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Regulated Tolls in the Competitive Environment of Northeast British Columbia: NEB Issues Directions to NGTL and Westcoast

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Decision Commented On: National Energy Board Examination to Determine Whether to Undertake an Inquiry of the Tolling Methodologies, Tariff Provisions and Competition in Northeast British Columbia: [Examination Decision, March 8, 2018](#)

As noted in [a post this time last year](#), the chair of the National Energy Board (NEB, the Board) decided to appoint a single Board member, Lyn Mercier, to conduct an examination to determine whether to conduct an Inquiry into the Tolling Methodologies, Tariff Provisions and Competition in Northeast British Columbia. Ms. Mercier submitted her Report to the Board on February 22, 2018 and the Board has now released its “Examination Decision” under the signature of the Board’s secretary.

While acknowledging that “parties have identified potential issues regarding the current competitive landscape in Northeast BC that should be examined” the Board ultimately concluded that it would be inappropriate to conduct an Inquiry since “holding an inquiry would introduce undue uncertainty to the Northeast BC supply basin and may not effectively resolve these potential issues.” Instead the Board concluded that it would be better to address the issues that had been identified through revisions to the Board’s Filing Manual and also by issuing directions to both NGTL and Westcoast with respect to their upcoming toll applications.

The Board did not issue similar directions to Alliance given the Board’s recent approval of Alliance’s “New Service Offering”. The Board noted that this new Offering “places the volume/revenue risk and the preponderance of costs risk on the pipeline.” The Board went on to observe that

Firm shippers on Alliance accept the risks associated with their contracting decisions and the utilization levels of their contracted services. In addition, the capital cost of new interconnections and facility expansions are paid for by the requesting party(ies) receiving the benefits and not by existing shippers. This reflects a stand-alone tolling methodology and provides a direct link between risks/costs borne by parties requesting new infrastructure and the benefits received by these parties.

While there is little in the way of details the Board anticipates that changes in the Filing Manual would be designed to “ensure that issues related to fair competition are addressed in future applications”. The Directions issued to NGTL and Westcoast fall under three headings: (1) policies affecting capital spending for system expansion, (2) depreciation policy and practices, and (3) tolling methodology and tariff provisions. The Board emphasised that it would require these filings even if either or both of these companies is able to reach a negotiated settlement

with its shippers. After all such settlements “do not fetter the Board’s ability and discretion to take into account any public interest considerations which may extend beyond the immediate concerns of the negotiating parties.”

The Board’s decision also raised an interesting procedural point. It transpires that while the Board directed the companies (Alliance, Westcoast and NGTL) to serve notice of Mercier’s examination on their shippers and stakeholders, nobody seems to have found it necessary to inform any of the First Nations with territories in Northeast British Columbia. This was eventually rectified in response to a letter from the Saulneau First Nation. The point is not without interest given the central role that tolling issues have played in recent certificate applications in northeast British Columbia (see earlier post, above) some of which have attracted First Nation interventions. It is equally of interest in the context of the discussion surrounding [Bill C-69](#), *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, since if that legislation goes through as tabled it will make it very difficult for the new Regulator to examining tolling issues as part of the certificate application (see earlier post on part 2 of Bill [here](#)).

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