



National Energy  
Board

Office national  
de l'énergie

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## Reasons for Decision

**Imperial Oil Resources Limited  
and Boston Gas Company**

**GH-1-99**

**June 1999**

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**Gas Export**

# National Energy Board

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## Reasons for Decision

In the Matter of

**Imperial Oil Resources Limited  
and Boston Gas Company**

Application Pursuant to Part VI of the *National Energy Board Act* for a Licence to Export Natural Gas

**GH-1-99**

**June 1999**

## **ERRATA**

### **NATIONAL ENERGY BOARD**

Reasons for Decision  
in the matter of an application from

Imperial Oil Resources Limited and Boston Gas Company

### **GH-1-99**

The following corrections are made to the GH-1-99 Reasons for Decision:

- (a) On page 8, Section 4.5, paragraph two, “Alberta spot price” and “monthly Alberta spot price” should both read “contract price”.
- (b) On page 8, Section 4.5, paragraph three, sentence two, “the product of the DQ and the Alberta spot price” should read “the difference between what the DQ is sold for and the contract price”.
- (c) On page 9, paragraph one, “the price” should read “the contract price”.

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## Abbreviations

Act	<i>National Energy Board Act</i>
Bcf	billion cubic feet
Boston Gas	Boston Gas Company
DCQ	Daily Contract Quantity
DQ	Deficient Quantity
DOE/FE	(United States of America) Department of Energy, Office of Fossil Energy
DUQ	Daily Undispatched Quantity
EIA	Export Impact Assessment
Esso	Esso Resources Canada Limited
FS	Firm Service
GHR-1-87	<i>Review of Natural Gas Surplus Determination Procedures</i>
GHW-1-91	<i>Proposed Changes to the Application of the Market-Based Procedure</i>
GHW-4-89	<i>Review of Certain Aspects of the Market-Based Procedure</i>
GJ	gigajoule(s)
IORL	Imperial Oil Resources Limited
Joint Applicants	IORL and Boston Gas
Joint Panel Report	Joint Public Review Panel Report on Sable Gas Projects
LDC	local distribution company
Maritimes & Northeast - Canada	Maritimes & Northeast Pipeline Limited Partnership
Maritimes & Northeast - U.S.	Maritimes & Northeast Pipeline, L.L.C.
MBP	Market-Based Procedure
MMBtu	million British thermal units

MMcf	million cubic feet
MMcf/d	million cubic feet per day
New Brunswick	Province of New Brunswick
NGMA	Natural Gas Market Assessment
NEB, Board	National Energy Board
Nova Scotia	Province of Nova Scotia
NSPD	Province of Nova Scotia Petroleum Directorate
SOEP	Sable Offshore Energy Project
Tcf	trillion cubic feet
Technical Report	<i>Canadian Energy Supply and Demand 1993-2010 - Technical Report</i>

## **Recital and Appearances**

**IN THE MATTER OF** the *National Energy Board Act* and the Regulations made thereunder; and

**IN THE MATTER OF** a joint application dated 15 January 1999 by Imperial Oil Resources Limited and Boston Gas Company for a new licence to export natural gas, pursuant to Part VI of the *National Energy Board Act*; and

**IN THE MATTER OF** Hearing Order GH-1-99;

**HEARD** in Halifax, Nova Scotia on 4 and 5 May 1999.

### **BEFORE:**

J.A. Snider	Presiding Member
K.W. Vollman	Member
J.-P. Théorêt	Member

### **APPEARANCES:**

C. Kemm Yates	Imperial Oil Resources Limited and Boston Gas Company
N.J. Schultz	Canadian Association of Petroleum Producers
J.H. Smellie	Irving Oil Limited
W.G. Lea, Q.C.	Maritime Electric Company, Limited
L.E. Smith	Maritimes & Northeast Pipeline Management Ltd.
A. Murphy	Mobil Oil Canada Properties
I. Blue	Province of New Brunswick
H.D. Williamson, Q.C.	Province of Nova Scotia
A.W. Moreira, Q.C. M. Burgess	Province of Nova Scotia Petroleum Directorate
M. Proud	Province of Prince Edward Island
G. Delisle	National Energy Board



## Chapter 1

# Part VI - Gas Export Application

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### 1.1 Background

Pursuant to the GH-5-89 proceeding, Esso Resources Canada Limited ("Esso") was issued licence GL-151 which authorizes it to export 992.0  $10^3\text{m}^3/\text{d}$  (35.0 MMcf/d) to Boston Gas Company ("Boston Gas"), for a period of 15 years. The terms and conditions of the licence are supported by the Natural Gas Sales Agreement, dated 1 May 1989, as amended, between Esso and Boston Gas, and are underpinned by Esso's Alberta gas supply pool. Effective 2 July 1992, Esso's corporate name was changed and, subsequently, the holder of licence GL-151 was amended to Imperial Oil Resources Limited ("IORL") by AO-1-GL-151. Gas flowed under licence GL-151 until December 1997.

