



National Energy Board

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## Reasons for Decision

**Maritimes & Northeast  
Pipeline Management Ltd.**

**GH-4-98**

**January 1999**

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**Facilities**

# **National Energy Board**

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## **Reasons for Decision**

In the Matter of

**Maritimes & Northeast Pipeline  
Management Ltd.**

Point Tupper Lateral Facilities Application, as  
amended, dated 14 August 1998

**GH-4-98**

**January 1999**

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Cat. No. NE22-1/1999-1E  
ISBN 0-662-27495-4

This report is published separately in both official languages.

**Copies are available on request from:**

Publications Coordinator  
National Energy Board  
444 Seventh Avenue SW  
Calgary, Alberta T2P 0X8  
E-Mail: [orders@neb.gc.ca](mailto:orders@neb.gc.ca)  
Fax: (403) 292-5503  
Phone: (403) 299-3562  
1-800-899-1265

**For pick-up at the NEB office:**

Library  
Ground Floor

Printed in Canada

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N° de cat. NE22-1/1999-1F  
ISBN 0-662-83430-5

Ce rapport est publié séparément dans les deux langues officielles.

**Exemplaires disponibles sur demande auprès du:**

Coordonnatrice des publications  
Office national de l'énergie  
444, Septième Avenue S.-O.  
Calgary (Alberta) T2P 0X8  
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Bibliothèque  
Rez-de-chaussée

Imprimé au Canada

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## Abbreviations

AFUDC	Allowance for funds used during construction
ARDA	Antigonish Regional Development Authority
$10^3\text{m}^3/\text{d}$	thousand cubic metres per day
$10^6\text{m}^3/\text{d}$	million cubic metres per day
$10^9\text{m}^3$	billion cubic metres
Btu	British thermal unit
Board or the NEB	National Energy Board
CBRM	Cape Breton Regional Municipality
CGC	CGC Inc.
CEAA	<i>Canadian Environmental Assessment Act</i>
cm	centimetre
CSA Z662-96	Canadian Standards Association Z662-96, <i>Oil and Gas Pipelines Systems</i>
DFO	Department of Fisheries and Oceans Canada
Duke Energy	Duke Energy Marketing L.P.
EIS	Environmental Impact Study
EIA	Environmental Impact Assessment
Enbridge	Enbridge Consumers Energy Inc.
ft	feet
GFR	<i>NEB's Guidelines for Filing Requirements</i>
Gas NB	Gas New Brunswick
Irving Oil	Irving Oil Limited
JRP	Joint Public Review Panel for the Sable Gas Projects
km	kilometre

KP	Kilometre Post
kPa	kilopascals
mm	millimetre
MDG	Municipality of the District of Guysborough
Mcf	thousand cubic feet
MMBtu/d	million Btus per day
MMcf/d	million cubic feet per day
M&NP or the Company	Maritimes & Northeast Pipeline Management Ltd.
Mobil	Mobil Oil Canada Properties
MN365	365 day firm transportation service
NGL	natural gas liquid
NEB Act	<i>National Energy Board Act</i>
NPS 6	nominal pipe size 6" (168.3 mm O.D.)
NPS 8	nominal pipe size 8" (219.1 mm O.D.)
NPS 10	nominal pipe size 10" (273.1 mm O.D.)
NPS 12	nominal pipe size 12" (323.9 mm O.D.)
Nova Scotia Power	Nova Scotia Power Inc.
New Brunswick	Province of New Brunswick, Natural Resources and Energy
Nova Scotia	Province of Nova Scotia, Petroleum Directorate
PEI	Province of Prince Edward Island, Department of Development
psi	pounds per square inch
OPR	<i>NEB's Onshore Pipeline Regulations</i>
O D	outside diameter
Report, the	the Environmental Screening Report
shippers, the	Stora, SOEI and CGC

SOEI	Sable Offshore Energy Incorporated
SOEP	Sable Offshore Energy Project
SaskEnergy	SaskEnergy International Incorporated
Sempra	Sempra Atlantic Gas Incorporated
Stora	Stora Port Hawkesbury Limited
TBO	transportation by others



## Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* ("NEB Act") and the Regulations made thereunder;

AND IN THE MATTER OF the *Canadian Environmental Assessment Act* ("CEAA"), S.C., 1982, c. C-37, as amended, and the Regulations made thereunder;

AND IN THE MATTER OF a facilities application by Maritimes & Northeast Pipeline Management Ltd. on behalf of Maritimes & Northeast Pipeline Limited Partnership dated August 14, 1998, as amended, pursuant to Part III, section 52, of the Act authorizing: (1) the construction and operation of a lateral pipeline from the M&NP mainline to Point Tupper, Nova Scotia (hereinafter referred to as the Point Tupper Lateral); and (2) a related tolling order pursuant to Part IV of the Act.

EXAMINED by means of an oral hearing held at Antigonish, Nova Scotia, on 23, 24, 25, 26, 27 and 30 November and 1 December 1998.

BEFORE:

J.A. Snider	Chair
A. Côté-Verhaaf	Member
C.M. Ozirny	Member

APPEARANCES:

L.E. Smith	Maritimes & Northeast Pipeline Management Ltd.
N.M. Gretener	
B. Gilmour	

J. Holm, MLA	NDP Caucus of Nova Scotia
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J. Reynolds	Energy Sector for Voluntary Planning
J. Woods	

R.M. Perrin	CGC Inc.
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L. Bugden	

K.G. Brown	Enterprise Cape Breton Corporation
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M. Imbleau	Gaz Métropolitain, Société en Commandite
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M. Laprairie M. Wappel	SaskEnergy International Inc.
J.L. Connors S.T. McGrath D. Mackenzie	Sempra Atlantic Gas Incorporated
G.T.H. Cooper, Q.C. K. Sebalj	Stora Port Hawkesbury Limited
J. Parker	Antigonish Regional Development Authority and the Antigonish Gas Committee
A.V. Parish, Q.C. D. Muise J. Whalley	Cape Breton Regional Municipality
A.W.D. Pickup, Q.C.	The Municipality of the County of Inverness; and the Municipality of the County of Richmond; and Strait-Highlands Regional Development Agency
I.A. Blue, Q.C. A. Hamilton	Province of New Brunswick
R.G. Grant	Sable Offshore Energy Incorporated
H.D. Williamson, Q.C. W. Moreira	Province of Nova Scotia Petroleum Directorate
V. Bulger J. Johnson M. Proud	Province of Prince Edward Island, Department of Development
G. MacDonald W.L. Hines B. McKeen	Municipality of the District of Guysborough
C. McKinnon P. Enderwick	Board Counsel

## Chapter 1

# Introduction

---

### 1.1 Section 52 Application

On 14 August 1998, Maritimes & Northeast Pipeline Management Ltd. ("M&NP" or the "Company"), on behalf of Maritimes & Northeast Pipeline Limited Partnership, applied to the National Energy Board (the "Board" or the "NEB") for a Certificate of Public Convenience and Necessity, pursuant to Part III, section 52<sup>1</sup> of the *National Energy Board Act* (the "NEB Act") to construct and operate a lateral natural gas pipeline from M&NP's mainline to Point Tupper, Nova Scotia ("Point Tupper Lateral"). M&NP also applied for a related tolling order pursuant to Part IV of the NEB Act.

The Point Tupper Lateral<sup>2</sup> would consist of approximately 55 km (34.2 miles<sup>3</sup>) of 219 mm O D ("NPS 8") pipeline from a point near Goldboro, Guysborough County, Nova Scotia (approximately 6 km west of the Sable Offshore Energy Inc. ("SOEI") gas plant) to the delivery point at the SOEI Fractionation Plant in Point Tupper. It would also include a further 4 km of 168 mm O D ("NPS 6") pipeline to two other delivery points, Stora Port Hawkesbury Ltd. ("Stora") and CGC Inc. ("CGC"), in the Point Tupper area, as well as associated metering, control and pressure regulation facilities. Construction of the Point Tupper Lateral between the M&NP Mainline and the SOEI Fractionation Plant would be carried out at the same time as construction of the SOEI Natural Gas Liquids ("NGL") pipeline. The Point Tupper Lateral would be installed in the same trench as the NGL pipeline. SOEI plans to begin clearing the right-of-way in February 1999, followed by pipeline construction from May to October 1999. SOEI plans to install a crossing of the Strait of Canso in early 1999. The crossing would consist of two NPS 8 pipelines. M&NP intends to purchase one of the two pipelines from SOEI, which would then form part of the Point Tupper Lateral.

The Board decided to hold an oral public hearing to consider M&NP's Point Tupper Lateral application. Hearing Order GH-4-98, issued on 10 September 1998, set out the Directions on Procedure for the oral hearing of the Application. The hearing was held in Antigonish, Nova Scotia, from 23 November to 1 December 1998.

### 1.2 Section 58 Application

On 16 November 1998, M&NP applied pursuant to section 58 of the NEB Act (see Appendix IV) for an Order exempting certain facilities, which would form part of the Point Tupper Lateral, from section 30 to section 33 and section 47 of the NEB Act (see Appendix IV). In that application, M&NP also sought leave to amend its section 52 application to exclude those facilities described in its section 58 application.

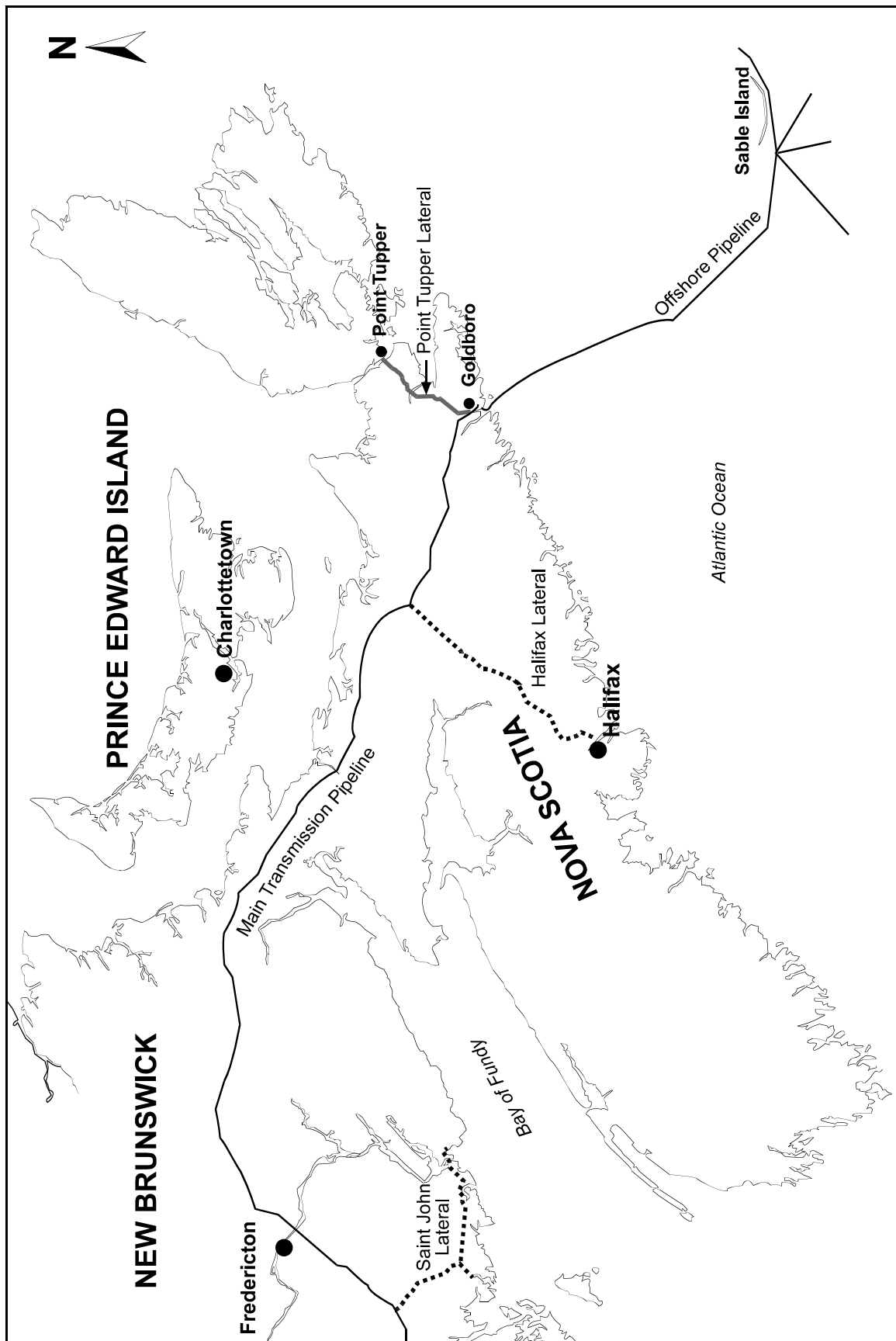
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<sup>1</sup> See Appendix IV for excerpts from Sections of the NEB Act.

<sup>2</sup> See Figure 1.

<sup>3</sup> A conversion factor of 0.62137 was utilized to convert km to miles.

**Figure 1-1**  
**Routes for M&NP's Proposed Laterals**



M&NP's section 58 application was filed in order to accommodate SOEI's construction schedule so that the construction of approximately 5 km of pipeline through wetland areas could commence at the beginning of February 1999. In light of the regulatory schedule affecting the application under section 52 of the NEB Act, as well as the time that would be required for any detailed route approval process, M&NP stated that the winter wetland construction facilities had to be exempted under section 58 of the NEB Act if there were to be any chance of meeting SOEI's construction schedule.

The Board heard a motion to amend M&NP's section 52 application at the commencement of the oral portion of the proceeding. After considering the arguments put forward by M&NP and other parties, the Board concluded that, although there may have been practical reasons for the proposal to amend the section 52 application, there was no legal basis upon which the motion could be granted in respect of an exemption from section 30 of the NEB Act.

The Board left open the possibility for M&NP to file another section 58 application for exemption from section 33 of the NEB Act in respect of the facilities for which the original section 58 application was filed. Prior to the end of the hearing, M&NP filed an amended section 58 application seeking an exemption from section 33 of the NEB Act for 5 km of pipeline through wetlands. The full text of the Board's ruling on this motion may be found in Appendix III.

## Chapter 2

# Facilities and Pipeline Safety

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### 2.1 Facilities Description

The facilities included in M&NP's application, and considered in the GH-4-98 proceeding, include approximately 55 km of NPS 8 pipeline from a point<sup>1</sup> near Goldboro, Guysborough County, Nova Scotia to a delivery point at the SOEI Fractionation Plant in the Point Tupper area, and approximately 4 km of NPS 6 pipeline to two other delivery points (Stora and CGC). The Lateral would cross the Strait of Canso between KP 52 and KP 55. This portion of the Lateral would be designed and constructed by SOEI, as approved by the Nova Scotia Energy, Mines and Resources Conservation Board. M&NP would purchase the section of pipeline that crosses the Strait of Canso to complete its lateral pipeline facilities.

Three intermediate valve sites, each consisting of a sectionalizing block valve and blowdown valves, would be installed on the NPS 8 portion of the Point Tupper Lateral. Custody transfer stations would be installed on the Point Tupper Lateral at each of the three delivery points. Each transfer station would consist of inlet and outlet piping, gas filtration, odourant injection facilities, pressure regulation, metering and associated facilities, sectionalizing block valves, blowdown valves and a control building.

The proposed maximum allowable operating pressure of the Point Tupper Lateral would be 9 930 kPa (1,440 psi). M&NP expects to bring these facilities into service by 1 November 1999. The capital cost of the proposed facilities is estimated to be \$20.8 million (in 1999 \$).

