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Regulator

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du Canada

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LETTER DECISION

File OF-EI-Gas-GL-K108-2022-01 01
14 December 2022

Keith B. Bergner
Lawson Lundell LLP
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925 West Georgia Street
Vancouver, BC V6C 3L2
Email kbergner@lawsonlundell.com

Dear Keith B. Bergner:

**Ksi Lisims LNG GP Ltd., on behalf of Ksi Lisims LNG Limited
Partnership application dated 25 April 2022 for a licence to export natural gas
in the form of liquefied natural gas**

**Before: T. Grimoldby, Presiding Commissioner; S. Luciuk, Commissioner;
M. Chartier, Commissioner**

On 25 April 2022, Ksi Lisims LNG GP Ltd., on behalf of Ksi Lisims LNG Limited Partnership (**Ksi Lisims LNG**) applied to the Canada Energy Regulator (**CER**), pursuant to section 344 of the *Canadian Energy Regulator Act* (**CER Act**), for a Licence to export natural gas in the form of liquefied natural gas (**LNG**) (**Application**).

Ksi Lisims LNG seeks:

- a 40-year Licence to export LNG, starting on the date of first export;
- a maximum annual export quantity of 22.4 billion cubic metres (**m³**), including a 15% annual tolerance;
- a maximum quantity of 778.3 billion m³ of natural gas over the term of the Licence;
- the point of export will be at a point on the outlet side of the liquefaction terminal at Wil Milit located on or near the northern point of Pearse Island, British Columbia.
- an early expiration clause where, unless otherwise directed by the Commission, the term of the Licence ends 10 years after the date of issuance of the Licence if the export of LNG has not commenced on or before that date.

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Decision

The Commission has decided, pursuant to section 344 of the CER Act, to issue a 40-year Licence to export LNG to Ksi Lisims LNG, subject to the terms and conditions described in Appendix I to this letter. The issuance of this Licence requires approval of the Minister of Natural Resources.

Summary of Public Notice, Comment Period, and Information Requests

On 29 June 2022, the Commission issued Information Request (**IR**) No. 1, asking Ksi Lisims LNG about gas-market flexibility in light of recent, global market events and changes in policy, regulation, and litigation.

On 14 July 2022, Ksi Lisims LNG responded to Commission IR No. 1. In the response, Ksi Lisims LNG discussed those changes in light of their proposed exports and the surplus criterion.

On 15 July 2022, the Commission issued a letter to Ksi Lisims LNG indicating it found the application to be complete. The Commission instructed Ksi Lisims LNG to publish the Notice of Application and Comment Period (**Notice**) by 12 August 2022 according to Appendix I of the letter. The Notice indicated that the Commission wished to obtain the views of potentially impacted persons on the merits of the application and that the Commission would consider submissions relevant to the criteria in section 344 of the CER Act.

On 19 August 2022, Ksi Lisims LNG filed a letter with the CER indicating it had published the Notice in the National Post, Globe and Mail, La Source online, Le Franco, Vancouver Sun, Vancouver Province, Edmonton Journal, and the Calgary Herald. On 29 August 2022, Ksi Lisims LNG confirmed publication in the print edition of La Source.

The Commission held a public comment period between 12 August and 11 September 2022. One submission was received.

As discussed below, the Commission received a letter of comment from Atlantic Pacific Spaceline Enterprise Incorporated (**APSE**) on 12 September 2022, which was dated 11 September 2022. Ksi Lisims LNG filed its response to APSE's submission on 21 September 2022.

Comments received During the Comment Period

APSE commented that:

- The Priddle Report is grossly deficient in light of current geopolitical events that have disrupted global oil and gas markets around the world;
- The Application specified "Export of Natural Gas" in place of "Liquefied Natural Gas", noting that there is a difference for the purposes of taxation in the province of British Columbia;
- Technical data of the amount of both the natural gas to be used and the quantity of LNG to be exported are not clearly presented and could have/should have been presented in a summary form near the front of the submission; and

- Ksi Lisims LNG's submission is lacking: technical diagrams to provide "proof-of-concept"; an adequate description of the parties involved in this business venture; whether any of the participants are foreign state-owned business entities; and a detailed description of the target market.

APSE requested that:

- the CER instruct Ksi Lisims LNG to amend and re-file its Application;
- the Application be placed in abeyance at the present time; and
- the CER petition the Governor in Council to place all future exportation of LNG under "regulated market" conditions.

On 21 September 2022, Ksi Lisims LNG responded:

- that the Priddle Report and IR response provide a substantive and thorough response to APSE's comments relating to geopolitical events. Recent price volatility and resulting changes in gas flows demonstrates the short-term flexibility of gas markets in response to world events; it is a sign that world gas markets are functioning as would be expected. The bottom line of the gas price experience of 2021-2022 is that it signals a flexible, functioning national, continental, and international market for pipeline and LNG gas supplies which continuously meets changing consumers' needs in full at market prices.
- that numerous statements in the APSE's letter do not relate to the considerations set out in section 345 of the CER Act. Ksi Lisims LNG declined to comment on matters raised in the letter that it viewed to be outside the scope of section 345 of the CER Act.
- that it intends to export natural gas in its liquefied form and that it is not necessary to amend and re-file the Application. Ksi Lisims LNG also noted that Ksi Lisims LNG GP Ltd. is a corporation incorporated under the laws of British Columbia, and Ksi Lisims LNG Limited Partnership is a partnership formed under the laws of the Province of British Columbia. Lastly, Ksi Lisims LNG submitted that there is no legal or statutory basis upon which to place the Application in abeyance.