In the GH-1-99 proceeding, the National Energy Board ("the Board" or "NEB") examined an application for a gas export licence from IORL and Boston Gas ("Joint Applicants"). The Joint Applicants applied for a gas export licence to underpin a proposed export of 1 205.0  $10^3\text{m}^3/\text{d}$  (42.5 MMcf/d) for sale to Boston Gas, for the period 1 November 1999 to 31 March 2007. The natural gas will be produced from the Sable Offshore Energy Project ("SOEP") and replace IORL's Alberta natural gas supplies sold to Boston Gas. The gas sales agreement between the Joint Applicants represents IORL's nine percent working interest of 1 205.0  $10^3\text{m}^3/\text{d}$  (42.5 MMcf/d) at a SOEP production level of 480,000 MMBtu/d. IORL's share in excess of this production level would be available for other markets.

IORL requested that licence GL-151 be revoked.

The evidence with respect to the Joint Applicants' application is discussed in Chapter 4 of these reasons.

## Chapter 2

# Market-Based Procedure

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The Board is directed by section 118 of the *National Energy Board Act* ("Act"), in its consideration of applications to obtain a licence to export oil or gas, to have regard to all considerations that appear to it to be relevant. The Board is required to satisfy itself, in accordance with paragraph 118(a), that the quantity of gas to be exported does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada, having regard to the trends in the discovery of gas in Canada.

In July 1987, pursuant to a *Review of Natural Gas Surplus Determination Procedures* ("GHR-1-87"), the Board implemented a procedure, known as the Market-Based Procedure ("MBP"), by which the Board assesses the merits of an application to obtain a gas export licence. The MBP is founded on the premise that the marketplace will generally operate in such a way that Canadian requirements for natural gas will be met at fair market prices. The MBP was modified following subsequent public hearings GHW-4-89 and GHW-1-91. The modifications do not affect the premise on which the MBP is founded.

To ensure that natural gas to be licensed for export is surplus to reasonably foreseeable Canadian requirements and that the specific export being proposed is in the public interest, the MBP provides that the Board:

- hold public hearings to consider applications for licences to export natural gas; and
- monitor Canadian energy usage and markets on an ongoing basis.

## 2.1 Public Hearings

During public hearings, the Board evaluates whether the market is functioning well. The three components considered by the Board are:

- 1) **Complaints Procedure:** The Board must consider any complaints from Canadian gas buyers who object to the proposed export on the grounds that they have not had an opportunity to buy gas on terms and conditions, including price, similar to those of the proposed export. The Complaints Procedure seeks to ensure that Canadian buyers who have been active in the market have access to gas supply on terms and conditions similar to those available to export customers.
- 2) **Export Impact Assessment ("EIA"):** The EIA assists the Board in its determination of whether a proposed export is likely to cause Canadians difficulty in meeting their energy requirements at fair market prices. The EIA sets out the impact of the proposed export on Canadian energy and natural gas markets. The Board's most recent EIA, which was prepared in consultation with the energy industry and other interested parties, was

included in Chapter 6 of the NEB report entitled *Canadian Energy Supply and Demand 1993-2010 - Technical Report* ("Technical Report"), released in December 1994.

- 3) Other Public Interest Considerations: In order to determine whether the proposed export is in the public interest, the Board will assess any other factors that it deems relevant. Such factors include the following other public interest considerations, which the Board will normally examine in conjunction with an export application:
- the likelihood that the licensed volumes will be taken;
  - the durability of the export sales contract;
  - whether the export sales contract was negotiated at arm's length;
  - producer support for the gas export application;
  - provisions in the export sales contracts for the payment of the associated transportation charges on Canadian pipelines over the term of the export sales contract; and
  - the appropriate length for an export licence having regard to the adequacy of gas supply and associated export sales and transportation contracts.

The above-noted other public interest considerations are examples of the factors that the Board normally has regard to when assessing the merits of gas export licence applications. However, in specific proceedings, the Board may also consider any additional factors that appear to it to be relevant in the circumstances.

In the GH-1-99 proceeding, as part of its examination of other public interest considerations, the Board included the potential environmental effects of the proposed export. For this purpose, the Board decided to rely on the necessary connection test described in the NEB Review of its Decision in GH-5-93 and the Reasons for Decision in GH-3-94. This test is used to establish the scope of the Board's assessment of the potential environmental effects of applications to export gas. The Board will consider the environmental effects of new upstream facilities and activities only when those facilities or activities are necessarily connected to the requirements of the export licence. For a necessary connection to exist, the export licence and new upstream facilities or activities must be integrated to the extent that they can be seen to form a single course of action.