**Table 2-1**  
**Estimated Capital Cost of Proposed Facilities**

<b>Description</b>	<b>\$ 000</b>	
Pipe and Coating	1,938	
Valves and Fittings	600	
Miscellaneous Materials	346	
Station Materials	491	
Stores Overhead	22	
<b>Sub-Total Materials</b>		<b>3,397</b>
Prime Contract	10,929	
Stations Contract	510	
Ancillary Contracts	563	
<b>Sub-Total Contracts</b>		<b>12,002</b>

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<sup>1</sup> The take-off point for the Point Tupper Lateral is approximately 6 km west of the SOEI Gas Processing Plant (i.e. KP 6 of the M&NP mainline).

<b>Estimated Capital Cost of Proposed Facilities (continued)</b>		
Engineering and Development Costs	2,968	
Lands	270	
<b>Sub-Total Eng. &amp; Dev.</b>		<b>3,238</b>
<b>SUB-TOTAL COSTS</b>		<b>18,637</b>
Contingency		1,846
Financing		50
AFUDC		317
<b>TOTAL</b>		<b>20,850</b>

## 2.2 Appropriateness of the Design

The capacity of the 55 km NPS 8 pipeline would be 71,000 MMBtu/d (74,880 GJ/d or  $1.9 \times 10^6 \text{ m}^3/\text{d}$ )<sup>1</sup> and the capacity of the 4 km portion of NPS 6 pipeline would be 60,700 MMBtu/d. M&NP currently has firm commitments for 15,600 MMBtu/d. In planning the facilities for the Point Tupper Lateral, M&NP considered the capabilities and cost estimates for several facility designs for the 55 km portion of the lateral which are shown below:

**Table 2-2**  
**Point Tupper Pipe Size Capital Costs**

<b>Pipe Size O D</b>	<b>Capability MMBtu/d</b>	<b>Capital Cost \$ 000 (1999)</b>
NPS 6	34,000	19,289
NPS 8	71,000	20,850
NPS 10	125, 000	25,199
NPS 12	197,000	28,519

Several intervenors took issue with the appropriateness of the size of the lateral. These intervenors suggested that the NPS 8 design was inadequate to support the foreseeable market. M&NP indicated that the design of the proposed facilities was selected on the basis that it would meet immediate current market requirements and provide sufficient surplus capability for future market growth. Although an NPS 6 pipeline design would meet immediate market requirements, M&NP indicated that it would be more cost effective to install an NPS 8 pipeline to accommodate future market growth. An NPS 10 (273.1 mm O.D.) pipeline design was not considered appropriate because a significant contribution-in-aid would be required from the three new shippers and the NPS 8 design provided a better economic choice over the range of markets forecasted. M&NP indicated that the appropriate

<sup>1</sup> To convert MMBtu to GJ, divide by 0.94821; to convert GJ to m<sup>3</sup>, multiply by 1000/38.86.

way to meet incremental loads would be to expand its system as new market requirements develop. M&NP committed to expand its system, as required, to meet the future demand.

An issue was also raised with respect to whether M&NP should have designed the Point Tupper Lateral for peak-day demand to accommodate a possible future distribution system. M&NP indicated that it currently has firm commitments for 15,600 MMBtu/d, all of which are to serve industrial loads that would not require peak-day service. M&NP further indicated that, if such a peak-day load were to materialize, it could meet the demand by using natural gas storage, by requesting large industrial users to reduce their demand or switch to an alternative fuel, or by expanding its system through the addition of looping or compression.

### *Views of the Board*

An appropriate pipeline design must take into account a range of technical and non-technical factors, including the required design capacity. This capacity is selected based on present incremental market requirements as well as reasonably anticipated market growth. In general, the greatest efficiencies in pipeline design can be realized when pipeline capacity is determined to meet the specific and known needs of the market it is intended to serve. Long-term or unknown needs can be accommodated through design criteria that ensure that the pipeline can be easily reconfigured or expanded at such time as future requirements are ascertainable. Once a design capacity has been selected, the specific design of the facilities can be determined.

The Board notes that M&NP has firm commitments for only 22 percent of the 71,000 MMBtu/d capacity of the pipeline. These firm commitments are strictly for industrial loads that would contract for delivery of gas on a 365-day, 100 percent load factor basis. Therefore, the Board finds it appropriate for M&NP to have designed its pipeline to meet its forecast of average daily end-use requirements, rather than to meet speculative peak-day forecasts. Given the uncertainty of how future markets will develop and given the Company's commitment and ability to expand its system in the future, the Board is of the view that it would not be appropriate or necessary to require M&NP to construct a larger diameter pipeline.

From a strictly technical perspective, the Board finds the size of the pipeline to be an adequate and cost effective means of meeting both the immediate and reasonably foreseeable future market requirements, and notes that M&NP has committed to expand its system in the future if the need arises. The Board is not convinced that the evidence with respect to current and future markets showed that an NPS 10 pipeline was required within the foreseeable future, or that such a pipeline was required for other public interest considerations. As market and economic considerations also influenced the decision on pipeline size, please refer to Chapter 5 of these Reasons for a discussion on markets, economic feasibility and public interest considerations of the facilities.



## 2.3 Safety of Design and Operation

M&NP submitted that the applied-for facilities would be designed, constructed and operated in accordance with NEB's *Onshore Pipeline Regulations* ("OPR"), which specify that the design, installation, testing and operation of a pipeline must be in accordance with the applicable provisions of Canadian Standards Association Z662-96, *Oil and Gas Pipeline Systems* ("CSA Z662-96") and all applicable standards, specifications and codes that are incorporated by reference in that standard.

M&NP indicated that the external surface of the NPS 8 pipeline would be coated with fusion bond epoxy and the NPS 6 pipeline would be coated with extruded polyethylene. M&NP also indicated that the external surface of its pipe components could be coated with either liquid epoxy-urethane or hot applied coal tar based tape. An impressed current cathodic protection system would be installed to provide additional corrosion protection.

Construction of the Point Tupper Lateral between M&NP's mainline and SOEI's Fractionation Plant would be contracted to SOEI, and carried out at the same time and in the same trench as SOEI's NGL pipeline. The separation between the Point Tupper Lateral and the NGL pipeline would be 30 cm at most locations and would not exceed one metre. The two pipelines would be separated using pipesacs<sup>1</sup> which are proposed to be spaced at regular intervals along the pipeline.

The operation of the proposed facilities would be monitored remotely using a supervisory control and data acquisition ("SCADA") system. The SCADA system would collect new data from each remote terminal unit in the system every 60 seconds. For the Canadian portion of its system, M&NP plans to locate its Gas Control Centre in Fredericton, New Brunswick, with support from Union Gas Limited's Gas Control Centre in Chatham, Ontario. However, the final decision on the location for the Gas Control Centre is still under evaluation and requires M&NP Management Committee approval.

### *Views of the Board*

The safety of a pipeline depends on many factors, including pipeline design, material selection, testing, construction and inspection practices, and operation and maintenance practices. M&NP is required to comply with the Board's OPR, which stipulate specific provisions in respect of these factors, and which specify that the design, installation, testing and operation of a pipeline must be in accordance with the CSA Z662-96 standard.

M&NP has committed to design, construct and operate the proposed facilities in accordance with the appropriate standards and regulations. Furthermore, M&NP and the Board would inspect the proposed facilities during construction and at regular intervals during their operation.

On the basis of the foregoing, the Board is satisfied that the proposed facilities would meet widely accepted standards, including the Board's OPR, for design, construction and operation.

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<sup>1</sup> A pipesac is a bag constructed out of non-biodegradable material which is filled with either gravel or other material approximating that granular size.

## Chapter 3

# Environment, Socio-Economic, Routing and Land Matters

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### 3.1 Environment Matters

#### 3.1.1 Environment Screening Report

The Board completed an environmental screening and an Environmental Screening Report (the “Report”) pursuant to the *Canadian Environmental Assessment Act* (the “CEAA”) and the Board's regulatory process. The Board provided copies of the Report to those federal agencies that provided specialist advice on the proposed project, to provincial regulatory agencies referenced in the Report, to parties referenced in the Report, and to M&NP. The Report provides information regarding the environmental conditions to be included in the certificate granted in respect of this application. The conditions are included in Appendix II.

The Board has considered the Report and comments received on the Report in accordance with the GH-4-98 Directions on Procedure and is of the view that, taking into account the implementation of the proposed mitigative measures and the requirements of the attached conditions (see Appendix II), the work proposed in M&NP's application is not likely to cause significant adverse environmental effects. This constitutes a decision pursuant to paragraph 20(1)(a) of the CEAA, and was taken prior to making a decision under Part III of the NEB Act in respect of the applied-for facilities.

The CEAA determination and a summary of the comments received are included in Section 7 of the Report. Copies of the comments received have been added as Attachment 2 to the Report<sup>1</sup>.

#### 3.1.2 Environmental Assessment Process

In final argument, M&NP submitted that its approach to the environmental assessment of the Point Tupper project was to build on previous environmental assessments that had been conducted for the corridor and the Strait of Canso crossing by the Joint Public Review Panel (“the JRP”) for the Sable Gas Projects. As such, the assessment it prepared for this application focused on identifying the differences between the Point Tupper Lateral and SOEI's NGL pipeline as well as on cumulative effects. M&NP further submitted that, because site-specific detailed environmental surveys are not typically available in the early planning stages of a project, they should be dealt with through certificate conditions. It argued that the CEAA's purpose is to ensure that, on a predictive level, the potential environmental effects may be understood in order to enable a responsible authority to conclude that, if mitigation measures are implemented, no significant adverse environmental effects are likely to arise as a result of the project.

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<sup>1</sup> Copies of the Environmental Screening Report are available from the Board's Publications Office, phone (403) 292-3562 or fax (403) 292-5503.

In respect of the Strait of Canso crossing, M&NP submitted that it was not applying to construct the crossing and that it was planning to purchase the line that was constructed by SOEI in conjunction with its NGL pipeline. It was M&NP's view that, since the Board was not approving the construction of the Strait of Canso crossing, the focus of the Board's environmental screening process should be on the operation of the crossing and not on its construction. M&NP submitted that this was particularly true since the Strait of Canso crossing for the NGL pipeline had already been assessed under the CEAA by the JRP and by the Province of Nova Scotia pursuant to the *Nova Scotia Environment Act*.

### ***Views of the Board***

The proposal to construct the Point Tupper natural gas pipeline pursuant to section 52 of the NEB Act is a project that requires an environmental screening under the CEAA. Although SOEI's NGL pipeline was assessed by the JRP, the applied-for facilities have not previously been assessed.

The Board is required, pursuant to section 16 of the CEAA, to consider:

- the environmental effects of an applied-for project;
- the significance of those effects;
- comments from the public;
- mitigation measures that would mitigate any significant adverse environmental effects of the project; and
- such other matters, that the Board, as a responsible authority, deems relevant.

In order to fulfil its responsibilities under the CEAA and the public interest provision in the NEB Act, the Board is required to conduct a thorough assessment of the environmental effects of the Point Tupper facilities. This assessment was carried out in respect of all of the components of the project outlined in the scope of the assessment, including the Strait of Canso crossing.

M&NP cited a number of provisions of the CEAA including para 4(b.1) and sections 18 and 24, in asserting that the Board ought to rely on, and indeed is mandated to rely on, previously completed environmental assessments, particularly in respect of the Strait of Canso crossing.

The Board agrees with the assertion that it is important, where possible, to avoid duplication in environmental assessment process. Paragraph 4(b.1) of the CEAA provides that one of the purposes of the Act is to ensure that responsible authorities carry out their responsibilities in a coordinated manner with a view to eliminating unnecessary duplication in the environmental assessment process. To this end, the Board notified other possible responsible authorities in accordance with the *Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements*. The Department of Fisheries and Oceans Canada ("DFO") was the only other responsible authority identified and provided comments to which M&NP responded. Environment Canada, a specialist department, also provided input, which M&NP addressed during the course of the hearing.

The Board is of the view that section 24 of the CEAA is not applicable to the Point Tupper project as it applies only to projects for which an environmental assessment was previously conducted. This project has not been previously assessed and therefore a previous assessment cannot be relied upon pursuant to this provision.

In conducting its assessment of the Point Tupper Lateral project, the Board relied, to the fullest extent possible, on previously available environmental information, including the JRP Report. However, in accordance with subsection 18(2) of the CEAA, the Board determined that the information initially available to it was insufficient to carry out a complete screening of this project. For this reason, the Board issued a number of information requests and posed numerous hearing questions in order to elicit additional information on the environmental effects of the project. In addition, the Board relied to a great degree on the supplemental information submitted by M&NP during the course of the hearing in carrying out its responsibilities under the CEAA.

M&NP argued that a CEAA assessment is to be carried out at a predictive, early planning stage and that site-specific, detailed environmental surveys are not typically required in the assessment process because they are not normally available until much later in the project's development. The Board makes several observations in respect of this submission:

1. The JRP concluded that there would not likely be significant adverse environmental effects from the construction of SOEI's NGL pipeline. In its report, however, the JRP made recommendations that any approval by regulatory authorities be conditioned on the filing, for approval, of an extensive amount of detailed information about the mitigative measures that would be implemented in the construction of the NGL pipeline. The JRP was therefore of the view that more detailed environmental work was required before construction could commence on the proposed right-of-way.
2. Although the Point Tupper pipeline would go in the same trench as SOEI's NGL pipeline, it is not the same project and it requires an assessment that, in the opinion of this Board, meets the requirements of the CEAA.
3. Despite M&NP's arguments that environmental screening is an early planning tool, the Board was not asked to conduct the screening early in the planning process for these facilities. In fact, M&NP has requested that construction commence as early as February 1999 for certain portions of the pipeline.
4. Part VII of the Board's *Guidelines for Filing Requirements* ("GFR") sets out the environmental information required for an application under section 52 of the NEB Act. Additional information can be sought through information requests and, if necessary, through questioning at the hearing.
5. In some cases, it may be appropriate to impose conditions to require the applicant to file additional information for approval prior to the commencement of construction. However, it should be borne in mind that the

Board must have sufficient information to conduct a complete environmental assessment and that the absence of information in this respect cannot be cured through the imposition of conditions.

For these reasons, in respect of the applied-for facilities, the Board is of the view that detailed site-specific information, like that contained in the environmental protection plans and the geotechnical assessments, was essential for the completion of its environmental screening.

With respect to M&NP's submission that the Board should not assess the construction of the Strait of Canso, the Board notes that this crossing will connect the mainland portion of the Point Tupper Lateral with the Cape Breton portion and that it is integral to the applied-for project. For this reason, the scope of the environmental assessment included the construction of the Strait of Canso crossing in the scope of the project. Accordingly, the Board was under an obligation to assess the environmental effects of the construction and operation of the Strait of Canso crossing. To the extent possible, the JRP Report and the evidence filed in the GH-6-96 hearing were relied on by the Board in its assessment. However, as noted above, the JRP Report included numerous recommendations for further detailed information to be submitted to the appropriate regulatory authority. Although the Board was not approving the construction of the crossing under the NEB Act, the Board is of the view that it was necessary to obtain additional information to that which was originally filed by M&NP in order fulfil its obligations under the CEAA.

