Licence term), Saint John LNG submitted that no reconsideration of the surplus criteria is required.

Saint John LNG further submitted that no further evidence was necessary on this issue, such as an updated supply/demand study. Saint John LNG noted that similar applications to the Commission, from LNG Canada Development Inc. and Cedar 1 LNG Export Ltd., included updated studies; however, those parties voluntarily filed this information and there is no requirement to do so.

Saint John LNG also submitted that, as Condition 3 of the Licence expressly reserves for the CER the discretion to change the sunset clause, no further process was required to grant the requested relief. Saint John LNG submitted that the existing, approved volumes would not be exceeded, even in the extended sunset period.

Saint John LNG states that the requested variance is minor in nature, as it does not change the term length of the Licence or the quantity to be exported, and only seeks to shift the timing of the exports. Therefore, the approval of the Minister of Natural Resources is not required (as per section 348 of the CER Act).

In response to IR No. 1, Saint John LNG provided that the extension of the "sunset period" will not impact the operation of the natural gas market and that the quantity of gas to be exported during the period 2051 to 2057 will remain surplus to Canadian requirements. In Saint John LNG's view, the North American natural gas market has continued to operate in a highly liquid, open, efficient, integrated and responsive manner over the period since the referenced export Licence (GL-318) was issued. Since the time of natural gas deregulation, the appropriate market signals provide the impetus for resource development, to ensure that Canadian domestic and export demands are met. There is no indication that this will change

in the future. The natural gas market has proven to be robust and flexible in the face of changing market conditions.

*Eastward Energy*

Eastward Energy stated that the Application, if granted, has the potential to impact natural gas supply and demand within the Maritimes region, which in turn impacts Eastward Energy's operations.

Eastward Energy submitted that the Application is not supported by updated evidence showing the surplus criteria under section 345 is met. The Application relies on two reports from 2015 filed in the original proceeding for the Licences. The Application does not offer any evidence that considers current gas market conditions in its analysis, or changes in the intervening years and the impact of those changes on forecasts. Eastward Energy noted that Saint John LNG's response to IR No. 1 did not include independent evidence.

Eastward Energy submitted that the evidence in support of the Application does not sufficiently consider how Saint John LNG's planned expansion to its existing LNG facility, to add liquefaction capability, will impact upon the surplus criteria.

Eastward Energy submitted that sunset clauses allow periodic review of licences in light of market conditions at the time of review and that variations of sunset clauses should be met with an appropriate level of scrutiny. The CER requires up-to-date evidence to hold up against its own monitoring, whereas here, the evidence is seven years expired.

Eastward Energy stated that substantial changes to gas markets have taken place since 2015 in the Maritimes region, including the decommissioning of the Sable Island and Deep Panuke gas fields and Maritime provinces changing from net exporters of natural gas to net importers.

Finally, Eastward Energy submitted that its request for updated evidence is in keeping with other recent applications to vary export licences, which included independent reports current to the time of filing, citing applications by Cedar 1 LNG Export Ltd. and LNG Canada Development. Eastward Energy also points to the CER's Filing Manual (**Filing Manual**) requirement that applicants provide supply and demand evidence "over the requested licence term".

Eastward Energy requested that Saint John LNG be required to file evidence that takes the market conditions post 2015 to present into account, including but not limited to considerations of market conditions impacting the Maritime region during that time frame. Eastward Energy further requested that the CER grant Eastward Energy (and any other interested parties) reasonable time to review the updated evidence, and an opportunity to file its own evidence if necessary.

*Saint John LNG Reply*

Saint John LNG replied that further evidence and related process is unnecessary, and the Commission currently has before it all of the evidence that is required to consider the Application and grant the relief requested.

Saint John LNG notes that Eastward Energy made submissions to the NEB in the original proceeding, including comments on natural gas supply. Saint John LNG states that if its expansion project proceeds, it would have a positive impact on gas supply for the Maritimes region.

Saint John LNG submitted that Eastward Energy's ability to obtain gas supply is in no way affected if the requested extension to the sunset clause is granted. Further, the surplus test

determination is a one-time assessment conducted at the time the export licence application is requested and is not revisited again and again. Saint John LNG stated the changes that have occurred in the intervening period are irrelevant. Saint John LNG submitted that it has met the requirement in the Filing Manual, as per the NEB's original decision issuing the Licences. Finally, Saint John LNG noted Eastward Energy did not comment on the import Licence, GL-319.