## **2.2 Ongoing Monitoring**

There are two main components to the Board's ongoing monitoring responsibility under the MBP:

- 1) assessments of Canadian energy supply and demand; and
- 2) natural gas market assessments.

The Act requires the Board to monitor the outlook for Canadian supply of all major energy commodities, including electricity, oil and natural gas and their by-products, and the demand for energy in Canada and abroad. Accordingly, the Board prepares and maintains forecasts of energy supply and demand and, periodically, has issued reports after obtaining the views of provincial governments, industry and other parties.

Among matters analyzed are trends in the discovery of oil and natural gas in Canada, the evolving shares of the energy market served by various energy forms and the implications for the natural gas market of alternative supply and demand assumptions. These matters and others are reviewed in the Board's latest report, entitled *Canadian Energy Supply and Demand 1993- 2010 - Trends and Issues*, released in July 1994, and the companion Technical Report, released in December 1994.

As the second part of its ongoing monitoring role, the Board analyzes shorter-term developments in natural gas supply, demand and prices, and publishes reports on its findings. Generally, the Natural Gas Market Assessment ("NGMA") studies and related statistical reports provide coverage of recent developments and near-term prospects for natural gas markets, competitive market activity, pipeline utilization for Canadian and export purposes, and the quantity of gas supply.

## **2.3 The Determination of Surplus by the MBP**

In summary, the Board determines that the gas to be exported is surplus to Canadian needs if:

- 1) there are no complaints registered under the Complaints Procedure;
- 2) the EIA indicates that Canadians will have no difficulty in meeting their energy requirements at fair market prices;
- 3) there are no other major public interest concerns; and
- 4) ongoing monitoring suggests that markets are functioning normally and identifies no other issues relating to the evolution of supply or demand that cast doubt on the future ability of Canadians to meet their energy requirements.

## Chapter 3

# Sunset Clauses

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### 3.1 Sunset Clauses

It has generally been Board practice in issuing a gas export licence to set an initial period during which, if the export of gas commences, the licence becomes effective for the full term approved by the Board. This condition in the licence is referred to as a sunset clause because the licence would expire if the export did not commence within the specified timeframe. Inclusion of the sunset clause is intended to limit outstanding licences to those for which the gas actually starts to flow within a reasonable period after the decision. In the current proceeding, the Board questioned the Joint Applicants concerning the acceptability of a sunset clause in the applied-for licence.

As a matter of general practice, the Board has set the timeframe by which exports must commence at two years from the expected commencement of the licence term.

## Chapter 4

# Imperial Oil Resources Limited and Boston Gas Company

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### 4.1 Application Summary

By application dated 15 January 1999, Imperial Oil Resources Limited and Boston Gas Company ("Joint Applicants") sought, pursuant to Part VI of the Act, a licence for the export of natural gas with the following terms and conditions:

Term	-	commencing on the date of first deliveries and ending on 31 March 2007
Point of Export	-	St. Stephen, New Brunswick
Maximum Daily Quantity	-	1 205.0 10 <sup>3</sup> m <sup>3</sup> (42.5 MMcf)
Maximum Annual Quantity	-	440.0 10 <sup>6</sup> m <sup>3</sup> (15.5 Bcf)
Maximum Term Quantity	-	3 262.0 10 <sup>6</sup> m <sup>3</sup> (115.1 Bcf)
Tolerances	-	ten percent per day and two percent per year

The gas proposed to be exported by the Joint Applicants would be produced from the SOEP. The gas would be transported on the Maritimes & Northeast Pipeline Limited Partnership ("Maritimes & Northeast-Canada") system to St. Stephen, New Brunswick. From the international border, the gas would be transported on the Maritimes & Northeast Pipeline, L.L.C. ("Maritimes & Northeast-U.S.") system to an interconnection with the Tennessee Gas Pipeline Company system at Dracut, Massachusetts for delivery to Boston Gas.

### 4.2 Gas Supply

#### 4.2.1 Supply Source

The natural gas to be exported will be produced from reserves in the Scotian Shelf located near Sable Island offshore Nova Scotia. The Joint Applicants stated that the supply supporting the application is the nine percent interest in the SOEP reserves owned by IORL.