## **3.2 Socio-Economic Matters**

### **3.2.1 Scope of M&NP's Socio-Economic Assessment**

The Cape Breton Regional Municipality ("CBRM") was concerned that the effects of the proposed project on industrial Cape Breton could be far more significant than predicted in M&NP's assessment. The CBRM asserted that M&NP's application failed to meet the intent of the NEB's GFR and the CEAA requirements, insofar as the application did not identify significant socio-economic effects of the project on the CBRM and did not have measures in place to mitigate possible adverse socio-economic impacts. Prior to the hearing, the CBRM sought an extension for the filing of evidence in order to submit the report, *A Socio-Economic Study of the Development of the Sable Gas Projects on the Cape Breton Regional Municipality* (the "Socio-Economic Study"), which was in the process of being prepared for the Province of Nova Scotia in consultation with the CBRM. The CBRM's rationale for the request was that the findings of the study would be relevant to the determination of project-related socio-economic effects on Cape Breton.

The Antigonish Regional Development Authority ("ARDA") supported the CBRM contention that M&NP's socio-economic information was inadequate, in that ARDA saw M&NP's assessment to be restricted to construction-related matters.

Nova Scotia provided indirect comments on the appropriateness of the scope of the M&NP socio-economic assessment in respect to its response to the CBRM request for a time extension to file the Socio-Economic Study. In a letter to the Board dated 5 November 1998, Nova Scotia stated that the

anticipated contents of the Socio-Economic Report "will be of marginal, if any relevance to the proceeding before the Board." Nova Scotia submitted that the Socio-Economic Study dealt with matters of general importance relating to the development and availability of natural gas to the former Cape Breton county area, but was not germane to the specific M&NP project.

M&NP maintained that its socio-economic assessment was appropriate given the scale of the project. The Company viewed the project's socio-economic effects as largely restricted to the impacts on the immediate region where the pipeline facilities are proposed to be built. The direct project impacts were seen to be small relative to other recent industrial projects, but nonetheless positive. M&NP asserted that, due to the distance of its project from the CBRM, it considered the project to have no substantive socio-economic impact on the CBRM.

### ***Views of the Board***

The Board's interest in socio-economic impacts of a project arises in two ways: firstly, pursuant to its responsibilities under the CEAA; and, secondly, as a part of its consideration of the public interest under the NEB Act.

The Board notes that, in respect of the CEAA assessment of socio-economic impacts, only those effects arising from project-related changes to the environment are considered. An example of such a project-related change would be damage to fish habitat and fish which in turn could cause an adverse social or economic consequence, such as impairment of a recreational or a commercial fishery. In the Board's view, the CBRM's position is based on an alleged inadequacy of information bearing on direct socio-economic changes, rather than on environmentally-induced socio-economic impacts. The Board has generally described its interest in socio-economic matters through its GFR. The purpose of the GFR is to provide guidance to applicants regarding the nature of information that is required to be filed in support of an application. Once an application is received, the Board examines it to determine whether there is sufficient information filed to set the application down for hearing. In this case, the Board determined that there was sufficient information in the application, including socio-economic information, to proceed. The Board also notes that its GFR set out expectations for the filing of information for a wide range of projects to address the fact that the potential impacts of proposed projects can vary significantly depending on the nature and size of projects. For this reason, the GFR indicate that the level of detail of required information shall correspond to the nature and magnitude of anticipated impacts. This encourages the choice of workable and relevant spatial, temporal and subject-matter boundaries when determining the scope of socio-economic studies required by the Board.

With respect to the socio-economic information that was filed by M&NP, the Board notes that it addressed and assessed the impacts on the immediate region where the facilities are proposed. In conclusion on this matter, the Board is satisfied that the level of detail of M&NP's socio-economic information is adequate given the nature and magnitude of the project.

### **3.2.2 Employment and Procurement Benefits**

The Municipality of the District of Guysborough ("MDG"), the CBRM, the Province of Nova Scotia, Petroleum Directorate ("Nova Scotia") and the Province of New Brunswick, Natural Resources and Energy ("New Brunswick") raised employment and procurement concerns, taking the position that opportunities for employment and procurement should be available locally.

M&NP estimated that the construction phase of its project would require a workforce of up to 60 construction workers and 20 Company staff, inspectors and technical/professional contractor personnel, over a six month period. The Company indicated an intention to maximize local employment and anticipates that 80 percent of workers would be from the Province of Nova Scotia. Given the current Nova Scotia labour supply, M&NP did not foresee a labour supply shortfall.

As well, M&NP stated that its policy is to secure goods locally, where available and consistent with quality, price, and product service support requirements.

#### ***Views of the Board***

The Board is of the view that there has been appropriate planning to provide full and fair local access to employment and procurement opportunities, and that M&NP is committed to providing local opportunities and benefits.

### **3.2.3 Impacts on Future Development**

The CBRM expressed concern with the potential of the proposed project to displace the demand for Cape Breton coal and electricity and to reduce the comparative competitiveness of industrial Cape Breton. The CBRM maintained that, if natural gas is not available in its region, the result would be a more precipitous economic and social decline than has occurred in the past three decades. The CBRM also asserted that the proposed pipeline would be too small to accommodate any future demand for natural gas which may exist on Cape Breton.

The MDG expressed concern that natural gas should be available to the Melford Industrial Land Reserve, which is slated for use by the downstream petro-chemical industry. A number of other intervenors supported the position of a need for a larger pipeline to support future regional development opportunities. Intervenors requesting an increased pipe size to accommodate a significant future demand for natural gas included CBRM, the Enterprise Cape Breton Corporation, the Strait-Highlands Regional Development Agency, the Municipality of the County of Richmond, the Municipality of the County of Inverness, and the Nova Scotia New Democratic Party Caucus. A letter of comment to this effect was also received from Sydney Steel Corporation.

M&NP maintained that the proposed project would not displace the use of Cape Breton coal or electricity. The Company noted that the project's impact would be to displace the use of propane at one facility and heavy oil and hog fuel at another facility. M&NP viewed the question of future regional development as one of end-use considerations, which in its view was outside the scope of the applied-for project. As well, M&NP disagreed with the CBRM position that the availability of gas to the Strait of Canso area would place the CBRM at a competitive disadvantage in the Province of Nova Scotia, and thus would result in the proposed project having an adverse socio-economic impact.

M&NP recognized that the major benefits from the project for the Province of Nova Scotia would depend on the extent to which natural gas is available for domestic, commercial and industrial purposes to communities along the pipeline.

### ***Views of the Board***

Although the CBRM expressed the view that natural gas would displace coal, there was no evidence to substantiate the assertion that the applied-for project would in and of itself displace the use of Cape Breton coal. The only shippers who have contracted for gas service do not currently use coal. It is purely speculative that other potential natural gas users would displace coal in accessing natural gas.

The Board recognizes the CBRM concern that the project could reduce the competitiveness of industrial Cape Breton relative to other regions if natural gas was not available to it in a timely manner relative to its availability to other regions. However, the Board notes that, compared to many Maritimes regions, industrial Cape Breton is relatively close to the proposed pipeline. Thus, assuming that natural gas distribution develops in the Province of Nova Scotia as planned, Cape Breton should not be disadvantaged vis-a-vis other regions of the Maritimes.

Finally, the Board recognizes that local access to natural gas could eventually be the major economic benefit of the project. However, the Board sees local and regional government demands for access to natural gas as an integral component of community and regional development planning and policy, and hence a provincial matter.

The Board's views in respect of the appropriate pipeline size are dealt with in Chapters 2 and 5.

### **3.2.4 Community Services**

A pipeline construction project can place demands on both public and private community services, such as medical and emergency services, transportation systems or accommodation and tourist facilities. The extent and nature of such impacts generally relate to the size, timing and duration of a project, the presence of other major construction projects, and the availability of existing services in the community. M&NP identified emergency services, roadway capacity and traffic, accommodation, and effects on tourism and recreation as socio-economic components of concern.

With respect to emergency services, M&NP led evidence to suggest that there would be ambulance services and trained personnel at construction sites. As well, province-wide ambulance and air-evacuation services are available, and no part of the right-of-way is more than one hour travelling time from a hospital. The Company expects that there would be little incremental demand on health and medical services arising from its project.

With regard to traffic and roadway capacity, M&NP will be relying on the traffic study that was completed and submitted to the Nova Scotia Department of Energy and the Board in respect to construction of the M&NP mainline and the SOEI Gas Processing Plant and NGL pipeline. M&NP maintained that there is sufficient transportation capacity with Route 104, rail lines and the new wharf



at Goldboro, and that, given proper consultation and scheduling of project traffic, there would be no residual adverse effects.

M&NP completed a study of available accommodation in the region adjacent to the proposed pipeline and concluded that the supply of available accommodation for workers is adequate. M&NP's conclusion is based on the assumptions of 40 workers requiring rental accommodation, of sufficient available accommodation being within 60 km of the work site, and of the success of SOEI working with local interests to identify and promote private accommodation opportunities.

M&NP maintained that impacts on recreation resources would be insignificant, given mitigation and the short construction period. M&NP has adopted the mitigative measures and best management practices for recreation resources committed to by SOEI. The mitigative measures include discouraging unwanted access to the easement and protecting the visual aesthetics along the proposed right-of-way. The best management practices include: notification of the schedule of construction activities in local papers; notification and consultation with local user groups prior to construction; signage of construction activities in recreational areas; restoration of watercourse beds and banks; and prevention of harassment of wildlife.

### ***Views of the Board***

The Board is of the view that, given the local circumstances, M&NP's planning and the proposed mitigative measures, adverse community service impacts are unlikely. The Board also notes that M&NP's planning has been done in concert with SOEI, which will be installing its NGL pipeline simultaneously with M&NP's pipeline in a common trench.

## **3.3 Routing and Land Matters**

### **3.3.1 Route Selection Process**

#### **Mainline to SOEI's Fractionation Plant**

As part of the GH-6-96 proceeding, SOEP carried out a route selection analysis to determine, based on environmental, socio-economic, technical and cost factors, an acceptable location for the proposed NGL pipeline from the Gas Processing Plant near Goldboro to the proposed Fractionation Plant in the Point Tupper area. The preferred corridor was the subject of an Environmental Impact Study ("EIS") presented to the JRP. The corridor selection process involved selection of an environmentally and socio-economically acceptable one km wide corridor for the NGL pipeline.

#### **Fractionation Plant to Terminal Point**

In selecting the preferred corridor and right-of-way between the SOEI Fractionation Plant and the Terminal Point, M&NP identified potential pipeline routes which parallel existing rights-of-way (i.e., roadways, railways, and utility corridors) in order to reduce disturbance to the natural and socio-economic environment. Three alternative rights-of-way were identified and evaluated based on environmental, socio-economic, technical and economic constraints.

The following guiding principles were adhered to in selecting an acceptable preferred route:

- a) SOEI's Fractionation Plant custody transfer station site would be the take-off point;
- b) the termination point would be the CGC plant site;
- c) a 15 m wide right-of-way would be required except where work space is limited;
- d) the route would be environmentally, socially, technically and economically acceptable; and
- e) the Board's GFR would be complied with.

The selection of the study area was directly linked to, and limited by, the terminal delivery points provided by M&NP. The northern boundary of the study area was located between the Landrie Lake Reservoir and the Strait of Canso, encompassing a distance of approximately 1.5 km.

Following the definition of the study area, constraint mapping at a 1:50,000 scale was used for the selection of alternative corridors. The corridor alternatives were chosen to parallel existing rights-of-way, including roads, railways and utility corridors, where possible. The corridor width was limited to approximately 100 m given the high degree of development. Because it was not possible to accurately delineate a 100 m width or to identify detailed constraints, it was necessary to refer simultaneously to both 1:50,000 and 1:10,000 scale mapping. At this stage, these maps were used primarily to identify specific environmental, socio-economic, technical, and construction constraints. Efforts were also made to parallel existing rights-of-way and linear corridors to minimize disruption to existing land uses and to reduce potential effects on valued environmental or socio-economic components.

M&NP reviewed available data and surveyed the area during a helicopter flight in 1998 in order to develop the alternative corridors and to choose the preferred corridor. The alternative and preferred corridors were presented by M&NP to the public at open-house meetings in Guysborough and Point Tupper in May 1998. The public had an opportunity to review and comment on the information presented.

Following the open-houses, M&NP identified its preferred corridor. It follows the south limit of the SOEI Fractionation Plant property and the rail/power corridor to the Industrial Park Road, continues along-side the road north to the municipal water pipeline easement, turns west across industrial lands and continues until the CGC plant site. The total length of the preferred corridor would be approximately 4 km and was selected on the basis that it would:

- a) parallel existing rights-of-way for the entire route;
- b) avoid known areas of shallow and exposed bedrock to the extent possible;
- c) avoid steep slopes and residential areas;
- d) minimize the length of the pipeline;
- e) parallel the municipal waterline;
- f) minimize the effect on adjacent wetlands and the proximity to residences and small private properties; and
- g) avoid disturbed areas and mill waste landfills.

### **3.3.2 Land Requirements**

M&NP submitted that the proposed Point Tupper Lateral pipeline would be located within a 25 m wide permanent right-of-way extending 55 km. M&NP further submitted that the right-of-way may be reduced, where required, by a restriction on the amount of working room available. The proposed pipeline would be located in the same trench and right-of-way as SOEI's NGL pipeline.

The 4 km section from the Fractionation Plant to the terminal delivery point would be located in a 15 m right-of-way. In cases where the pipeline is proposed to be installed within existing road allowances, the work space would be restricted to less than 15 m. Pipeline construction methods would be adapted in accordance with the space limitations. In response to information requests from the Board, M&NP provided schematics (cross-sections) of both the 25 m and the 15 m rights-of-way identifying the various activities within those rights-of-way.

#### **Temporary Work Space**

Pipeline construction across watercourses or wetlands commonly necessitates the use of additional work space, on both sides of the crossing, beyond the standard easement width. This space is required for the preparation of the pipe section, the temporary stockpiling of grade material or backfill material and for storage of ditch spoil.

SOEI indicated that it would typically require a 10 m wide by 30+m long work space at both sides of the watercourse crossings, which represents an area in addition to the 25 m easement. Experience has shown that this amount of additional work space is adequate for crossings. During the hearing, M&NP stated that, with respect to temporary work space, it has decided to purchase permanent easement in the areas where it would need additional work space. The decision to obtain temporary work space as a permanent easement was taken in order that should one company require the same space during operation to excavate the pipeline again, the company would have that required room and would not have to re-approach the landowner.

With respect to landowner notification, M&NP filed a "Chronology of Lands Activities" which sets out the activity, schedule and an explanation of each event. As well, M&NP filed with the Board sample copies of subsection 87(1) notices and agreements with respect to permanent easement and temporary work space agreements.

### **3.3.3 Common Rights-of-Way**

In its application, M&NP stated that the Point Tupper Lateral facilities have been designed to be constructed in the same trench and right-of-way as SOEI's NGL pipeline from the mainline to SOEI's Fractionation Plant in the Point Tupper area. The construction of the natural gas pipeline would require the acquisition of land rights through an easement for the construction, operation and maintenance of the natural gas pipeline. SOEI will also hold an easement in the same right-of-way for its NGL pipeline.

In order to understand the working of such overlapping easement agreements, as it would affect landowners, the Board requested M&NP to provide copies of all agreements between SOEI and M&NP that relate to the 25 m rights-of-way to be acquired under both provincial and federal

legislation. In response, M&NP indicated that it was in the process of drafting a number of agreements, including:

- a) Point Tupper Lateral Agreement;
- b) Operation Agreement; and
- c) Letter of Commitments.

### **Point Tupper Lateral Agreement**

The Point Tupper Lateral Agreement sets out the specific price, terms and conditions of the purchase of the pipeline crossing the Strait of Canso, as well as the specific price, terms and conditions of the engineering, procurement, construction and inspection of the Point Tupper Lateral, assuming that the lateral is installed in a common trench with the NGL pipeline. Clause 8.1 of that agreement states:

Each of M&NP and SOEI agree to work cooperatively together to develop a joint policy with respect to landowners along the lateral pipeline and the NGL pipeline.