Commission Analysis and Findings

In response to APSE's comments on whether Ksi Lisims LNG has sufficiently considered current geopolitical events, the Commission agrees with Ksi Lisims LNG's assessment that gas markets are behaving as expected. The Commission is satisfied that Ksi Lisims LNG has adequately addressed recent market events in the Application and related submissions.

The Commission finds that the Application is sufficiently clear and that Ksi Lisims LNG does not need to refile the Application. Lastly, where APSE's comments included matters that do not pertain to the consideration of section 345 of the CER Act, as stated in the Commission's 15 July 2022 letter, those comments will not be considered by the Commission.

Surplus Determination

The Commission's role, under section 345 of the CER Act, is to assess whether the gas proposed to be exported, in this case LNG, does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada, having regard to trends in the discovery of gas in Canada (**Surplus Criterion**).

In support of their application and to assess Surplus Criterion,¹ Ksi Lisims LNG submitted a report from Roland Priddle, entitled *Ksi Lisims LNG Application for 40-Year Gas Export Licence: Gas Supplies, Requirements, Implications and Surplus Assessment Report (Priddle Report)*, which covers the period through 2073. The Priddle Report noted that the Canadian gas resource base is large, so the quantity of gas Ksi Lisims LNG seeks to export will not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada having regard to the trends in the discovery of natural gas in Canada.

The Priddle Report stated that:

- the North American natural gas market is generally liquid, efficient, integrated, and responsive to changes in supply and demand, and that the natural gas resources are large in Canada and the US.
- the presently-assessed resource, Canadian and North American, from which Canadians' gas requirements will be met during the applied-for licence term is enormous, approximating some 5,000 Tcf.
- the "high case" annual Canadian gas requirement of about 8 Tcf projected for most of the period through 2073 is well within the capabilities of the resource, which as time goes on, is likely to be assessed as even larger than today.
- the incremental cost of gas supply is low, and is distributed by a sophisticated, efficient Canadian and North American gas market where supply and demand adjusts to price signals.
- demand will drive production, rather than production being constrained by the resource.
- projections for Canadian gas production fall below the range of forecasts for the 2060s filed with the CER in support of previous successful applications for 40-year licences.

The Priddle Report concluded that the quantity of gas proposed to be exported by Ksi Lisims LNG is surplus to Canadian needs. The capability of the resource will not be the limiting factor on the supply of gas during the projection period, just as it is not now a factor. On the contrary, the limitation on gas supply will continue to be the availability of economic markets available to Canadian gas producers. Canadians will continue to be able to meet their gas requirements easily, adequately, cost competitively and securely in the presence of the applied-for export quantities over the requested licence term.

In their response to the Commission's IR 1, Ksi Lisims LNG stated that recent price volatility and resulting changes in gas flows demonstrates the short-term flexibility of gas markets in

¹ Section 345 of the CER Act.

response to world events and is a sign that world gas markets are functioning as would be expected. Ksi Lisims LNG opined that it is possible that the higher and more volatile gas prices, caused by recent political events, will not last; globally, high prices will tend to dampen demand and foster alternative supplies of gas and competing energies. The gas resources of Canada and North America are so large that supplies for the Canadian market will be almost entirely drawn from continental sources over the requested licence term.

Ksi Lisims LNG also stated that Priddle agrees with the premise that trends in policy and regulation as well as litigation related to the construction of gas pipelines in North America have resulted in the cancellation of some interstate natural gas pipelines in the US, especially in the US northeast. At the same time, Canadian gas markets appear to be adequately piped and supplied from coast to coast to meet foreseeable Canadian gas consumption requirements which, in aggregate, seem not to be increasing. Ksi Lisims LNG also found that there are no existing or anticipated shortages of pipelined gas supply for local consumption in Canada.

Commission Analysis and Findings

The Commission is satisfied that the quantity of gas to be exported during the 40-year term does not exceed the surplus remaining after allowance has been made for the reasonably foreseeable requirements for use in Canada, having regard to trends to the discovery of gas in Canada. Based on the evidence on the record, the Commission finds that the current and forecasted Canadian natural gas requirements will be met over the term of the Licence, given the resource base and the integrated nature of the North American natural gas market.

The Commission recognizes that Canadian LNG requirements are met in the context of free trade within a North American energy market. Depending on regional characteristics, exports and imports contribute to either LNG supply or LNG demand. It is in this context that the Commission considers whether the Surplus Criterion is satisfied.