#### **4.2.2 Reserves**

IORL adopted the reserves estimates detailed in the Joint Public Review Panel Report on Sable Gas Projects ("Joint Panel Report"), dated October 1997. IORL's share of the total estimated mean raw recoverable reserves of  $84.3 \times 10^9 \text{ m}^3$  (3.0 Tcf) would be  $7.6 \times 10^9 \text{ m}^3$  (268.3 Bcf) or approximately  $7.0 \times 10^9 \text{ m}^3$  (247.1 Bcf) of marketable reserves based on the Joint Panel Report. These reserves exceed the quantity of gas that could be exported over the term of the applied-for export.

#### **4.2.3 Productive Capacity**

During the GH-6-96 proceeding, IORL submitted that the first year daily average deliverability for the SOEP reserves was estimated to be  $13.4 \times 10^6 \text{ m}^3/\text{d}$  (480,000 MMBtu/d). That rate was expected to be maintained for a minimum of thirteen years. IORL indicated that Sable Offshore Energy Inc., on behalf of the SOEP owners, filed an update of its Reservoir Management Plan with the Canada-Nova Scotia Offshore Petroleum Board on 28 September, 1998 which included a project depletion plan that would provide an annual daily average deliverability of  $14.8 \times 10^6 \text{ m}^3/\text{d}$  (530,000 MMBtu/d) of residue gas. IORL's interest in the deliverability would be some  $1.2 \times 10^6 \text{ m}^3/\text{d}$  (43,200 MMBtu/d) to  $1.3 \times 10^6 \text{ m}^3/\text{d}$  (47,700 MMBtu/d) compared to the applied-for daily quantity of  $1.2 \times 10^6 \text{ m}^3/\text{d}$  (43,200 MMBtu/d). This deliverability satisfies IORL's requirements for the proposed term of the applied-for licence.

### **4.3 Transportation**

The gas to be supplied to Boston Gas by IORL would be delivered to St. Stephen, New Brunswick pursuant to a Precedent Agreement entered into between Boston Gas, Maritimes & Northeast-Canada and Maritimes & Northeast-U.S., dated 16 December 1997. The Precedent Agreement provides for the FS transportation of a Maximum Daily Quantity of 43,200 MMBtu of natural gas on the Maritimes and Northeast-Canada system from an interconnection with the Sable Offshore Energy Project gas processing plant at Country Harbour, Nova Scotia, to the export point near St. Stephen, New Brunswick. From the international border, the gas would be transported on the Maritimes and Northeast-U.S. system to a point of interconnection with the Tennessee Gas Pipeline Company system at Dracut, Massachusetts. The Precedent Agreement also provides for an anticipated in-service date of 1 November 1999 extending through 31 October 2002, the Primary Term. Boston Gas has the option of extending the term through 31 March 2007.

### **4.4 Market**

Since the early 1990s, IORL has been providing gas to Boston Gas from IORL's Alberta supplies, supported by export licence GL-151. This gas moved at a load factor of almost 100 percent. The proposed gas export would be used to replace IORL's Alberta gas supplies of  $992.0 \times 10^3 \text{ m}^3/\text{d}$  (35.0 MMcf/d) sold to Boston Gas.

Boston Gas is a local distribution company in the State of Massachusetts, serving the city of Boston and 73 cities in eastern Massachusetts. Its markets consist of over 530,000 residential, commercial and

industrial customers. Boston Gas' customer base has grown steadily by one percent per year over the past five years. This trend is expected to continue over the next five years. The proposed export of IORL's SOEP supply is expected to be taken at a high load factor, similar to the performance supported by IORL's Alberta supplies.

To provide for peak demand during the winter months, Boston Gas uses storage services facilitated by underground storage contracts. Boston Gas has contracts with five storage providers for  $482.8 \times 10^6 \text{ m}^3$  (17.0 Bcf) of storage and  $4.6 \times 10^6 \text{ m}^3/\text{d}$  (162.4 MMcf/d) of withdrawal capacity. Boston Gas also makes use of its own and leased liquefied natural gas storage facilities which provide for up to  $87.6 \times 10^6 \text{ m}^3$  (3.1 Bcf) of natural gas in storage or  $8\,130.0 \times 10^3 \text{ m}^3/\text{d}$  (287.0 MMcf/d) of available gas.

The natural gas market in the State of Massachusetts is in the process of restructuring toward a more competitive gas commodity market in which customers will have a choice of gas suppliers. In this regard, Boston Gas has largely unbundled its merchant services from its transportation services, although it still offers some bundled services. The Joint Applicants indicated that the effects of the restructuring and load displacement, as a result of customer choice, will have little or no effect on Boston Gas' local distribution market portfolio over the next three to five years. Furthermore, Boston Gas will be able to take the applied-for volumes within its own customer base throughout the proposed licence term either as a direct provider or through the assignment of supplies and capacity.