M&NP advised that the joint policy referred to in this clause was not intended as a formal policy. M&NP indicated that both SOEI and M&NP have obligations to the landowners. M&NP has certain systems in place now, and wants to ensure that those systems, such as the Letter of Commitments, are provided to affected landowners. SOEI has agreed to use M&NP's Letter of Commitments.

Clause 8.2 of the Agreement describes a complaint-tracking system. M&NP stated that it has a database set up to receive complaints and issues from the field, and that a report would be produced on a regular basis to document responses to those complaints.

M&NP undertook to the Board to formulate a written landowner policy and to communicate it to landowners.

### **Operating Agreement**

M&NP and SOEI are in the process of negotiating an Operating Agreement which is intended to establish the guidelines for the individual and joint operation of the Point Tupper Lateral natural gas pipeline and the NGL pipeline. The agreement would also identify opportunities for the realization of mutual benefits from efficiencies and synergies resulting from this cooperative venture. M&NP undertook to file a copy of the agreement with the Board, once it is finalized.

### **Letter of Commitments**

M&NP indicated that it will provide landowners with a written Letter of Commitments. SOEI would also utilize this document which would be given to landowners during the land-acquisition program. M&NP provided the Board with a copy of a Letter of Commitments which is currently being provided to the landowners along the proposed Halifax and Saint John Lateral routes and which would form the basis of the Letter of Commitments to the Point Tupper Lateral landowners. M&NP further indicated that, in light of this unique project development, the Letter of Commitments would need to be revised to address the project description, the interaction between M&NP and SOEI, and the guiding principles and responsibilities scoped for the operations phase of the project.

The Letter of Commitments would include sections on project communication, general pipeline construction, construction on forested land, construction on agricultural land, surface use of the easement, and a discussion of the NEB safety zone<sup>1</sup>. M&NP undertook to file a copy of the agreement with the Board, once it is finalized.

### **3.3.4 Landowners' Concerns**

In a letter of comment, Mr. Alan Hayman, solicitor on behalf of several landowners, raised the following four issues. M&NP's responses, as provided during the course of the proceedings, are set out following each issue.

- a) The SOEI easement agreements signed by landowners contain a provision which prohibits the landowner from granting any further rights to any other party without written consent from SOEI;

M&NP indicated that it had been informed that it was likely that SOEI would provide consent.

- b) As the NGL pipeline and Point Tupper Lateral pipeline are regulated separately by provincial and federal regulators, respectively, landowners need to know whether provincial or federal regulatory authority applies when different standards exist under the respective legislation;

As provided in the Point Tupper Lateral Agreement, M&NP would be contracting the construction of the Point Tupper Lateral from the Mainline to the Fractionation Plant to SOEI. M&NP would be fully responsible to landowners and the Board for any concerns arising from the construction and operation of the Point Tupper Lateral facilities. SOEI would be fully responsible to landowners and provincial regulators for any concerns arising from the construction and operation of the NGL Pipeline. During construction, one right-of-way agent representing both M&NP and SOEI, would be the primary contact with the landowners to ensure that their concerns and issues are addressed and resolved in a responsible manner. The Letter of Commitments would provide additional detail concerning control and management systems, such as the Issues Resolution and Communication System.

Prior to the Point Tupper Lateral or the NGL Pipeline being placed in service, the landowners would be provided with details of the operating arrangements between M&NP and SOEI. The Letter of Commitments would provide a statement as to the guiding principles and responsibilities of M&NP and SOEI concerning the operation of the pipelines.

- c) Who has responsibility during construction and what level of government will oversee construction and respond to landowners' concerns?

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<sup>1</sup> In addition to a specific right-of-way that is acquired under an easement agreement, there is an additional 30 m safety area on both sides of the right-of-way. The safety area is provided for under the NEB Act to restrict excavation activities which could pose a threat to safety.

M&NP stated that construction and operation of the Point Tupper Lateral would be subject to the provisions of the NEB Act and its regulations while the NGL Pipeline would be subject to the provisions of the Nova Scotia Pipeline Act and its regulations.

- d) Would M&NP acquire its easement as if no previous interest had been granted (i.e., the SOEI easement)?

M&NP would not discount the market value of the easement on the Point Tupper Lateral to a nominal sum because of the previous easement granted to SOEI. However, M&NP would not expect to compensate for damages already paid for by SOEI, for example, damages from clearing. In compensating landowners for the required easement on the Point Tupper Lateral, M&NP would comply with all of the provisions relating to compensation as set out in sections 86 and 87 of the NEB Act.

### ***Views of the Board***

The Board finds the criteria identified by M&NP to be acceptable for the purpose of route selection for the NPS 8 pipeline. The Board further finds that M&NP's approach to route selection is acceptable and that it results in an appropriate route for the pipeline.

The potential impacts of the construction of the pipeline on affected landowners, including the amount of land required for easements and temporary work space, have been carefully considered by the Board. The Board finds that M&NP's anticipated requirements and method of acquisition of easements and temporary work space are reasonable and justified for this project.

In summary, the Board is satisfied with M&NP's route selection process and approach to land matters regarding this project but notes that there are several policy documents which are currently being finalized which will be required to be submitted to the Board for its approval.

## **3.4 Section 58 Exemption**

In a ruling at the outset of the hearing, the Board denied a motion by M&NP to amend its section 52 application to remove approximately 5 km of pipeline that runs through wetland areas along the 55 km route. M&NP had sought to remove this portion of the route from the section 52 application and to apply for an exemption for it under section 58. The purpose of this request was to expedite approval of this 5 km section to accommodate SOEI's plans for February 1999 construction through the wetlands. SOEI had identified environmental reasons why it was preferable to carry out winter construction in the wetland areas.

Although M&NP presented convincing environmental and economic justification for early approval of the 5 km section, the Board ruled that there was no legal basis upon which its motion could be granted. Referring to the decision of the Federal Court of Appeal in the Pesh Creek decision<sup>1</sup>, the

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<sup>1</sup> *Alberta v. Westcoast Energy Inc.* [1997] F.C.J. No. 77.

Board determined that it was not open to an applicant to partition its pipeline into sections so that a portion of it could be considered under section 58. The Board did, however, leave it open to M&NP to apply under section 58 for an exemption from section 33 of the Act in respect of the 5 km section of the line. An exemption from section 33 would mean that M&NP would not be required to file a Plan, Profile and Book of Reference for the 5 km section of the line. M&NP filed such an application on 27 November 1998.

### ***Views of the Board***

The environmental evidence presented by the applicant indicated that winter construction would decrease the project's impact on the wetlands and that there would be some additional impact if the contractor had to go in twice to construct each line. Furthermore, it is clearly less economically efficient to have to schedule two construction periods. The Board is therefore of the view that, for both environmental and economic reasons, it is preferable that there be only one construction event through the sensitive wetland area of the route.

It is not open to an applicant to divide its project into segments so as to exempt a pipeline greater than 40 km in length from the requirement to obtain a certificate to construct and operate that pipeline. However, the Board is of the view that it is permissible to exempt a portion of the line, in appropriate circumstances, from the requirements of section 33. Section 33 requires a company to file a plan, profile and book of reference for the pipeline. Exempting M&NP from this requirement would enable it to commence construction once its certificate is in place. There would be no requirement to subject this segment of pipeline to the detailed route process, which would effectively preclude winter construction through the wetlands. M&NP has contacted landowners affected by this portion of the pipeline and no concerns appear to have been raised. Therefore, provided that M&NP obtains all of the required land rights, the Board is satisfied that, for the reasons outlined above, it is in the public interest to grant M&NP an exemption from section 33 in respect of the 5 km pipeline through the wetland areas.

## Chapter 4

# Tariff Matters

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### 4.1 M&NP's Lateral Policy

In the GH-6-96 proceedings, the Board approved a postage stamp toll design for the Canadian portion of the M&NP line. The Board determined that the postage stamp toll, set at approximately \$0.60/MMBtu/d, struck an appropriate balance between the encouragement of the development of gas markets in the Provinces of Nova Scotia and New Brunswick and the ability of M&NP to remain competitive with other alternatives serving markets in the U.S. Northeast. In the GH-6-96 proceedings, the Board also approved M&NP's "Lateral Policy", which was designed to provide a test for the construction of lateral pipelines to markets within the Provinces of Nova Scotia and New Brunswick<sup>1</sup>. The JRP viewed the postage stamp toll and the Lateral Policy as a package that would furnish a solid economic foundation for the pipeline in its early years and provide the greatest potential for the future development of the gas market in the Maritimes.

In addition to the Lateral Policy, M&NP filed an agreement at the GH-6-96 proceedings entitled "Joint Position on Tolling and Laterals", which had been negotiated between M&NP, SOEP, New Brunswick and Nova Scotia. A key provision of that agreement was a commitment by M&NP to develop work plans for a future lateral to Cape Breton.

Finally, M&NP negotiated a Memorandum of Understanding ("MOU") with SOEP, Nova Scotia Power and the Province of Nova Scotia on 3 December 1997 in which M&NP committed to construct the Point Tupper Lateral concurrently with SOEI's NGL pipeline, provided that firm transportation agreements were entered into for an amount not less than 10,000 MMBtu/d for a period of at least 20 years<sup>2</sup>.

#### 4.1.1 Application of the Lateral Policy

In this proceeding, M&NP requested an Order pursuant to Part IV of the NEB Act from the Board confirming that no contribution-in-aid of construction would be required from the shippers on the Point Tupper Lateral and that the full cost of service of the Point Tupper Lateral would be included in the calculation of M&NP's tolls.

According to M&NP's Lateral Policy, if the contracted demand of a proposed lateral generates sufficient revenue to cover the annual cost of service of that project based on a test-toll threshold of \$0.60/MMBtu, M&NP would proceed to construct the lateral without any incremental contribution from the shipper. If the proposed lateral did not generate sufficient revenue to cover the cost of service, M&NP could require a shipper contribution to cover the shortfall (i.e., revenue deficit). The shortfall is considered to be the cumulative difference between the toll calculated based on estimated

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<sup>1</sup> The full text of the Lateral Policy is contained in Appendix V.

<sup>2</sup> The full text of the MOU is contained in Appendix VI.



costs and volumes flowing from the potential lateral and the \$0.60/MMBtu/d test toll, over the term of the proposed contracted demand.

In the case of the Point Tupper Lateral facilities, the annual cost of service associated with the facilities was calculated for each year using conventional cost of service methodology based on M&NP's estimate of the capital and operating costs of the facilities and a depreciation rate based on the term of the shippers' transportation contracts (i.e. 20 years). It was determined that a shortfall occurred in each of the first five years of operation of the lateral, for a total of \$719,000.

**Table 4-1**  
**Cost of Service - Lateral Policy Test**  
(\$ 000)

<u>Cost of Transmission</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Operation and Maintenance Exp.	84	87	91	94	98
Depreciation Expense	1,042	1,042	1,042	1,042	1,042
Property Tax	110	114	119	124	129
Capital Tax	94	89	84	79	74
Income Tax	461	736	732	726	720
Return on Rate Base	<u>1,766</u>	<u>1,673</u>	<u>1,583</u>	<u>1,494</u>	<u>1,405</u>
Total Cost of Service	3,556	3,741	3,651	3,560	3,468
Annual Demand Determinants	187,200	187,200	187,200	187,200	187,200
Demand (\$/MMBtu/month)	\$18.9974	\$19.9838	\$19.5023	\$18.5231	\$18.5231
100 percent Load Factor (\$/MMBtu) (estimated toll)	\$0.6246	\$0.6570	\$0.6412	\$0.6252	\$0.6090
Net Present Value of Cumulative Shortfall over \$0.60 MMBtu/d toll	\$719,000				

The Lateral Policy allows M&NP to waive the shipper contribution, in whole or in part, at the discretion of M&NP, if it determines that construction of the facilities would be economic based on various factors enumerated in the Policy.

M&NP submitted that, to determine whether the project was economic, it evaluated the various economic criteria (i.e. determination of a test toll), as well as factors associated with the estimate of system net revenues. M&NP concluded that the factors pointed to an enduring market which, in its view, rendered the Point Tupper Lateral economic in accordance with the Lateral Policy. As a result of this conclusion, M&NP extended the period of return on rate base and depreciation from 20 years

(current terms of the existing contracts) to 25 years to reflect an enduring market beyond the term of the contracts. When the cost of service is applied to the extended term, the new test toll falls below the threshold of \$0.60/MMBtu/d.

M&NP stated that it expected that the existing lateral shippers would extend the term of their contracts beyond 20 years and that, as a result, this could be considered to be an enduring market. This expectation was based on the fact that the shippers were large industrials and that their desire to sign a 20 year agreement was a strong indication that they planned to be in operation for longer than the 20 years. Assuming that a cost of service toll regime still existed in 20 years, and that no significant capital additions were made, M&NP submitted that tolls would be quite a bit lower for Years 21 through 25, making it attractive for customers to renew contracts.

M&NP further submitted that another reason why the customer contribution should be waived was because an NPS 6 pipeline was all that was necessary to meet the transportation needs of the three existing shippers. The costs associated with an NPS 6 pipeline would have passed the cost of service test toll threshold without requiring a customer contribution and, therefore, without reliance on the enduring market factor. The decision to build an NPS 8 pipeline was based on the assumption that additional markets would be served by the line. As a result, M&NP concluded that it would not be reasonable to impose the revenue shortfall on the three existing shippers.

### ***Views of the Board***

The Lateral Policy allows for the waiver of a contribution in aid of construction if a project shows to be economic, based on a number of criteria. M&NP agreed during the proceedings that the various factors boiled down to an assessment of whether there was an enduring market for the lateral. The Board is of the view that M&NP has established that there is an enduring market as a result of the long term commitment of the three shippers and that there is a reasonable likelihood that their contracts will be extended beyond 20 years. Because of the economic advantages of shared construction, it is clear that the time is right to construct this pipeline and that a slightly larger size than would normally be required to satisfy the existing load will limit the requirement for expansions for the foreseeable future, should new markets develop. Consequently, the Board agrees that it would not be reasonable in these particular circumstances to require a contribution in aid of construction from the shippers on the Point Tupper Lateral. Therefore, the Board is of the view that the Lateral Policy was correctly applied by M&NP and that in the present circumstances, the full cost of service of the lateral should be included in the calculation of M&NP's tolls.

## **4.1.2 SaskEnergy International Incorporated ("SaskEnergy") Concerns**

SaskEnergy challenged the \$0.60/MMBtu/d test toll, set out in the Lateral Policy, as the appropriate test toll threshold that should be applied to the laterals. In its view, the appropriate test toll threshold should be the greater of the \$0.60/MMBtu/d or the actual toll on the M&NP system at the time the M&NP Lateral Policy is applied. The Board heard arguments on this point and ruled that the \$0.60/MMBtu/d test toll was a fundamental element of the Lateral Policy. It was further determined that it would be inappropriate to amend the Policy, which would have amounted to a review of the Board's decision in GH-6-96 in this respect. The entire ruling can be found in Appendix III.

SaskEnergy also expressed its concern with the way M&NP applied the Lateral Policy test toll and its impact on potential Local Distribution Companies (“LDCs”). According to SaskEnergy, the impact of “unfettered cherrypicking” by M&NP of the industrial load would be to reduce the number of consumers and communities that receive natural gas. SaskEnergy stated that in considering this application the Board should have regard to any public interest that may be affected by the granting, the refusing or the conditioning of the application, and that the viability of the LDCs throughout the Province of Nova Scotia would be determined by the Board's decision.