Climate policies continue to evolve, which can create challenges in projecting and assessing future markets. While real long-term energy production and demand could substantially differ from what was presented in the Priddle Report, the Commission is of the view that Canadian and North American natural gas markets are large, liquid, open, efficient, integrated, transparent, and responsive to changes in supply and demand, which would help Canadians acquire the natural gas they need in most cases.

The Commission is further of the view that the major trends of discovery are that North American natural gas resources remain large. The Commission finds that the size of the gas resource base in Canada, as well as North America, is such that the gas proposed to be exported by Ksi Lisims LNG does not exceed the remaining natural gas surplus.

The CER, among other things, monitors and reports on Canada's natural gas supply and demand, including LNG developments. Monitoring assists the CER in identifying where markets may not be functioning properly or where the evolution of supply and demand casts doubt on the ability of Canadians to meet future energy requirements. The Commission finds that the evidence in this Application is consistent with the CER's current market monitoring.

In aggregate, the LNG export licences issued to date represent a significant volume of LNG exports from Canada. However, all of these LNG ventures are competing for a limited global market and face numerous development and construction challenges. Market forces influence how many LNG export licences will be used or used to their full allowance. Therefore, the Commission does not find cumulative licensed volumes to be an accurate or

meaningful measure in assessing whether Canadians' requirements for natural gas will be met. The Commission evaluates each application based on its merits and the record before it. The Commission is satisfied that the resource size and the efficient nature of natural gas markets in North America, along with global LNG markets, will play major roles in determining which projects will proceed.

Commencement of Term of Licence

Ksi Lisims LNG requested a Licence to export natural gas in the form of liquefied natural gas with a term of 40 years to commence on the date of first export. Ksi Lisims LNG also requested that the LNG export Licence issuance be made subject to an "early expiration clause". If such a clause were included in the export Licence, the term of the Licence would end 10 years after the date of issuance of the Licence if the export had not commenced on or before that date.

Commission Analysis and Findings

The Commission has determined it would be appropriate that the Licence have an early expiration clause.

Allowing for such a clause provides applicants with a period of time within which to construct the facility before the term of the Licence commences. In this case, the export facility associated with this Licence has not been built. Ksi Lisims LNG advises that the commissioning of the export facility is anticipated to be as early as 2027, depending on the pace of regulatory approvals and a final investment decision. The Priddle Report covers this ten year period and extends until 2073.

Relief from Filing Requirements

Ksi Lisims LNG requested relief from the filing requirements set out in section 12 of the *National Energy Board Act Part VI (Oil and Gas) Regulations (Part VI Regulations)* that are not otherwise met in this Application and such further and other terms as may be requested herein and as the Commission may consider appropriate in the circumstances.

Commission Analysis and Findings

The Commission is satisfied that Ksi Lisims LNG has met the filing requirements of section 12 of the Part VI Regulations that are relevant to the assessment of the Surplus Criterion, specifically paragraph 12(a).

The Commission notes that similar relief has been requested and granted in previous National Energy Board (**NEB**) and CER decisions with respect to LNG export applications as a result of the NEB's *Interim Memorandum of Guidance Concerning Oil and Gas Export Applications and Gas Import Applications under Part VI of the National Energy Board Act*, dated 11 July 2012 (Memorandum). The Memorandum indicates that applicants for gas export licences are no longer required to file the information contained in paragraph 12(f) of the Part VI Regulations. The CER is in the process of updating the Part VI Regulations to align with changes to the CER Act.

The Commission recognizes that not all of the filing requirements contained in section 12 of the Part VI Regulations are relevant to its assessment of this Application. Therefore, the Commission exempts Ksi Lisims LNG from those filing requirements that were not included in the Application.

No further relief is required in the granting of this Application.

Yours sincerely,

Signed by

Ramona Sladic
Secretary of the Commission

c.c. Keith William Steeves, President & CEO, A.P.S.E. Inc.
Email kwsteeves@yahoo.com

Attachment

December 2022
Calgary, Alberta

Appendix I

Terms and Conditions of the Licence to be Issued for the Export of LNG

General

1. Ksi Lisims LNG GP Ltd., on behalf of Ksi Lisims LNG Limited Partnership (**Ksi Lisims LNG**), must comply with all of the terms and conditions contained in this Licence unless the Commission otherwise directs.

Licence Term, Conditions and Point of Export

2. Subject to Condition 3, the term of this licence shall commence on the date of first export and shall continue for a period of 40 years thereafter.
3. This Licence shall expire 10 years after the issuance of the Licence, if the export of LNG has not commenced on or before that date, unless the Commission otherwise directs.
4. The maximum quantity of natural gas, inclusive of a 15% annual tolerance, that can be exported by Ksi Lisims LNG under the authority of this Licence is:
 - a. 22,400,000,000 m³ annually, in any 12-month period; and
 - b. 778,300,000,000 m³ for the term.
5. The point of export of LNG from Canada must be: at a point on the outlet side of the liquefaction terminal at Wil Milit located on or near the northern point of Pearse Island, British Columbia.
6. The natural gas to be exported by Ksi Lisims LNG must meet the definition of natural gas set out in the *National Energy Board Act Part VI (Oil and Gas) Regulations*.