## **Commission's Analysis and Findings**

### *Section 345 of the CER Act – Surplus Criteria*

Section 345 of the CER Act, also known as the surplus criteria, states:

The Commission must not issue a licence unless it is satisfied that the quantity of oil or gas to be exported does not exceed the surplus remaining after allowance has been made for the reasonably foreseeable requirements for use in Canada, having regard to trends in the discovery of oil or gas in Canada.

The provision is materially similar to its predecessor, section 118 under the NEB Act.

In approving Saint John LNG's original application for the Licences, the NEB found that the quantity of gas proposed to be exported by Saint John LNG over the proposed term up to 2051 was surplus to Canadian needs ([A72416-1](#)). The NEB was satisfied that the gas resource base in Canada and North America is large and can accommodate reasonably foreseeable Canadian demand, including the natural gas exports proposed under the License application, and a plausible potential increase in demand. The NEB concluded that section 118 of the NEB Act (now section 345 of the CER Act) was satisfied.

In this case, the Commission is not persuaded that a re-evaluation of the surplus criteria during the already approved export period (up to 2051) is required. While the Commission agrees with Eastward Energy that substantial changes have happened to the Maritimes gas markets since 2015, none of the changes enumerated by Eastward Energy demonstrate that the overall functioning of the market has changed.

The Commission finds that Saint John LNG has provided sufficient evidence to show that Canadian natural gas requirements will be met over the term of the extension from 2051 to 2057. In the original proceeding, Saint John LNG relied on two studies supporting this conclusion: a long-term natural gas supply and demand forecast to 2050 prepared by Ziff Energy and a description of the implications of Saint John LNG's applied-for exports on the ability of Canadian to meet their natural gas requirements prepared by Roland Priddle.

Saint John LNG submitted some updated information regarding supply and demand in gas markets in its Application and in response to IR No. 1. As noted by Saint John LNG, there is no requirement in the CER Act or the Filing Manual that such evidence must be in the form of an independent or expert report for the purposes of seeking an extension to a sunset clause. Saint John LNG's conclusions regarding the Canadian gas market are also consistent with the CER's own market monitoring. Importantly, the Commission notes that the extension being sought is for a short period of time relative to the length of the term considered and approved in the original proceeding for the Licences.

The Commission notes that market signals provide the impetus for resource development, and that the natural gas market has proven to be robust and flexible. The Commission acknowledges that the North American gas market is highly liquid, open, efficient, integrated, and responsive to changes in supply and demand. Given the large size of Canadian and North American gas resources, as observed by the CER through its market monitoring, and the integrated and well-functioning nature of the North American gas market, the

Commission concludes that the natural gas to be exported by Saint John LNG will be surplus to Canadian requirements from 2051-2057, as required by section 345 of the CER Act.

The Commission acknowledges that the Maritimes gas market is not as well connected to the North American gas market as most other Canadian markets are and may have some additional risks to gas supply, as described by Eastward Energy. The CER monitors Canadian gas markets and will continue to do so in the future. The Commission also has tools available if there is a market failure because LNG exports interfere with the ability of Canadians to obtain energy (for example, sections 348 and 351 of the CER Act).

*Varying Licence GL-319*

Section 345 of the CER Act does not apply to import Licence GL-319. The import Licence is tied to the export Licence as a means of supplying the necessary quantities of gas. Therefore, the Commission also finds it appropriate to vary the sunset clause in Condition 3 of Licence GL-319, as requested.

*Authority to vary under subsection 348(1) of the CER Act*

Pursuant to subsection 348(1) of the CER Act, a variation will require approval of the Minister of Natural Resources if it "...is neither minor nor technical in nature."

The Commission considers whether each request for transfer or variation of an import or export licence is "neither minor nor technical" on a case-by-case basis. In this case, the Commission notes that the 25-year term of the Licences and quantity of natural gas to be exported or imported will remain unchanged and the sunset clause is extended by only 6 years. The variance request is limited to the expiry date stated in Condition 3. The Commission considers the requested variation of the Licences minor in nature. Therefore, the approval of the Minister of Natural Resources is not required.

**Decision**

The Commission approves the Application pursuant to subsection 348(1) of the CER Act and issues Amending Orders AO-001-GL-318 and AO-001-GL-319.

The Commission reminds Saint John LNG that the other conditions to Licences GL-318 and GL-319 remain in effect.

Yours sincerely,

*Signed by*

Ramona Sladic  
Secretary of the Commission

Attachments

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