If M&NP's primary objective under the Lateral Policy is to encourage the development of gas markets in Nova Scotia, SaskEnergy asserted the benefits of the Policy should not only be available to construct M&NP's facilities, but also be available to LDCs. SaskEnergy asked the Board to require M&NP to apply funds generated by its Lateral Policy from any additional loads to be served by the lateral in excess of 15,600 MMBtu/d in order to facilitate construction of extensions to the Point Tupper Lateral. In SaskEnergy's view, this would not have any negative effect on the ability of M&NP to provide service to its customers or to maintain the competitiveness of its tolls and would ensure that Nova Scotians are able to take full advantage of the benefits of M&NP's Lateral Policy.

M&NP and other intervenors took exception to SaskEnergy's proposal and expressed the view that it was outside the scope of this proceeding.

#### ***Views of the Board***

The Board has considered SaskEnergy's request regarding a condition or policy statement to its Order relating to the impact of M&NP's Lateral Policy on LDCs. The Board is of the view that it would be inappropriate to attach such a condition. The development of natural gas markets in the Province, and how gas is bought and sold, is a matter of local interest that is most appropriately left for the Province to determine.

## **4.2 Commercial Arrangements**

### **Nature and Terms of the Point Tupper Lateral Agreement.**

The Point Tupper Lateral Agreement between SOEI and M&NP contains provisions relating to a) the performing by SOEI of the necessary work associated with the engineering, procurement and construction of the Point Tupper natural gas Lateral Pipeline; and b) the financial arrangements regarding the sale to M&NP of the portion of pipeline which would cross the Strait of Canso. As part of the \$15.6 million lump-sum payment M&NP is paying to SOEI for construction of its lateral, approximately \$3.1 million is related to the purchase of the Strait of Canso crossing.

### **Negotiation Process and Reasonableness of the Costs.**

While Mobil Oil Canada Properties ("Mobil") is an equity partner in M&NP, it also is an equity partner in the SOEI project through an affiliate. As the negotiations with SOEI on the agreement did not involve M&NP's management committee until it was ready for approval, M&NP asserted that the agreement was negotiated at arm's length.

Nova Scotia questioned M&NP witnesses in detail regarding the reasonableness of the costs which made up the \$15.6 million lump-sum payment for the Point Tupper Lateral facilities. M&NP maintained that all costs were fully justified. With respect to the reasonableness of the cost for the crossing of the Strait of Canso, M&NP asserted that this amount was, in its estimation, very low compared to the risk that actual construction costs incurred could be higher as the payment would be fixed, regardless of actual costs.

M&NP acknowledged that it would be required to make an application to the Board, pursuant to paragraph 74(1)(b) of the Act, seeking leave to purchase the portion of the pipeline that crosses the Strait of Canso.

### *Views of the Board*

The Board notes that M&NP's arrangements with respect to the Strait of Canso crossing have caused significant controversy in this proceeding. The Strait of Canso crossing was contained in the original project description but M&NP indicated that it intended to purchase the crossing from SOEI. On 16 November 1998, M&NP sought leave of the Board to amend its application to remove the Strait of Canso crossing from the project description. By response dated 18 November 1998, the Board advised that this motion could be heard at the outset of the hearing. The Board reminded M&NP that the crossing was included in the scope of the environmental assessment and that it was subject to examination in the proceedings on this basis regardless of the outcome of the motion to remove it from the section 52 application. In a letter to the Board dated 22 November 1998, M&NP withdrew its request of 16 November, stating that the Strait of Canso crossing was always intended to form a part of the section 52 application.

The Board acknowledges M&NP's submission that there were business reasons why it decided to purchase the crossing instead of contracting with SOEI to construct it on M&NP's behalf. However, even though M&NP did not apply to construct the portion of its pipeline that crosses the Strait of Canso, it still requires a certificate under section 52 of the NEB Act in order to operate it. It is the view of the Board that it would have been preferable for M&NP to have applied to the Board to construct and operate the entire 55 km of pipeline, including the Strait of Canso crossing. The crossing was not something that was already built; in fact, the construction will be carried out at the same time as the construction of the rest of the SOEI and M&NP pipelines. Furthermore, the crossing is not merely an accessory to the applied-for pipeline but is integral to it. Although the Board might have preferred an alternate approach, it finds the arrangements respecting the agreement for the Strait of Canso crossing to be acceptable. The certificate would contain a condition that M&NP apply to purchase the Strait of Canso crossing from SOEI.

The Board is satisfied that the negotiation of the terms of the Point Tupper Lateral Agreement occurred at arms-length and in an objective manner. With respect to the reasonableness of the costs, the Board notes the estimated \$14 million in savings achieved as a result of the building the Lateral in a common trench with SOEI's NGL pipeline. The Board is also satisfied that M&NP's procedures in assessing the rationale for specific costs relating to these facilities was reasonable. However, the actual costs, once incurred, may be the subject of further review in the context of a Part IV proceeding.

## Chapter 5

# Gas Supply, Transportation, Markets and Economic Feasibility

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### 5.1 Gas Supply

The natural gas to be transported to customers supplied by the Point Tupper Lateral will be produced from reserves in the Scotian Shelf located near Sable Island offshore of Nova Scotia. During the GH-6-96 proceeding, SOEP estimated that the total gas reserves for the Scotian Shelf were approximately  $512 \times 10^9 \text{ m}^3$  (18.3 Tcf). At that same proceeding, it was determined that the first year daily average deliverability would be approximately 480,000 MMBtu/d. In its Point Tupper Lateral application, M&NP relied upon the findings of the NEB, the JRP, the Commissioner for the SOEP and the Canada-Nova Scotia Offshore Petroleum Board, all of whom concluded that adequate gas supply was available to support the respective SOEP and M&NP applications in the GH-6-96 proceeding.

The JRP concluded that the proponents had used reliable sources for their resource estimates and that a consensus exists among the different government departments and agencies that gas supply is adequate. It went on to conclude that M&NP had demonstrated sufficient gas reserves and projected production to support its proposal. Based upon those findings, M&NP submitted that it was unnecessary to review detailed evidence with respect to overall gas supply in the current proceeding.

With respect to project-specific gas supply, M&NP provided evidence regarding the gas supply arrangements of its shippers. SOEI will utilize gas obtained offshore, supplied in proportion to each producer's ownership under a 20 year arrangement. Stora has signed Term Sheets with Duke Energy Marketing L.P. ("Duke Energy") for daily volumes of 11,000 MMBtu/day. It plans to execute a gas supply contract with Duke Energy. CGC is presently negotiating the terms of a formal gas purchase and sale agreement with Duke Energy for the firm sale of 1,000 MMBtu/day. CGC expects to execute its gas supply contract by mid-December 1998. Both Stora and CGC expect to take their gas supply at 100 percent load factor. The gas supply arrangements of Stora and CGC are for a primary term of five years with three potential renewal terms of five years. These two shippers assured the Board that they have a strong incentive to extend these contracts beyond the primary five year term because of their 20-year commitment for service on the pipeline.

### 5.2 Transportation Arrangements

The Certificates of Public Convenience and Necessity issued to SOEP and M&NP pursuant to the GH-6-96 proceeding provide the necessary approvals for SOEP and M&NP to construct and operate the upstream facilities that will supply gas and transportation to the Point Tupper Lateral.

M&NP has entered into Firm Service Agreements with CGC, SOEI and Stora (collectively referred to as "the shippers") whereby these shippers have agreed to accept natural gas transportation service effective the later of 1 November 1999 or the date of commencement of service. The shippers are responsible for constructing any downstream take-away facilities to accept natural gas and for the contracting of natural gas supply detailed above. Pipeline fuel requirements for these shippers will be

negligible as there is no compression on either the mainline Canadian pipeline facilities or the Point Tupper Lateral. The shipper arrangements are summarized in Table 5-1.

**Table 5-1  
Firm Service Agreements**

<b>Customer Name</b>	<b>Market to be Served</b>	<b>Volume</b>	<b>Contracted Service</b>	<b>Term</b>	<b>Type of Agreement</b>
CGC	Gypsum Wallboard manufacturing	1,000 MMBtu/d	MN365 (100% Load Factor)	20 years	Firm Service Agreement
SOEI	Fractionation Plant	3,600 MMBtu/d	MN365 (100% Load Factor)	20 years	Firm Service Agreement
Stora	Pulp & Paper	4,000 MMBtu/d	MN365 (100% Load Factor)	20 years	Firm Service Agreement
Stora	Pulp & Paper	7,000 MMBtu/d	MN365 (100% Load Factor)	20 years	Firm Service Agreement

### 5.3 Markets

The market that most clearly underpins the proposed pipeline consists of the plant facilities of CGC, SOEI and Stora. In addition to the three shippers with firm service agreements, M&NP anticipates that further markets will develop upon the establishment of local distribution of natural gas. It is expected that distribution franchises will be awarded in Nova Scotia in 1999 pursuant to provincial legislation enacted in September 1997 (*Gas Distribution Act*). The purpose of the *Gas Distribution Act* is to provide a framework for the orderly development and operation of a gas delivery system in the province, and to allow for fair competition in the sale of gas for consumption in the province.

Based on its expectation that distribution franchises will be awarded, M&NP developed a forecast of future market growth for the Cape Breton and Northern Nova Scotia region that could be served by the Point Tupper Lateral. The forecast was part of an overall assessment of potential gas markets for the Province of Nova Scotia developed by M&NP. Certain assumptions were made regarding usage, conversion, development and market penetration<sup>1</sup> in order to arrive at an ultimate measure of the Nova Scotia market. In its analysis, M&NP assumed that it would be economically feasible to develop distribution systems in the region, but it did not provide any specific evidence to support this assumption.

A forecast market acquisition rate of 50 percent was used for the residential market based, to a large degree, on the past experience of Westcoast Energy Inc. on Vancouver Island, which M&NP argued was an analogous greenfield market. The Company also relied on a Canadian Facts Market Research Study of consumer and business attitudes and perceptions towards natural gas in the Maritimes.

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<sup>1</sup> Market penetration refers to the proportion of residences that have access to natural gas service whereas acquisition rate refers to the proportion of residences that actually convert to natural gas service.

M&NP stated that its assumption of acquisition rates was based on the economic logic in converting to natural gas and the ability of a firm to absorb the capital cost to convert. M&NP assumed an acquisition rate of 65 percent for commercial class customers and an acquisition rate of 100 percent for industrial customers where the service would be available. M&NP's analysis purported to show that the future market potential for the Point Tupper Lateral could reach 13,956 MMBtu/d by Year 15, excluding the current contracted capacity of 15,600 MMBtu/d.

In addition to the markets identified, future industrial projects that may develop, such as Stora's proposed cogeneration facility, were discussed during the proceeding. Stora's proposed 250 megawatt facility would require approximately 29,000 MMBtu/d of natural gas. Stora expects to make a decision on whether or not to proceed with this project in 1999.

Intervenors' views of the potential market to be served by the Point Tupper Lateral were varied. Enbridge Consumers Energy Inc. ("Enbridge") expressed concerns about whether or not the market would really be as large as M&NP expected. On the other hand, both SaskEnergy and Sempra Atlantic Gas Incorporated believed that M&NP had underestimated the size of the potential market. SaskEnergy argued that M&NP's market forecasts were unnecessarily pessimistic while Sempra argued that M&NP's best intentions had not resulted in a full appreciation of the anticipated future market. Sempra was particularly concerned that the regulations of the Nova Scotia Government calling for a commitment "to laying pipe alongside 62 percent of Nova Scotia doorsteps in seven years" was not taken into consideration in M&NP's assumption of 50 percent acquisition rate of the residential market in 15 years.

Both Irving Oil Limited ("Irving Oil") and Nova Scotia believed that M&NP's forecast was reasonable. Irving Oil argued that M&NP had prepared a credible forecast appropriate to the unique aspects of a greenfield project. Nova Scotia was satisfied that M&NP had done a reasonable job of forecasting the market and designing the pipeline with adequate capacity to meet the market into the foreseeable future.

## **5.4 Economic Feasibility and Public Interest**

All intervenors expressed support for the Point Tupper Lateral Project.

M&NP suggested that the Point Tupper Lateral represented a unique opportunity to build a lateral to Cape Breton. M&NP argued that its project had economic feasibility considerations that were different from other projects given that it was a greenfield pipeline that would serve a region that never before had access to natural gas. M&NP acknowledged that a 20 percent load factor on a pipeline does not usually satisfy the Board, but suggested that the Point Tupper Lateral had many uncommon characteristics. One of these characteristics is that the estimated cost of the project was \$20.9 million rather than an estimated cost of \$35.0 million if the project were not built at the same time as the NGL pipeline.

Based on its analysis of existing markets and new market growth, M&NP concluded that the proposed facilities would be used at a reasonable level over their economic life and that the demand charges would be paid.



Several intervenors argued that M&NP's application should be approved because of the environmental benefits of using the same trench and because its cost would only be the incremental cost of building the natural gas pipeline in the same trench as the NGL pipeline.

Irving Oil stated its view that the Board has taken into account different circumstances in its assessment of the economic feasibility of new facilities since its GH-5-89 Decision. Irving Oil contended that for a greenfield pipeline, capacity would sometimes be in place prior to the development of markets and that the market evidence submitted by M&NP should be examined in this context.

New Brunswick argued that the Board did not have an obligation to look at the factors in section 52 of the NEB Act and suggested that section 52 provided the Board with discretion regarding which factors it may find relevant in making a finding of public convenience and necessity. New Brunswick argued that M&NP's evidence on supply, markets and economic feasibility was sufficient to satisfy the Board that the proposed facilities were economic and that they were required by the public convenience and necessity.

### ***Views of the Board***

M&NP filed its application for a certificate of public convenience and necessity pursuant to section 52 of the NEB Act (the full text of which is set out in Appendix IV).

Section 52 sets out the obligations of the Board with respect to this application. In fulfilling its mandate, the Board must have regard to all of the factors in this NEB Act provision.<sup>1</sup> However, it is important to note that Parliament did not find it necessary to specify how these factors or any others that the Board might consider relevant are to be weighted and applied. None of these factors can or should be considered in isolation. Further, while the Board may be guided by past decisions, it need not be bound by them. Therefore, the Board must find an appropriate balance among all of

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<sup>1</sup> The Board notes that the English and French versions of section 52 convey different meanings. The English version states that the Board may have regard to the factors described in paragraphs (a) through (e), while the meaning of the French version does not convey that element of discretion and suggests that the factors in paragraphs (a) through (e) must be considered. Since both versions are official, resort must be taken to the rules for construing bilingual legislation to determine the intention of Parliament. Applying the rules of statutory interpretation applicable in this context, the Board is of the opinion that the French version of section 52 conveys the intention of Parliament and is the version that must be applied.

The French version of section 52 of the NEB Act reads as follows (more restrictive text underlined): *Sous réserve de l'agrément du gouverneur en conseil, l'Office peut, s'il est convaincu de son caractère d'utilité publique, tant pour le présent que pour le futur délivrer un certificat à l'égard d'un pipeline; ce faisant, il tient compte de tous les facteurs qu'il estime pertinents, et notamment de ce qui suit:*

- a) *l'approvisionnement du pipeline en pétrole, gaz ou autre produit;*
- b) *l'existence de marchés réels ou potentiel;*
- c) *la faisabilité économique du pipeline;*
- d) *la responsabilité et la structure financière du demandeur et les méthodes de financement du pipeline ainsi que la mesure dans laquelle les Canadiens auront la possibilité de participer au financement, à l'ingénierie ainsi qu'à la construction du pipeline;*
- e) *les conséquences sur l'intérêt public que peut, à son avis, avoir sa décision.*

the relevant factors, including, but not limited to, those set out in section 52, and must do so on the basis of the evidence before it and within the specific circumstances of each application.

