

The Mackenzie Gas Project and Shale Gas

By Nigel Bankes

Matter considered: Alternatives North, Notice of Motion, Mackenzie Gas Project, asking the National Energy Board to order the proponent to provide the Board with an update on the North American gas market

The Joint Review Panel issued its [assessment](#) of the Mackenzie Gas Project (MGP) at the end of 2009 and attention now turns to the National Energy Board (NEB) which must decide whether (subject to the approval of the Governor in Council) to issue a certificate of public convenience and necessity for the pipeline.

In making its decision under s.52 of the *National Energy Board Act*, R.S.C. 1985, c. N-7:

... the Board shall have regard to all considerations that appear to it to be relevant, and may have regard to the following: ...

(b) the existence of markets, actual or potential;

(c) the economic feasibility of the pipeline;

(d) the financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity of participating in the financing, engineering and construction of the pipeline; and

(e) any public interest that in the Board's opinion may be affected by the granting or the refusing of the application.

The proponent (Imperial Oil Resources Ventures Ltd. on behalf of Imperial, ConocoPhillips, Shell, ExxonMobil and the Aboriginal Pipeline Group) first filed its analysis of the North American natural gas market in 2004. I had assumed that, in the ordinary course, the NEB would require the proponent to update its filings on these issues as part of its consideration of the proposal this spring. That would be good practice in any event but surely absolutely crucial in light of the dramatic changes in the North American gas markets over the last couple of years brought about by technological developments which have allowed operators to produce shale

gas. The development began in the United States but is now extending into Canada (especially British Columbia, but with the expectation that we will also see production in Quebec in the coming years). This, as BP's chief executive officer Tony Hayward [observed](#) at the recent Davos World Economic Forum meeting, is a "game changer" for the North American Gas Market. And it must be a game changer for Mackenzie Gas for at least two reasons: (1) the size of the resource, and (2) its location close to markets and close to existing natural gas infrastructure. The size of the resource will tend to keep North American gas prices depressed while the distance to market for Mackenzie gas will tend to reduce producer netbacks (and Crown royalties) to lower levels than those that will accrue to producers located closer to market, perhaps making the Mackenzie area non-competitive to explorers and producers.

But it seems that the Board had no such plans to raise the issue of its own motion and hence the importance of the Notice of Motion filed with the National Energy Board by Alternatives North on February 4, 2010 asking the Board to require the MGP proponent to update its supply / demand and market work to take account of shale gas. In my view the Board must either accede to this Notice of Motion or it must reject MGP's application. If the Board does not accede to the Notice of Motion it will not only look silly (or at least ostrich-like), but it will also not be able to reach a valid assessment of the economics of the project and whether the project is ultimately in the public convenience and necessity of Canada. This is not a case where the proponent is entitled to say to the Board that it wants a decision on the record as it stands; and that it is up to the intervenor to adduce further evidence that Mackenzie gas will not be needed in the foreseeable future. The trouble with that argument is that the record is patently incomplete (the public record is full of the sorts of statements made by Hayward above) unless and until the proponent or somebody else updates the filings to take account of the shale revolution. And if the Board declines to make the order that Alternatives North seeks, and if the proponent declines of its own motion to provide updated studies, then the Board must reject the application on the simple basis that the proponent has failed to establish that the project meets the public convenience and necessity test.