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The National Energy Board  
444 – 7th Avenue SW  
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Attention: Anne-Marie Erickson  
Acting Board Secretary

Dear Sirs and Mesdames:

**Mackenzie Gas Project (“MGP”) – Hearing Order GH-1-2004  
Government of the Northwest Territories’ (“GNWT”) Response to the  
Recommendations in the JRP Report, December 2009 (the “Report”)**

As requested in the National Energy Board (the “NEB”) letter of January 6, 2010, this letter contains the submissions of the GNWT in connection with the recommendations made to the NEB in the Report. The GNWT notes that the Report also makes recommendations to the GNWT, the federal government, and various departments and agencies of both governments. In asking for submissions, the NEB has asked that all intervenors clearly distinguish between recommendations made to it directly on the one hand and recommendations made to other governments or agencies on the other.

The GNWT has two roles in connection with the regulatory review of the MGP. On the one hand, it has been an intervener before the NEB throughout the GH-1-2004 proceeding. On the other, Ministers of the GNWT will have received the recommendations of the JRP as Responsible Ministers under the *Mackenzie Valley Resources Management Act*, S.C. 1988, c. 25 (the “MVRMA”). In consequence, the GNWT finds itself needing to respond to the recommendations made by the JRP to the NEB at the same time that it is in the process of reviewing and considering the recommendations that have been made by the JRP directly to its Ministers or other levels of Government under the MVRMA.

In these circumstances, the GNWT will restrict itself to making submissions in GH-1-2004 that relate exclusively to recommendations made to the NEB. The GNWT submissions should not be read to relate to recommendations made to any other level of Government or their agencies.

The submissions in GH-1-2004 will focus on the appropriate form of any certificate or approval issued by the NEB and are made in light of the specific statutory mandate of the NEB. While some of the issues raised in the submissions

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may also be issues that will be need to be addressed by Responsible Ministers under the MVMRA, those Ministers will need to consider their responsibilities in light of the specific legislation granting them authority and in light of any submissions that are made by other parties in connection with those decisions. More generally, if the MGP were to proceed, the GNWT would expect to develop policy in connection with it over an extended period of time and does not wish any comment it makes now to be interpreted as pre-judging any of the diverse policy issues that it will face over that period.

For these reasons, the comments in this letter will be restricted to recommendations by the JRP to the NEB which the GNWT believes should be modified or rejected and the Proponent's January 28, 2010 submissions relating to those recommendations.

**A. General Comments relating to NEB Conditions**

There are three types of recommendations the GNWT believes should be modified.

**1. Recommendations relating to future decisions of the NEB in connection with the Northwest Alberta facilities of Nova Gas Transmission Ltd. (NGTL), future expansion of MGP facilities or development of other facilities that would permit expansion of MGP facilities.**

The GNWT does not believe the NEB should provide for any of these matters in any conditions to a certificate or approval issued by the NEB because these matters are not currently before the NEB.

**2. Recommendations requiring the proponents to file proof of approval by other agencies or governments as a condition of the NEB certificate or approval.**

In the context of a condition to a NEB certificate or approval, this form of recommendation may not be appropriate where other agencies or governments do not have the authority to approve the plan or project in the first place. Where no such approval power exists, it may be more appropriate to require the proponents to consult with these agencies instead of obtaining their approval. For instance, Recommendation 6-6 might be modified to read as follows:

“The Panel recommends that the National Energy Board, as a condition of any certificate or approvals it might issue in relation to the Mackenzie Gas Project, require the Proponents to file, for approval, six months prior to the commencement of construction, their plans for identifying the potential for and preventing or mitigating any impacts to stream flow or diversion from frost bulb and aufeis creation as a result of the Project. The plans should be developed in consultation with Fisheries and Oceans Canada...”

**3. Recommendations that require the Proponent to file plans or detailed specifications in connection with specific construction related activities.**

The JRP has recommended that the NEB require the filing, six months prior to construction, of detailed information that it may not be desirable to develop so far in advance. The GNWT suggests modifying this approach with more nuanced provisions in the conditions that require detailed construction plans, procedures and monitoring programs to be filed with the board only when certainty is necessary to properly regulate activities which are imminent. The GNWT wishes to ensure that the final form of the conditions are developed in light of current detailed information from the proponents and fully developed policies of government agencies as well.

**B. Other Specific Comments**

In addition to the general comments outline above, the GNWT has the specific comments on individual recommendations set out below.

**Recommendation 5-1**

The GNWT suggests deletion of the words “except where the Joint Review Panel for the Mackenzie Gas Project (the “Panel”) has recommended otherwise”. The NEB has laid out a procedure by which it will arrive at a final set of proposed conditions including those recommended by the Panel to the extent the NEB accepts them. To the extent that the NEB does not accept them, it would be inappropriate to include this language and, where it does accept them, the individual conditions imposed by the NEB can fully reflect them rendering the general language unnecessary.

**Recommendation 10-2**

The GNWT shares responsibility with Environment Canada in connection with Endangered Wildlife. Accordingly, the words: “or the government of the Northwest Territories” should be inserted after “Environment Canada” in each of the last two sentences of this recommendation.

**C. Response to Proponents January 28, 2010 Submission**

The proponent submits that the NEB should reject recommendation 8-6 from the JRP which relates to the establishment of the Greenhouse Gas emissions target or a series of targets in connection with the MGP facilities. The GNWT believes that it is desirable for the proponent to provide a clear prediction of the anticipated GHG emissions associated with MGP facilities over time including both emission targets and trajectories and the details of any approaches that they propose to adopt to mitigate GHG emissions. This information will be important to the NEB and other agencies to assist in understanding the implications of the MGP on GHG emissions in the Northwest Territories as a whole and to evaluate the effectiveness of measures taken to reduce those emissions.

Page 4

In closing, the GNWT wishes to emphasize that the comments contained in this letter are directed only at the form of the conditions that should attach to any certificate or approval the NEB determines it should issue.

Yours very truly,

LAWSON LUNDELL LLP



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CWS/tss

cc: To all parties