With respect to the availability of gas to the pipeline (paragraph 52(a)) and the financial matters of paragraph 52(d), the Board is satisfied with the evidence of the Company. Neither of these matters was challenged during the course of the hearing.

In recent years, the Board has assessed the economic feasibility of gas pipeline facilities by determining the likelihood of the facilities being used at a reasonable level over their economic life and the likelihood of the demand charges being paid. The Board first established this test in its GH-5-89 Decision with respect to an expansion proposal by TransCanada PipeLines Limited.<sup>1</sup> A determination of economic feasibility normally includes an evaluation of such factors as:

- a) the availability of long-term gas supply;
- b) the long-term outlook for gas demand in the markets to be served;
- c) the contractual commitments underpinning the proposal; and
- d) the risks associated with new gas sales, including any previous experience with the market.

The context in which that test of economic feasibility was first established, and in which it has since been applied, is that of expansions to established pipelines or the construction of new pipelines to serve existing markets.

Considering first the existence of potential markets, the Board has significant concerns with the Cape Breton and Northern Nova Scotia Cumulative Market Forecast presented by M&NP in Table 6-5 of its application. M&NP has not performed an assessment of the feasibility of the transmission and distribution systems that will be required for such markets to materialize. The Board is of the view that, until the awarding of natural gas distribution franchises in Nova Scotia and the distribution systems are constructed, the timing and the extent of the future development of these markets remain uncertain. Furthermore, the Board was not convinced that the market acquisition rates experienced by Westcoast Energy Inc. on Vancouver Island provided an analogy that should be assumed to apply directly to Cape Breton and Northern Nova Scotia. While the existence of the pipeline will undoubtedly lead to utilization beyond the needs of the three firm shippers currently identified, it is difficult to assess the extent of that future market in this greenfield situation.

On the other hand, the Board is satisfied with M&NP's evidence that the shippers on the Point Tupper Lateral are serving long-term markets. The Board notes that firm service agreements are in place for a term of 20 years. Although these markets may initially fill only 22 percent of the capacity of the proposed line, they have been shown to be strong and committed to a long-term utilization of the Point Tupper Lateral.

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<sup>1</sup> GH-5-89 Reasons for Decision, Volume I "Tolling and Economic Feasibility" dated November 1990, Chapter 3, pages 26 and 29.

The Board recognizes that the overall load factor for the proposed lateral will be low in the first years of the project and that the economic feasibility of the proposed facilities is marginal when compared to a strict application of the economic feasibility test developed in the Board's GH-5-89 Decision. However, in the case of a greenfield pipeline serving a market that has not been served by natural gas, it is expected that capacity will be in place prior to the complete development of markets.

In the present case, where a strict and traditional application of the factors normally considered by the Board may not provide a complete assessment of the present and future public convenience and necessity of the proposed pipeline, the Board is of the view that matters of the public interest must be given significant weight. In this regard, the Board notes that the Point Tupper Lateral application represents a unique opportunity to capture the benefits of simultaneous construction of the natural gas pipeline and the NGL pipeline. This combined construction minimizes the environmental effects of the construction of the natural gas line and allows M&NP to pay only the incremental cost of building the natural gas line in the same trench as the NGL pipeline. While the future markets for this pipeline may not be accurately assessable, it is certain that failure to construct this lateral at this time, with the opportunity presented by the common construction, would result in very significant delay in natural gas reaching the Cape Breton region of Nova Scotia. Furthermore, the Board is of the view that the construction of the proposed facilities would serve the public interest because, in general, consumers in a market will benefit from the competition and choice provided by the introduction of an alternative source of energy.

In conclusion, the Board is satisfied, having had regard to all relevant considerations, that the Point Tupper Lateral is and will be required by the present and future public convenience and necessity.

## Chapter 6

# Disposition

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The foregoing chapters constitute our Reasons for Decision in respect of the application heard by the Board in the GH-4-98 proceeding.

The Board is satisfied that the proposed Point Tupper Lateral Pipeline project is, and will be, required by the present and future public convenience and necessity, provided that the terms and conditions outlined in Appendix II are met. Therefore, subject to the approval of the Governor in Council, a certificate of public convenience and necessity will be issued pursuant to Part III of the NEB Act.

Should the Point Tupper application receive approval of the Governor in Council, the Board will grant M&NP an exemption from section 33 of the NEB Act in respect of the approximately 5 km of pipeline through the wetland areas.

The Board confirms that no contribution-in-aid of construction is required for the Point Tupper Lateral facilities and that the full cost of service of the Point Tupper Lateral should be included in the calculation of M&NP's tolls.

J.A. Snider  
Presiding Member

A. Côté-Verhaaf  
Member

C.M. Ozirny  
Member

Calgary, Alberta  
January 1999

## Appendix I

### List of Issues

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The Board has identified, but does not limit itself, to the following issues for discussion in the proceeding:

1. The economic feasibility of the proposed facilities.
2. The appropriateness of the design of the proposed facilities.
3. The safety of the design and operation of the proposed facilities.
4. The potential environmental and socio-economic effects of the proposed facilities, including those factors outlined in subsection 16(1) of the *Canadian Environmental Assessment Act*.
5. Any Part IV issues arising from this Application.
6. The appropriateness of the arrangements proposed by M&NP for the portion of the pipeline which would cross the Strait of Canso.
7. The appropriate terms and conditions to be included in any approval which must be granted.

## Appendix II

# Certificate Conditions

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### General Conditions

1. The pipeline facilities in respect of which this certificate is issued shall be the property of and shall be operated by M&NP.
2. M&NP shall:
  - a) cause the approved facilities to be designed, manufactured, located, constructed and installed in accordance with those specifications, drawings and other information or data set forth in its application, or as otherwise adduced in evidence before the Board, except as varied in accordance with subsection (b) hereof; and
  - b) cause no variation to be made to the specifications, drawings or other information or data referred to in subsection (a) without the prior approval of the Board.
3. M&NP shall apply to the Board, pursuant to section 74 of the NEB Act, for the purchase of the Strait of Canso Crossing portion of the Point Tupper Lateral from SOEI.

### Prior to Commencement of Construction

4. Prior to the commencement of ground-breaking activity, M&NP shall file with the Board its Letter of Commitments to landowners.
5. Unless the Board otherwise directs, M&NP shall implement or cause to be implemented all of the policies, practices, and procedures for the protection of the environment included in or referred to in its Application, in its undertakings made to relevant regulatory authorities, and as adduced in evidence before the Board in the GH-4-98 proceeding.
6. Unless the Board otherwise directs, M&NP shall ensure that the hay and straw used for erosion and sediment control will be free of noxious or invasive weeds.
7. Unless the Board otherwise directs, M&NP shall, at least fifteen (15) days prior to the commencement of the horizontal directional drill, or any in-water work at the Strait of Canso, file with the Board, the following information:
  - a) a detailed crossing plan for the Strait of Canso which would include: the chosen method of crossing, a description of any mitigative measures for the protection of the environment and a description of the procedures by which the contractor would be made aware of such measures; and
  - b) a detailed monitoring program, as identified in the Environmental Protection Plan, which should include baseline data collected prior to construction of the Strait of Canso crossing.

8. Unless the Board otherwise directs, M&NP shall file with the Board and maintain at its construction office(s), copies of any permits, approvals or authorizations for the applied-for facilities issued by federal, provincial and other permitting agencies, which include environmental conditions, or site-specific mitigative and restorative measures. In addition, M&NP shall file with the Board and maintain at its construction office(s), an information file(s) which would include any subsequent variations to any permits, approvals or authorizations, obtained prior to, or following the commencement of construction.
9. Unless the Board otherwise directs, M&NP shall file with the Board for approval, fifteen (15) days prior to the commencement of ground-breaking activities, updated copies of previously filed Environmental Protection Plans. The three Environmental Protection Plans shall include a wet-weather shut-down policy that includes watercourse crossings and approaches.
10. Unless the Board otherwise directs, M&NP shall, at least twenty one (21) days prior to the commencement of construction of the wet watercourse crossings, submit to the Board for approval, additional information regarding each watercourse crossing. The additional information shall include:
  - a) a construction schedule for all crossings;
  - b) the construction designs of the crossings;
  - c) the proposed duration of the construction of the crossings;
  - d) in-stream timing restrictions identified by regulatory agencies;
  - e) an erosion and sediment control plan;
  - f) site-specific mitigative and restorative measures to be employed as a result of consultations with regulatory agencies;
  - g) if blasting is required, the blasting plan, including comments from the Department of Fisheries and Oceans;
  - h) copies to the Board of all correspondence from Department of Fisheries and Oceans and the Nova Scotia Department of the Environment regarding watercourse crossings, including evidence to demonstrate that all issues raised by regulatory agencies have been adequately addressed;
  - i) evidence to demonstrate that the proposed construction methods and site-specific mitigative and restorative measures are in compliance with federal and provincial legislation; and
  - j) the status of approvals, including any environmental conditions imposed on approvals which have been received.
11. Unless the Board otherwise directs, M&NP shall, at least thirty (30) days prior to the commencement of construction of the watercourse crossings which appear on the 1:10,000 scale mapping, submit to the Board for approval additional information regarding the treatment

method to deal with acid drainage and specific mitigation measures to be implemented at watercourse crossings in areas of potential acid producing rock, as developed in consultation with Environment Canada and appropriate provincial authorities. The additional information shall set out for each watercourse crossing to be affected:

- a) the name and location of the watercourse;
  - b) the selected treatment method of the runoff water;
  - c) the proposed Canadian Water Quality Guideline values to be adhered to;
  - d) site specific mitigative, monitoring and restorative measures to be employed as a result of consultation with regulatory agencies;
  - e) evidence to demonstrate that all issues raised by regulatory agencies and other interested parties have been adequately addressed, including all necessary updates to the environmental assessment where deficiencies have been identified; and
  - f) the status of approvals, including any environmental conditions imposed on approvals which have been received.
12. Unless the Board otherwise directs, M&NP shall construct the St. Francis Harbour River, Salmon River and the Milford Haven River watercourse crossings using either a dry crossing or horizontal directional drill method.
13. Unless the Board otherwise directs, M&NP shall submit to the Board for approval, at least fifteen (15) days prior to the commencement of ground-breaking activities, the results of the acid generating rock studies, including any locations which would be affected by construction, the proposed mitigative measures, monitoring requirements and the results of consultations with Environment Canada and appropriate provincial authorities. The Environmental Protection Plans shall include all of the above-referenced information for the protection of the environment.
14. Unless the Board otherwise directs, M&NP shall submit to the Board for approval, site-specific mitigation plans for each active nest of a raptor or sensitive species encountered within 400 m of the right-of-way, developed in consultation with Environment Canada wildlife experts.
15. Unless the Board otherwise directs, M&NP shall consult with the Nova Scotia Museum of Natural History and SOEI to determine an appropriate method of archaeological/heritage assessment and monitoring for the right-of-way and temporary work space common to M&NP and SOEI. Unless the Board otherwise directs, M&NP shall, at least thirty (30) days prior to the commencement of ground-breaking activities, file with the Board for approval, the agreed upon method of archaeological/heritage assessment and monitoring.
16. Unless the Board otherwise directs, M&NP shall file with the Board an action plan, to be developed in consultation with Environment Canada, for minimizing and accounting for greenhouse gas emissions for all of M&NP's facilities in Atlantic Canada prior to the



commissioning of the Point Tupper Lateral project. M&NP shall file the results of this action plan with the Board and Environment Canada on an annual basis.

17. Unless the Board otherwise directs, M&NP shall, at least twenty-one (21) days prior to the commencement of construction of the approved facilities, file with the Board a detailed construction schedule or schedules identifying major construction activities and shall notify the Board of any modifications to the schedule or schedules as they occur.
18. Unless the Board otherwise directs, at least thirty (30) days prior to the commencement of construction, M&NP shall submit to the Board, for approval:
  - a) its field joining program, pursuant to section 21 of the National Energy Board *Onshore Pipeline Regulations* ("OPR"); and
  - b) its construction safety manual, pursuant to section 26 of the OPR.
19. Unless the Board otherwise directs, at least thirty (30) days prior to the commencement of construction of the 168.3 mm O.D. (NPS 6) portion of its lateral, M&NP shall submit to the Board for approval the Geotechnical Report for the NPS 6 line.
20. Unless the Board otherwise directs, M&NP shall file with the Board, at least twenty-one (21) days prior to the commencement of construction, an inspection program that includes a detailed list of the number and type of each inspection position, including job descriptions and qualifications, that will be responsible for the inspection of the various pipeline construction operations, including environment and safety.

#### **During Construction**

21. Unless the Board otherwise directs, M&NP shall file with the Board for approval ten (10) days prior to seeding, the seed mixes to be used for revegetation of the right-of-way and temporary work spaces, as developed in consultation with Environment Canada, and appropriate provincial agencies.
22. Unless the Board otherwise directs, M&NP shall file with the Board a report on the results of the archaeological/heritage monitoring, including the treatment of any archaeological/heritage site encountered during construction.
23. Unless the Board otherwise directs, M&NP shall, during construction, maintain for audit purposes at each construction site, a copy of the welding procedures and non-destructive testing procedures used on the project together with all supporting documentation.
24. Unless the Board otherwise directs, M&NP shall, at least twenty-one (21) days prior to the commencement of pressure testing, file with the Board the information outlined in section 33 of the OPR, complete with a pressure testing manual for Board approval pursuant to section 34 of the OPR, and any specific mitigative measures that M&NP intends to use for pressure testing.

## **Post Construction**

25. Unless the Board otherwise directs, M&NP shall file with the Board a post-construction environmental report within six months of the date that each approved facility is placed in service. The post-construction environmental report shall set out the environmental issues that have arisen up to the date on which the report is filed and shall:
  - a) provide a description of all minor amendments to practices, procedures and recommendations which have been implemented during the construction process;
  - b) indicate the issues resolved and those unresolved; and
  - c) describe the measures M&NP proposes to take in respect of the unresolved issues.
26. Unless the Board otherwise directs, M&NP shall file with the Board, on or before the 31 January that follows each of the first two complete growing seasons following the filing of the post-construction environmental report referred to in Condition 14:
  - a) a list of the environmental issues indicated as unresolved in the report and any that have arisen since the report was filed; and
  - b) a description of the measures M&NP proposes to take in respect of any unresolved environmental issues.
27. Unless the Board otherwise directs, at least thirty (30) days prior to placing the approved facilities in service, M&NP shall file with the Board for approval an operation and maintenance manual pursuant to section 48 of the OPR.
28. Unless the Board otherwise directs, at least thirty (30) days prior to placing the approved facilities in service, M&NP shall file with the Board for approval an emergency response plan pursuant to section 49 of the OPR.
29. Unless the Board otherwise directs, at least thirty (30) days prior to the commencement of operation of the Point Tupper Lateral, M&NP shall submit to the Board, for approval, the M&NP/SOEI Operating Agreement.

## **Expiration of Certificate**

30. Unless the Board otherwise directs prior to 31 December 2000, this certificate shall expire on 31 December 2000 unless the construction and installation with respect to the applied-for facilities has commenced by that date.