## 4.5 Gas Sales Contract

IORL and Boston Gas have executed an amendment to the Natural Gas Sales Agreement, dated 1 May 1989, ("Amended Agreement") to underpin the sale of IORL's gas supply from SOEP. The effective date of the commencement of IORL's gas sales under the Amended Agreement is expected to be 1 November 1999. The Amended Agreement contains certain conditions precedent with regard to regulatory authorizations.

The Amended Agreement provides for the sale of a Daily Contract Quantity ("DCQ") of 43,200 MMBtu, in support of the applied-for export of  $1\,205.0 \times 10^3 \text{ m}^3/\text{d}$  (42.5 MMcf/d). Boston Gas is obligated to purchase the DCQ at the SOEP gas processing plant near Goldboro, Nova Scotia, the delivery point. To accommodate Boston Gas' least cost economic dispatch requirements, it has the right to take less than the DCQ. The difference between the DCQ and the dispatch quantity is defined as the Daily Undispatched Quantity ("DUQ"). In these situations, IORL is guaranteed the Alberta spot price for the DUQ disposed of in the market, with Boston Gas paying IORL any difference below the monthly Alberta spot price.

For any reason other than Boston Gas' least cost economic dispatch requirements or *force majeure* event, the volume of gas not taken with respect to the DCQ is defined as the Deficient Quantity ("DQ"). In this regard, Boston Gas must pay IORL the product of the DQ and the Alberta spot price. Additionally, Boston Gas must pay for any incremental expenses incurred by IORL in selling the DQ and the DUQ.

The Amended Agreement stipulates that Boston Gas is solely responsible for all transportation arrangements downstream of Goldboro, Nova Scotia.



Under the Amended Agreement, the price of the gas sold from SOEP to Boston Gas for export is to be the higher of the following:

- Henry Hub Index less \$U.S. 0.15/MMBtu; or
- the prevailing SOEP Market Price

The Joint Applicants indicated that the price of the gas purchased at the Goldboro, Nova Scotia delivery point (based upon the Henry Hub Index as published in *"Inside FERC's Gas Market Report"*, less \$U.S. 0.15/MMBtu), as of 1 February 1999, would have been \$Cdn. 2.37/GJ (\$Cdn. 2.49/MMBtu). The Amended Agreement provides for renegotiation of the gas price during the month of June 2002 to be effective the following contract year. Binding arbitration is provided for the resolution of a gas price dispute.

## **4.6 Regulatory Authorizations**

The Joint Applicants filed their long-term import authorization DOE/FE Order No. 1445 authorizing the import of the natural gas commensurate with the terms of the applied-for licence. The Joint Applicants indicated that provincial removal permits are not required.

## **4.7 Application of the Market-Based Procedure**

### **4.7.1 Complaints Procedure**

The Province of New Brunswick inquired whether customers in the Maritimes were offered IORL's proposed export quantities and its remaining volumes from SOEP on similar terms and conditions, including price. The Province of Nova Scotia Petroleum Directorate also questioned whether the price of the gas to be exported was the result of a discount and whether a similar discount would be available to purchasers of gas in Nova Scotia.

The Joint Applicants responded that it had met with several Maritime customers regarding the purchase of IORL's SOEP production. None of these potential customers were prepared to offer terms and conditions, including price, similar to those contained in the proposed export. Furthermore, the price of the gas to be exported is not the result of an applied discount but a negotiated price relative to a Gulf Coast index. Finally, IORL submitted that it is prepared to sell its remaining SOEP gas production to Maritime customers under similar terms and conditions as those contained in the proposed export.

### **4.7.2 Export Impact Assessment**

The Joint Applicants relied on the Board's EIA contained in its report Canadian Energy Supply and Demand 1993 - 2010 - Trends and Issues. They indicated that the term of the proposed export was within the time period considered by the Board's EIA and submitted that the Board's EIA was sufficient to satisfy the EIA component of the MBP.

IORL noted that the SOEP was a "seed" project representing a new and developing gas industry in the Maritimes and that other parties were active in the basin as a result of the 1998 land sales in Nova Scotia and other recent land postings. IORL referred to the Joint Panel Report noting the potential established resources of 512 billion cubic metres for the Scotian Shelf. In support of its position on supply, IORL quoted the Joint Panel Report that "it is reasonable to expect that, as happened in other parts of Canada in the past, the construction of the M&NP pipeline, anchored by a dynamic export market and large industrial gas consumers, will provide the impetus for the establishment of the necessary downstream transportation and distribution systems and the further development of the domestic market." The Joint Applicants indicated that without the export market there would be no project and no Canadians would have access to SOEP natural gas. They concluded that the proposed export is not likely to cause Canadians difficulty in meeting their energy requirements at fair market prices.