## Appendix III

### Rulings

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#### 1.0 Direct Access - Enbridge and Gas New Brunswick ("Gas NB")

##### *Board's Letter of Decision Dated 9 October 1998*

In their interventions, Enbridge and Gas NB requested that the Board add, as an issue to these proceeding, the following:

"The potential commercial impacts of the proposed facilities, including the potential commercial impact that direct service to M&NP's customers, who are also end users, may have on the development of a gas delivery system to serve markets in Cape Breton and northeastern Nova Scotia."

By letter dated 1 October 1998, the Board requested that parties provide their comments on whether this issue should be added to the List of Issues. By further letter of 5 October 1998, the Board allowed Enbridge and Gas NB to respond to submissions on this matter. After examining all submissions made, the Board, for the reasons stated below, decided to deny the request of Enbridge and Gas NB to add the proposed issue to the List of Issues.

In paragraph 3 of their interventions, Enbridge and Gas NB cited two justifications for adding the issue. They were as follows:

1. The proposed issue is relevant and justified because "M&NP has anticipated the awarding of distribution franchises in Nova Scotia", and although not included in the lateral test, M&NP presents a "Forecast of future market growth" in Table 6-5 (NEB Facilities Application, p. 36). This expectation of additional demand at reasonable levels", together with the "strong shipper commitment", "demonstrate that the demand for the transportation service offered by the Point Tupper Lateral will ensure utilization of the related facilities long into the future".
2. The proposed issue involves a matter of public interest, within the meaning of the term in clause 52(e) of the *National Energy Board Act*. Finally, the proposed issue is not unusual; to the contrary, the Board has identified a similar issue in three recent proceeding: GH-3-97 (Alliance Pipeline Project), GH-1-98 (Coleman Pipeline Project), and GH-2-98 (AEC Suffield Pipeline Project). CGEI also notes that, in the GH-3-97 proceeding, the Board allowed cross-examination "in the area of by-pass" because "potential commercial impacts is an issue" and, in the context of this proceeding, "direct service" is a synonym for "bypass".

#### *Ruling*

With respect to (1) above, the Board agrees that certain matters apparently intended to be included in the proposed issue are relevant. M&NP's evidence refers directly to the awarding of distribution franchises in the Province of Nova Scotia. To the extent that a proponent puts forth evidence in a proceeding that is relevant to that proceeding, it is always appropriate to allow a thorough testing of that evidence through information requests and cross-examination during the hearing. However, in the

view of the Board, these matters are clearly contemplated by and may be included in the Board's examination of the "economic feasibility of the proposed facilities".

With respect to the arguments set out in (2) above, the Board views the issues included in the cited cases as dealing with situations where existing facilities and commercial arrangements were in place. That was the context in which the issue was included in each of the hearings referred to. Thus, this argument of CGEI and GNB does not support the relevance of the proposed issue to the current proceeding.

In conclusion, the proposed issue will not be added for the reasons that: (a) to the extent that it relates to market growth, demand and utilization, the issue is already included as "economic feasibility"; and (b) the Board does not view the issue of "potential commercial impacts" on hypothetical facilities or speculative commercial arrangements to be relevant to these proceeding.

## **2.0 M&NP's section 58 application**

On 16 November 1998, M&NP applied for leave to amend its application filed under section 52 pursuant to section 58 of the NEB Act exempting certain facilities which will form part of the Point Tupper Lateral from sections 30 to 33 and section 47 of the NEB Act.

The section 58 application consisted of approximately 5 km of NPS 8 natural gas pipeline in a common trench and right-of-way with SOEI's NGL pipeline and a related temporary access road. The proposed work would be carried out in wetland areas in the Carter's Lake area between KP 48+520 and KP 53+680, east of St. Francis Harbour River to the Carter's Lake area.

The reason for the application was to accommodate SOEI's construction schedule so that the construction of approximately 5 km of pipeline through wetland areas can commence at the beginning of February 1999. In light of the regulatory schedule affecting the application under section 52 of the NEB Act as well as the time required for a detailed route approval process, M&NP believed that the winter wetland construction facilities must be exempted under section 58 of the NEB Act if there was to be any chance of meeting SOEI's construction schedule.

M&NP submitted that it recognized the environmental benefits associated with installing the relevant portion of its gas lateral in the winter and at the same time as SOEI's NGL pipeline. The Company stated that it sought the support of the federal responsible authorities and the key provincial authorities prior to applying to the Board to amend its application. M&NP submitted that it had contacted all affected landowners and those affected by the safety zone to advise them of the section 58 process.

### ***Ruling***

"The motion put forward by M&NP is to amend its application concerning the Point Tupper facilities to exclude those facilities described in a section 58 application filed with the Board on 16 November 1998. The reason for the request to amend the application is to accommodate the SOEI construction schedule so that the construction of approximately 5 km of pipeline through wetland areas can commence at the beginning of February, 1999. The Board has considered the arguments put forward by M&NP in support of its application, and the arguments put forward by others, and concludes that although there may be practical reasons for the proposal to amend the

application, there is no legal basis upon which this motion may be granted in respect of an exemption from section 30 of the *National Energy Board Act*. The Federal Court, in *Alberta and WestCoast Energy Inc.*, the Pesh Creek Reference that we referred to earlier, said, and I quote: **"The Board is obviously not entitled to partition a project into multiple sections so as to be able to consider all or some of them under the exceptional provisions of section 58 of its enabling statute ---** "That is a compelling argument for not granting the application as made. The Point Tupper Lateral is a single project. To allow the applicant to carve out 5 km of that project and to seek approval for that portion of the project under section 58 of the *NEB Act* would be contrary to the clear meaning of section 52 of the Federal Court's pronouncement in the *Pesh Creek* Decision. The 5 km that were applied for under section 58 will not be excluded from the facilities applied for under section 52 of the Act. During your submissions, Mr. Smith, we heard that your major concern was with respect to the filing of the Plan, Profile and Book of Reference, which, in turn, trigger the Detailed Route Procedures of the *National Energy Board Act*. So should you, Mr. Smith, wish to provide submissions at the end of the proceeding regarding the end of the proceeding regarding the appropriateness of granting a section 58 exemption from section 33 in respect of these 5 km of facilities through the wetlands, we will hear you on that matter. And further, if you wish to leave your options open regarding winter construction, we would expect your witnesses to be able to speak to both this and the spring construction as proposed in the application. Mr. Smith, that is our Ruling in this matter".

### **3.0 Test Toll Issue - SaskEnergy**

SaskEnergy asked M&NP if it was prepared to accept a condition on any certificate granted by the Board as follows:

"Until such time as there is an expansion of the M&NP mainline system, the test toll for the purposes of the M&NP Lateral Policy shall be the greater of 60 cents per MMBtu or the actual toll on the M&NP system at the time the Lateral Policy is applied."

SaskEnergy argued that the record of GH-6-96 and the Lateral Policy did not stipulate a 60 cent test toll.

M&NP objected that the proposed condition would be, in effect, a review of the Sable Joint Review Panel's decision (GH-6-96), and a change to the Lateral Policy, as put forward and approved by the Board. Based on the GH-6-96 proceeding, M&NP stated that it was understood that the Tolling and Lateral Policy embedded a 60 cent test toll. It further stated that the 60 cent test toll was an absolutely key control feature of the Lateral Policy.

#### ***Ruling***

"It is our view that the 60-cent test toll was a fundamental element of the Lateral Policy, as described by Maritimes & Northeast and debated at great length and decided in the GH-6-96 Proceeding. The Board approved the Lateral Policy in that Proceeding in its entirety, without exception of any of its elements. We do not feel that it would

be appropriate to amend the Policy, which would amount to a review of the GH-6-96 Decision on this point.

Mr. Laprairie, and other Parties, your questions and any evidence which assumes that the Lateral Policy is open for reconsideration will not be allowed in this Proceeding. And, in our view, embedded in that Lateral Policy is a 60 cent test toll. That is our Ruling on this matter.”

## Appendix IV

### Excerpts from Sections of the NEB Act

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Below are excerpts of the sections of the *National Energy Board Act* referred to in these Reasons for Decision.

#### Section 30 - Operation of Pipeline

- 30.(1) No company shall operate a pipeline unless
- a) there is a certificate in force with respect to that pipeline; and
  - b) leave has been given under this Part to the company to open the pipeline.
- (2) No company shall operate a pipeline otherwise than in accordance with the terms and conditions of the certificate issued with respect thereto.

R.S., c. N-6, s. 26.

#### Section 31 - Location of Pipelines - Approval of Board

31. Except as otherwise provided in this Act, no company shall begin the construction of a section or part of a pipeline unless
- a) the Board has by the issue of a certificate granted the company leave to construct the line;
  - b) the company has complied with all applicable terms and conditions to which the certificate is subject;
  - c) the plan, profile and book of reference of the section or part of the proposed line have been approved by the Board; and
  - d) copies of the plan, profile and book of reference so approved, duly certified as such by the Secretary, have been deposited in the offices of the registrars of deeds for the districts or counties through which the section or part of the pipeline is to pass.

R.S., c. N-6, s. 27; 1980-81-82-83, c. 116, s. 9.

#### Section 32 - Application for certificate

- 32.(1) On an application for a certificate, the company shall file with the Board a map in such detail as the Board may require showing the general location of the proposed line and such plans, specifications and information as the Board may require.
- (2) The company shall file a copy of the application and of the map referred to in subsection (1) with the attorney general of each province to which the application relates in whole or in part, and the Board shall require notice of the application to be given by publication in newspapers or otherwise.

R.S., 1985, c. N-7, s. 32; 1990, c. 7, s. 15.

### **Section 33 - Plan, Profile and Book of Reference**

33. (1) When the Board has issued a certificate, the company shall prepare and submit to the Board a plan, profile and book of reference of the pipeline.
- (2) The plan and profile shall be drawn with such detail as the Board may require.
- (3) The book of reference shall describe the portion of land proposed to be taken in each parcel of land to be traversed, giving the numbers of the parcels, and the area, length and width of the portion of each parcel to be taken, and the names of the owners and occupiers in so far as they can be ascertained.
- (4) The plan, profile and book of reference shall be prepared to the satisfaction of the Board, and the Board may require the company to furnish any further or other information that the Board considers necessary.

R.S., c. N-6, s. 29; R.S., c. 27(1st Supp.), s. 9.

### **Section 47 - Leave to open line**

47. (1) No pipeline and no section of a pipeline shall be opened for the transmission of hydrocarbons or any other commodity by a company until leave to do so has been obtained from the Board.

1996, c. 10, s 237.1

- (2) Leave may be granted by the Board under this section if the Board is satisfied that the pipeline may safely be opened for transmission.

R.S., c. N-6, s. 38.

### **Section 52 - Certificates**

52. The Board may, subject to the approval of the Governor in Council, issue a certificate in respect of a pipeline if the Board is satisfied that the pipeline is and will be required by the present and future public convenience and necessity and, in considering an application for a certificate, the Board shall have regard to all considerations that appear to it to be relevant, and may have regard to the following:
- a) the availability of oil, gas or any other commodity to the pipeline;
  - 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.

R.S., 1985, c. N-7, s. 52; 1990, c. 7, s. 18; 1996, c. 10, s. 238.



## **Section 58 - Exempting orders respecting pipelines, etc**

58. (1) The Board may make orders exempting
- a) pipelines or branches of or extensions to pipelines, not exceeding in any case forty kilometres in length, and
  - b) such tanks, reservoirs, storage facilities, pumps, racks, compressors, loading facilities, interstation systems of communication by telephone, telegraph or radio, and real and personal property and works connected therewith, as the Board considers proper,
- from any or all of the provisions of sections 29 to 33 and 47.
- (2) [Repealed, 1990, c. 7, s. 22]
- (3) In any order made under this section the Board may impose such terms and conditions as it considers proper.

R.S., 1985, c. N-7, s. 58; 1990, c. 7, s. 22.

## **Section 74 - Limitations on purchase and sale, etc.**

74. (1) A company shall not, without the leave of the Board,
- a) sell, convey or lease to any person its pipeline, in whole or in part;
  - b) purchase or lease any pipeline from any person;
  - c) enter into an agreement for amalgamation with any other company; or
  - d) abandon the operation of a pipeline.
- (2) For the purposes of paragraph (1)(b), "pipeline" includes a pipeline as defined in section 2 or any other pipeline, and, for the purposes of paragraph (1)(c),
- (3) Notwithstanding paragraph (1)(a), leave shall only be required where a company sells, conveys or leases such part or parts of its pipeline as are capable of being operated as a line for the transmission of gas or oil.

R.S., c. N-6, s. 63; R.S., c. 27(1st Supp.), s. 19.

## Section 86 - Methods of acquisition

86. (1) Subject to subsection (2), a company may acquire lands for a pipeline under a land acquisition agreement entered into between the company and the owner of the lands or, in the absence of such an agreement, in accordance with this Part.
- (2) A company may not acquire lands for a pipeline under a land acquisition agreement unless the agreement includes provision for
- a) compensation for the acquisition of lands to be made, at the option of the owner of the lands, by one lump sum payment or by annual or periodic payments of equal or different amounts over a period of time;
  - b) review every five years of the amount of any compensation payable in respect of which annual or other periodic payments have been selected;
  - c) compensation for all damages suffered as a result of the operations of the company;
  - d) indemnification from all liabilities, damages, claims, suits and actions arising out of the operations of the company other than liabilities, damages, claims, suits and actions resulting from gross negligence or wilful misconduct of the owner of the lands;
  - e) restricting the use of the lands to the line of pipe or other facility for which the lands are, by the agreement, specified to be required unless the owner of the lands consents to any proposed additional use at the time of the proposed additional use; and
  - f) such additional matters as are, at the time the agreement is entered into, required to be included in a land acquisition agreement by any regulations made under paragraph 107(a).

R.S., c. N-6, s. 74; 1980-81-82-83, c. 80, s. 5.

## **Section 87 - Notice of proposed acquisition of lands**

87. (1) When a company has determined the lands that may be required for the purposes of a section or part of a pipeline, the company shall serve a notice on all owners of the lands, in so far as they can be ascertained, which notice shall set out or be accompanied by
- a) a description of the lands of the owner that are required by the company for that section or part;
  - b) details of the compensation offered by the company for the lands required;
  - c) a detailed statement made by the company of the value of the lands required in respect of which compensation is offered;
  - d) a description of the procedure for approval of the detailed route of the pipeline; and
  - e) a description of the procedure available for negotiation and arbitration under this Part in the event that the owner of the lands and the company are unable to agree on any matter respecting the compensation payable.
- (2) Where a land acquisition agreement referred to in section 86 is entered into with an owner of lands before a notice is served on the owner pursuant to this section, that agreement is void.
- (3) Where a company serves a notice on an owner of lands under subsection (1) and subsequently decides not to acquire all or part of the land described in the notice, it is liable to the owner for all damages suffered and reasonable costs incurred by the owner in consequence of the notice and the abandonment of the acquisition of the land and the owner may bring an action to recover the amount of the damages and costs in any court of competent jurisdiction in the province in which the land is situated.

R.S., c. N-6, s. 75; R.S., c. 27(1st Supp.), s. 21; 1980-81-82-83, c. 80, s. 5.