Nova Scotia expressed disappointment that no attempt was made to include information respecting the expected local demand in the first application to export natural gas from the Maritimes. It noted that the Board's 1994 EIA made only passing reference to supplies from the Maritimes, and made no reference at all to demand in the Maritimes.

Nova Scotia noted that the Joint Applicants recognized the importance of relevant supply and demand evidence in referring to the Joint Panel Report in that respect. Nova Scotia suggested, however, that the Joint Panel Report is two years old, and considerably more current information exists today. Nova Scotia argued that applicants for export licences in this emerging market should be required to bring forward in their applications the best and most current information available to meet not only the Board's requirements, but to provide comfort to the citizens of Maritimes Canada as well. Nova Scotia suggested that such information was necessary because market participants are on a steep learning curve and Maritimes' demand is essentially undefined at this time.

With respect to petrochemicals, Nova Scotia underlined the importance placed by the Joint Panel Report on the opportunity for Nova Scotia to benefit from the use of natural gas liquids as a base for a petrochemical industry in the province. Nova Scotia questioned the Joint Applicants on the commitments already made by the parties in this regard in the Memorandum of Understanding (MOU) dated 3 December 1997. IORL stated that there was nothing in the contract underpinning the proposed export sale to Boston Gas that would preclude the arrangements anticipated by the MOU. Boston Gas confirmed that it was aware of the commitments made by the parties to the MOU.

New Brunswick suggested that there is uncontradicted evidence that currently forecasted Canadian demands plus existing commitments for SOEP gas are greater than the discrete supply available during the requested term of the applied-for licence. New Brunswick submitted that 211,200 MMBtu/d was a reasonable estimate of the foreseeable requirements for use in Canada. New Brunswick argued that, if 360,000 MMBtu/d of SOEP gas must go to the U.S. in order to make the Maritimes & Northeast Pipeline viable, the proposed production of 530,000 MMBtu/d would not be sufficient to meet all reasonably foreseeable requirements. The Joint Applicants suggested that the numerical exercise proposed by New Brunswick was an oversimplification of the market's behavior. The Joint Applicants noted that the MBP is based on the premise that the market works and that it did not involve setting aside specific uncontracted quantities of gas reserves for Canadian markets before exports are allowed.

New Brunswick noted that, in its consideration of an application for a licence to export gas, the Board is required to satisfy itself that the quantity of gas to be exported does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada, having regard to the trends in the discovery of gas in Canada. New Brunswick argued that Maritime Canada is economically out of reach of the Western Canada sedimentary basin and, therefore, only trends in developing SOEP resources were relevant because discoveries elsewhere in Canada cannot satisfy Maritime Canada's requirements.

#### **4.7.3 Other Public Interest Considerations**

The Joints Applicants submitted that the potential environmental impacts of the SOEP and the Maritimes and Northeast Pipeline Project were examined in previous public hearings. As well, the Joint Applicants stated that no additional investment would be required to transport the gas to market.

The Province of Nova Scotia had no objection to the export proposal of the Joint Applicants nor the timing of a Board decision. However, the Province of New Brunswick submitted that the Board should postpone its decision on the gas export licence application by the Joint Applicants until early 2000 to allow a reasonable period of time for gas distributors and other industrial buyers to negotiate gas purchase contracts with the SOEP producers. New Brunswick further submitted that a postponement of the Board's decision would also provide an opportunity for parties to complain, if necessary, about the Joint Applicants' export proposal. In addition, a postponement would provide a framework for: conducting a hearing on any issues which may arise; allowing other potential SOEP export applicants to be treated according to the same policy which could develop during the course of the postponement; and assessing the applicability of the Market-Based Procedure. New Brunswick submitted that the MBP is not applicable to a situation where there is a lack of a properly functioning and competitive market, which is the case for this proposed export.

The Joint Applicants responded that major potential customers were party to negotiations before its gas sales contract was finalized. They also indicated that it was necessary to contract gas to the market on a timely basis to support the investments required for the project. Furthermore, potential LDCs have the opportunity to negotiate gas purchase arrangements, subject to regulatory authorizations, in support of obtaining a franchise. The Joint Applicants also indicated that no party, including potential LDCs, objected to their export proposal.

The Province of Nova Scotia indicated its concerns with respect to the perceived lack of price transparency and timely price discovery. It submitted that the Joint Review Panel found that there was an absence of a fully functioning Maritimes gas market and, as a result, the opportunity for price discovery was lacking. Furthermore, the Province of Nova Scotia indicated that the Maritimes market lacks the liquidity and price discovery evident in the Alberta market. It also submitted that the Joint Applicants should disclose their gas export prices at the same time they file the prices with the Board.

The Joint Applicants responded that they have disclosed the gas sales contract which includes the mechanism by which any party can determine the export price. Additionally, concerns expressed by certain intervenors in the GH-6-96 proceeding related to the perceived lack of price discovery with respect to the issuance of short-term export orders; not exports under licences. The Joint Applicants stated that the Market-Based Procedure and the filed export gas sales contract provide for price

discovery. They also submitted that the NYMEX price index, which is published in several newspapers, would be similar to the price under its proposed export and be available prior to the export actually taking place.

Although the Joint Applicants acknowledged that a confidential price survey is not yet in place to provide for the development of a price index at Goldboro, Nova Scotia, they would be willing to participate in such surveys. The Joint Applicants also acknowledged that the Maritimes gas market is in the early stages of development and, thus, is thin and not liquid compared to the gas commodities market in Alberta. However, they submitted that there is a functioning bilateral contracts market in the Maritimes. In this regard, they noted that Canadian buyers and producers of SOEP gas have made arm's length transactions to satisfy their requirements in Canada.

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

#### **Applicability of the Market-Based Procedure**

The Province of New Brunswick raised the question of whether the MBP should be applied in respect of this application to export natural gas from the SOEP, on the basis that there is a lack of a properly functioning and competitive market. As discussed in Chapter 2 of these reasons, the MBP is the vehicle by which the Board satisfies itself that the requirements of section 118 of the Act are met. As part of its application of the MBP, the Board assesses, *inter alia*, the issues raised by the Province of New Brunswick. Accordingly, the Board is of the view that the MBP is an appropriate procedure for assessing the merits of this application to export natural gas from the SOEP.

#### **Complaints Procedure**

The first component of the MBP is the Complaints Procedure. Canadian users of natural gas must have an opportunity to buy gas on terms and conditions similar to those of the proposed export. The Board notes that, since there were no complaints registered during the GH-1-99 proceeding, the Joint Applicants have satisfied this aspect of the MBP.

#### **Export Impact Assessment**

The next component is the EIA, wherein the Board must determine whether the proposed export is likely to cause Canadians difficulty in meeting their energy requirements at fair market prices.

The overall forecast of supply and demand for the period extending through 2010, as contained in the Board's 1994 Technical Report, indicates that Canadians would not likely experience difficulty in meeting their energy requirements at fair market prices. The Board is of the view that approval of the applied-for licence, which totals  $3\,262.0 \times 10^6 \text{ m}^3$  (115.1 Bcf), would not change this conclusion. Furthermore, the Board notes that this proposed export is for a term of only about seven and one-half years, after

which this gas could be available to satisfy domestic requirements, including growth in LDC markets.

Although the Board is satisfied with the Joint Applicants' evidence on the EIA, the Board agrees with Nova Scotia that evidence on the forecast supply and demand balance of natural gas for the Maritimes could have provided Canadians a better understanding of the emerging gas market in the Maritimes within the context of the proposed export.

#### Other Public Interest Considerations

The final aspect of the hearing component of the MBP is the Other Public Interest Considerations. The Board will assess those factors normally considered and outlined in Chapter 2, as well as any other factors it deems relevant.

With regard to the potential environmental effects of the proposed export, the Board notes that the environmental impacts of the SOEP and the Maritimes and Northeast Pipeline Project were examined in previous public hearings. Furthermore, the Board notes that the Joint Applicants submitted that no additional investment would be required above that which was considered pursuant to the Joint Panel Report, to move this gas to market. The Board, thus, concludes that no further environmental assessment is required in this case.

The Board is cognizant of the concerns raised by the Maritime provinces with regard to exports taking place during the course of the development of domestic demand in the Maritimes, including the yet-to-be determined LDCs. However, the Board does not agree with New Brunswick that the Sable Island market is isolated from the North American gas market. The Board notes that the SOEP was developed in the context of a North American gas market, to satisfy domestic demand as well as the export market. The Board does not see merit in delaying its decision as proposed by New Brunswick which, if adopted, could impede the normal course of commerce in the marketplace.

The Board recognizes that the SOEP and the Maritimes & Northeast Pipeline in Canada and the U.S. are the result of market-driven initiatives. In this regard, the Board agrees with the Joint Applicants that all parties can negotiate arrangements to buy gas at any time and, if necessary, buyers have the opportunity to complain about applications for licences to export natural gas.

The early contracting of gas from the SOEP to domestic and export markets is not inconsistent with contracting practices in the North American gas market which can require certainty of contracts to underpin the financing of project investments. Furthermore, the decision of the Joint Review Panel in GH-6-96 mentioned that exports were an integral component underpinning the SOEP. The proposed export of the Joint Applicants is, therefore, consistent with this decision and reflective of normal commercial activities in the North American natural gas market to which the SOEP is linked.