## Appendix V

### M&NP's Lateral Policy (as filed in the GH-6-96 proceeding)

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#### 17 Policy with respect to Fees and Construction of New Facilities

- 17.1 Customers may request that Pipeline construct a pipeline extension (other than a mainline extension) from Pipeline's existing facilities to deliver gas to one or more Customers, including new delivery points and enlargements or replacements of existing laterals. Pipeline is not required to build facilities upon Customer request or otherwise if, as determined by Pipeline in its reasonable judgment, such facilities are not operationally feasible, will adversely impact on Pipeline's existing services or would otherwise adversely impact Pipeline's system. In the event Pipeline decides to construct such facilities and the contracted demand requested by a Customer generates sufficient revenue each year, based on a test toll designed to maintain the competitiveness of Pipeline's rates, to recover the annual cost of service associated with the incremental capital and operating cost of the facilities, Pipeline will proceed to construct the facilities without any contribution from the Customer. The test toll will remain in place until Pipeline's first mainline expansion at which time the appropriateness of the test toll may be revisited. If the facilities do not generate sufficient revenue to cover the cost of service associated therewith, Pipeline will require a Customer contribution in accordance with the following:
- a) The annual cost of service associated with the facilities will be calculated for each year using conventional cost of service methodology based on Pipeline's estimate of the capital and operating costs of the facilities and a depreciation rate based on the term of the shipper's transportation contract.
  - b) A contribution will only be based on the period in which the facilities generate a revenue deficit.
  - c) Customers have the option of paying the contribution as a single lump-sum payment at the commencement of the facilities project or as a unit surcharge that would amortize the contribution over the term of the contract. If Customer elects to pay a surcharge, the surcharge may be adjusted up or down in future years, if new Customers request service on the same facilities.

Where a Customer requests service that requires more than one set of facilities to be constructed in the same time frame, as determined by Pipeline, such sets of facilities can be considered as one project for the purposes of calculating the need for any contribution.

- 17.2 Pipeline may waive from time to time, at its discretion, all or a portion of the monetary reimbursement requirement set forth in Section 17.1 if it determines that construction of the facilities would be economic, based on Customer assurance of transportation throughput through the proposed facilities and other matters, as described below. All requests for waiver shall be handled by Pipeline in a manner which is not unduly discriminatory.

For purposes of determining whether a project is economic, Pipeline will evaluate projects on the basis of various economic criteria, which may include, without limitation, the estimated transportation throughput, cost of the facilities, operating, maintenance, administrative and general expenses attributable to the facilities, the system net revenues Pipeline estimates will be generated subsequent to such construction and the availability of capital funds on terms and conditions acceptable to Pipeline. In estimating the system net revenues to be generated, Pipeline will evaluate the existence of capacity limitations of the existing facilities, the marketability of the capacity, the location of the markets, the nature of the transportation service, and other factors with impact the utilization of Pipeline's system.

- 17.3 Any monetary reimbursement due Pipeline by Customer pursuant to this Section 17 shall be due and payable to Pipeline within ten (10) Days of receipt by Customer of Pipeline's invoices for same; provided, however, such monetary reimbursement, plus carrying charges thereon, may be amortized over the contract term or a mutually agreeable period. Carrying charges shall be computed utilizing interest factors acceptable to both Pipeline and Customer.
- 17.4 Nothing in this statement of policy shall require Pipeline to file an application for a certificate of public convenience and necessity under Part III of the *National Energy Board Act*. Further, nothing in this policy statement shall prevent Pipeline from contesting an application for the provision of facilities filed pursuant to subsection 71(3) of the *National Energy Board Act* or a request to compel the rendition of service pursuant to subsection 71(2) of the *National Energy Board Act*. Pipeline reserves the right to seek a waiver of the policies set forth in this Section 17 for good cause shown during any proceeding before the NEB.

## **Appendix VI**

# **Memorandum of Understanding dated 3 December 1997**

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### **1. Introduction**

The purpose of this Memorandum of Understanding ("MOU") is to summarize the general scope and principles which have been agreed to in respect of certain aspects of the Sable Offshore Energy Project ("SOEP") and the Maritimes & Northeast Pipeline Project ("M&NPP") among the following parties (individually a "Party" and collectively the "Parties"): Mobil Oil Canada Properties ("Mobil"), Shell Canada Limited ("Shell"), Imperial Oil Resources Limited ("IORL"), Nova Scotia Resources Limited ("NSRL"), (Mobil, Shell, IORL and NSRL collectively referred to as the "SOEP Producers"), Maritimes & Northeast Pipeline Limited Partnership ("M&NE"), Nova Scotia Power Inc. ("NSPI") and the Province of Nova Scotia ("Nova Scotia").

### **2. Completion of Formal Agreements**

The Parties undertake to negotiate in good faith and to execute and deliver all necessary formal agreements and other documents which may be required to carry out the terms of this MOU as soon as possible. The Parties recognize that in some instances the parties to the formal agreements may be affiliates of a Party rather than the Party itself or may include an affiliate of a Party in addition to such Party.

### **3. Halifax Lateral**

Subject to obtaining all regulatory approvals, M&NE will construct a pipeline lateral from the M&NPP mainline pipeline to the Halifax Regional Municipality and terminating at the Tuft's Cove NSPI power plant; provided that, NSPI enters into a firm service transportation agreement for a daily quantity of at least 45,000 MMBtu for a period of at least ten years which specifies Tuft's Cove as the delivery point. NSPI agrees to specify its Tuft's Cove power plant as the delivery point in its Precedent Transportation Service Agreement with M&NE dated March 4, 1997 for a daily quantity of at least 45,000 MMBtu and to enter into a firm service transportation agreement upon the satisfaction of all conditions precedent in such Precedent Transportation Service Agreement. M&NE agrees that it will not require an aid to construct from NSPI if it enters into a firm service transportation agreement on the foregoing terms.

### **4. Cape Breton Lateral**

Subject to obtaining all regulatory approvals, M&NE will construct a pipeline lateral from the M&NPP mainline pipeline to the Point Tupper area in Cape Breton concurrently with the SOEP Producers' construction of the natural gas liquids pipeline; provided that, firm service transportation agreements are entered into in a timely fashion, for a daily quantity of at least 10,000 MMBtu for a period of at least twenty years which specify locations on such lateral as delivery points. As part of this 10,000 MMBtu, the SOEP Producers agree to enter into a firm service transportation agreement with M&NE for a daily quantity of at least 2,000 MMBtu for a period of at least 20 years which specifies the

SOEP fractionation plant at Point Tupper as a delivery point. The Parties recognize that there will be a substantial reduction in the overall costs of the natural gas liquids pipeline and the Cape Breton lateral if both pipelines are constructed at the same time. In order to allow the Cape Breton lateral to be constructed at the same time and to lower the initial threshold quantity of gas which has to be transported on this lateral to satisfy M&NE's; lateral policy, the SOEP Producers have agreed that M&NE will only be required to pay the incremental costs associated with the construction of the Cape Breton lateral which are over and above the stand-alone cost of constructing the natural gas liquids pipeline. This contribution by the SOEP Producers will allow the Cape Breton lateral to be constructed by M&NE without M&NE requiring an aid to construct from the M&NE shippers which will be transporting the initial 10,000 MMBtu of daily quantities on this lateral.

## **5. Nova Scotia Gas Market Development Initiative**

In the spirit of the Canada-Nova Scotia Offshore Petroleum Resources Accord which provides that Nova Scotia should be the principal beneficiary of the petroleum resources in the offshore of Nova Scotia, the SOEP Producers will fund a Government initiative to promote the use of gas within Nova Scotia during the initial ten year period of production from the SOEP. The level of the fund will be established based on a reasonable forecast of the quantities of gas to be consumed in Nova Scotia during such ten year period.

The fund will be managed by Nova Scotia and Nova Scotia deems it appropriate to use this fund in Government programs designed to achieve a lower delivered cost of gas for all gas consumers in Nova Scotia whether they are served directly off of the mainline pipeline or off of any lateral which may be constructed in Nova Scotia. M&NE supports the establishment of the fund and where appropriate, agrees that, upon the request of Nova Scotia, it will allow its administration and billing systems to be utilized in connection with Nova Scotia's management of the fund. The SOEP Producers and NSPI agree to allow their administration and billing systems to be utilized in a similar manner.

Funding of this Nova Scotia Gas Market Development Initiative is to be construed as being part of the benefits to be provided by the SOEP Producers of Nova Scotia and no other funds of similar mechanisms with the same intent or objective will be created by the SOEP Producers.

## **6. Economic Feasibility of the M&NPP**

All Parties recognize that the Canadian segment of the M&NPP will require, amongst other things, an initial daily threshold transportation contract quantity of 530,000 MMBtu of long term firm service to underpin its financing and to support its economics. Accordingly, each Party agrees that it will not take any action which would reduce the initial daily contract quantity to be transported on the Canadian segment of the M&NPP below this initial threshold daily contract quantity in order to allow the SOEP to proceed.

## **7. Tolls in Respect of Quantities in Excess of 530,000 MMBtu During the Initial Ten Year Period**

Each Party recognizes that the regulators having jurisdiction could approve tolls for the Canadian segment of the M&NPP in respect of the transportation of daily quantities in excess of 530,000 MMBtu which will allow M&NE to be market competitive with other transportation alternatives (e.g. bypass competitive rates). M&NE agrees to discuss all tolling methodologies for these quantities with

the Parties and any other interested third parties including bypass rates, volume x distance rates and zones including a short-haul zone.

#### **8. Tolling Methodology After the Expiry of the Initial Ten Year Period**

Each Party recognizes that the regulators having jurisdiction could approve a tolling methodology on the Canadian segment of the M&NPP which will apply in respect of the transportation of daily quantities for the period after the initial ten year period of production from the SOEP which will not necessarily be a continuation of a discounted postage stamp toll methodology. M&NE agrees to discuss all other tolling methodologies with the Parties and any other interested third parties including volume x distance rates and zones prior to determining what tolling methodology it will apply for.

#### **9. Nova Scotia Training and Research and Development Programs**

The SOEP Producers and M&NE agree to work with Nova Scotia and other interested third parties in respect of instituting business focused gas industry training programs in Nova Scotia for both the SOEP and future projects involving both the offshore area of Nova Scotia and onshore Nova Scotia. The SOEP Producers and M&NE agree to work with Nova Scotia and other interested third parties in respect of establishing gas industry research and development programs at institutes located in Nova Scotia for both the SOEP and future projects involving both the offshore area of Nova Scotia, and onshore Nova Scotia. The SOEP Producers agree that the management and coordination of these programs will be carried out from within Nova Scotia. These initiatives include the following specific programs:

- a) creating a network of centres of excellence in onshore and offshore gas technology;
- b) training in offshore gas production operations utilizing the SOEP simulator;
- c) environmental, health and safety training; and
- d) making onshore gas distribution and pipeline and offshore industry training modules available and assisting in establishing training programs based on these modules.

#### **10. Supply of Petrochemical Feedstocks**

Each of Mobil, Shell, IORL and NSRL support the potential for the development within Nova Scotia of petrochemical uses for the production from the SOEP and specifically agree:

- a) to fractionate SOEP raw natural gas liquids into propane, butane and condensate in the Point Tupper area of Cape Breton;
- b) to not enter into any commitments to supply the fractionated natural gas liquids products for delivery outside of Nova Scotia, during the initial ten year period of production from the SOEP, under any arrangement with a term in excess of two years without ensuring that an equivalent product would be made available by the relevant producer, if required, for use within Nova Scotia at market competitive prices and on normal industry terms and conditions. If petrochemical development in Nova Scotia has not commenced by the end of the ninth year of the said ten year period, then



SOEP Producers and Nova Scotia will forthwith undertake to review the future prospects for petrochemical development in Nova Scotia, taking into account the expected future production from the offshore area of Nova Scotia; and

- c) to remove or to allow third parties to remove ethane from the gas which will be transported on the M&NPP under market competitive prices and on normal industry terms and conditions for use in Nova Scotia should a viable use for such ethane develop and provided that the third party or each SOEP Producer can make arrangements in order that an equivalent quantity of energy, meeting pipeline quality specifications, can continue to be delivered to M&NE's customers and further provided that the SOEP Producers do not suffer any negative financial consequences relating to either the upstream processing of gas or the downstream transportation and sale of gas.

#### **11. Mobil's Interest in the M&NPP**

Mobil offers to sell an agreed percentage of its interests in the M&NPP to NSPI. Mobil and NSPI will negotiate in good faith to establish the formal agreement respecting this arrangement. M&NE will obtain waivers of the appropriate rights of first refusal which any M&NE limited partner or any Maritimes & Northeast Pipeline, L.L.C. member may have in respect of any such disposition by Mobil to NSPI.

#### **12. Nova Scotia Resources Limited**

NSRL agrees to become an active participant in the SOEP and to use all reasonable efforts to work with the remaining SOEP Producers to sign the Sable Offshore Energy Project Commercial Terms Memorandum of Understanding dated April 1, 1997 and to work to finalize all critical SOEP project documents as soon as possible. NSRL and Nova Scotia agree that should NSRL wish to dispose of its interest in the SOEP either by an asset sale or as a result of the sale of the shares of Nova Scotia Resources (Ventures) Limited, then NSRL shall first provide Mobil and Shell with a right of first refusal. Such right of first refusal shall be in priority to any rights of first refusal contained in any of the project documents to be entered into among the SOEP Producers. NSRL, Nova Scotia, Mobil and Shell will negotiate in good faith to establish the formal agreement respecting this right of first refusal arrangement.

#### **13. Provincial Jurisdiction Over Laterals**

Nova Scotia and M&NE will carry out further discussions to investigate whether the "transportation by others" concept could be utilized for future laterals to be constructed in Nova Scotia other than the proposed Halifax and Cape Breton laterals referred to in paragraphs 3 and 4 of this MOU. The Parties recognize that future laterals to other communities in Nova Scotia may be constructed, consistent with M&NE's lateral policy and Nova Scotia's Gas Distribution Act, as markets develop.

#### **14. Regulatory Approvals**

All Parties agree to publicly support the SOEP and the M&NPP. Nova Scotia agrees to support the SOEP Producers and M&NE in achieving all federal regulatory approvals, without delay, and in achieving, without delay, the necessary federal Governor-in-Council approvals. Each Party agrees that it shall not seek any review, appeal or rehearing of the Joint Review Panel's recommendations

contained in its October 27, 1997 report or of any decision or regulatory approval associated with the SOEP or the M&NPP which is consistent with such recommendations and each Party further agrees that it shall not support any third party in connection with any review, appeal or rehearing of any such decision or regulatory approval which may be sought by any third party.

## **15. Termination Rights**

Any Party may elect to terminate any future obligations of such Party under this MOU by providing thirty days' written notice of its election to all other Parties in the event that:

- a) the SOEP Producers have not elected to proceed with the SOEP by December 31, 1997 or do not continue to proceed with the SOEP thereafter;
- b) M&NE does not continue to proceed with the M&NPP; or
- c) the formal agreement required to address the matters set out in paragraphs 3, 4 and 5 of this MOU have not been executed by December 15, 1997 or such later date as the Parties may otherwise agree.

The SOEP Producers and Nova Scotia may elect to terminate any future obligations which they may have under this MOU by providing thirty days' notice of its election to all other Parties if a definitive agreement among the SOEP Producers and Nova Scotia on royalty matters has not been reached by December 31, 1997. The SOEP Producers, M&NE or Nova Scotia may elect to terminate any future obligations which they may have under this MOU by providing thirty days' notice of its election to all other Parties if the formal agreement required to address the matters set out in paragraph 9 of this MOU has not been executed by December 15, 1997 or such later date as those Parties may otherwise agree. Mobil, Shell, IORL, NSRL or Nova Scotia may elect to terminate any future obligations which they may have under this MOU by providing thirty days' notice of its election to all other Parties if formal agreements required to address the matters set out in paragraphs 10 and 12 of this MOU have not been executed by December 15, 1997 or such later date as those Parties may otherwise agree. Any Party providing a notice referred to in paragraph 15 of this MOU shall have no further obligations under this MOU from and after the end of the thirty day notice period.