The Board notes that Canadian buyers and producers of SOEP gas have already made arm's length transactions to satisfy their gas requirements in the Maritimes. The Board, thus, concludes that the emerging gas market in the Maritimes, supported by arm's length bilateral contracts, is characteristic of a normal functioning market. Moreover, the Board has not observed any signs of market failure in this case. Finally, the Board is also satisfied that the pricing mechanism underpinning this proposed export is in the public domain and, when viewed in light of readily available pricing indices, provides for price transparency and timely price discovery.

The Board believes that setting aside specific uncontracted quantities of gas reserves for Canadian markets before exports are allowed could in fact introduce harmful market distortions. These distortions, in turn, could preclude the further development of a well functioning gas market that is now taking place in the Maritimes and which is expected to grow as a result of the "seed" project that is the SOEP.

The Board notes that IORL provided gas to Boston Gas from IORL's Alberta supplies at essentially 100 percent load factor and that the applied-for volumes are expected to perform at a similar load factor over the term of the applied-for licence. The Board also observes that there are significant penalties to be paid by Boston Gas for deficient volumes. The Board is, therefore, satisfied that there is a reasonable expectation that the volumes sought to be licensed will be taken.

The Amended Agreement contains a market-oriented determination of the gas price. Additionally, the Amended Agreement provides for price redetermination as well as binding arbitration. The Board is, thus, satisfied that the gas purchase agreement will remain attractive to the parties over the proposed term and is, therefore, durable.

The Board has examined the Amended Agreement between IORL and Boston Gas and is satisfied that it continues to be at arm's length.

Given that IORL owns the gas supply interest of the SOEP supporting this export licence application, a finding of producer support is not necessary.

The gas supply in support of the proposed export was examined by the Joint Review Panel during the GH-6-96 proceeding. The Board is satisfied that IORL's nine percent interest in the SOEP reserves exceeds the applied-for volume. Furthermore, IORL has adequate productive capacity to meet its requirements over the term of the applied-for licence.

The Board notes that Boston Gas is responsible for the transportation arrangements downstream of Goldboro, Nova Scotia under its obligations in the Amended Agreement. The Board is, therefore, satisfied that the associated transportation charges on the Maritimes and Northeast-Canada system will be paid over the term of the proposed export.

The Amended Agreement is for a term and volume commensurate with the requested licence. The Board observes that the transportation arrangements are for a Primary Term to 31 October 2002 and are renewable for the balance of the licence term. Having considered this, and the adequacy of gas supply which was examined in previous public hearings, the Board is satisfied that the requested licence term is appropriate.

#### Conclusion

Taking all factors into consideration in the current proceeding, the Board is satisfied that the quantity of gas proposed to be exported does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada, having regard to future trends in the discovery of gas in Canada.

#### **Decision**

**The Board has decided to issue a gas export licence to Imperial Oil Resources Limited and Boston Gas Company, subject to the approval of the Governor in Council. Appendix I contains the terms and conditions of the licence to be issued.**

**The Board has also decided to revoke licence GL-151 as requested by Imperial Oil Resources Limited and Boston Gas Company. The Board will forward Revocation Order RO-GL-151 to the Joint Applicants in due course.**

## Chapter 5

# Disposition

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The foregoing chapters constitute our Decision and Reasons for Decision in respect of the application heard by the Board in the GH-1-99 proceeding.

J.A. Snider  
Presiding Member

K.W. Vollman  
Member

J.-P. Théorêt  
Member

Calgary, Alberta  
June 1999



## Appendix I

### **Terms and Conditions of the Licence to be Issued**

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1.
  - (a) Subject to condition 1(b), the term of this Licence shall commence on the date of first deliveries and end on 31 March 2007.
  - (b) The term of this Licence shall end on 1 November 2001 unless exports commence hereunder on or before that date.
2. Subject to condition 3, the quantity of gas that may be exported under the authority of this Licence shall not exceed:
  - (a) 1 205 000 cubic metres in any one day;
  - (b) 440 000 000 cubic metres in any consecutive twelve-month period ending on 31 October; or
  - (c) 3 262 000 000 cubic metres during the term of this Licence.
3.
  - (a) As a tolerance, the amount that may be exported in any 24-hour period under the authority of this Licence may exceed the daily limitation imposed in condition 2 by ten percent.
  - (b) As a tolerance, the amount that may be exported in any consecutive twelve-month period under the authority of this Licence may exceed the annual limitation imposed in condition 2 by two percent.
4. Gas exported under the authority of this Licence shall be delivered to the point of export near St. Stephen, New Brunswick.