



Environment
Office of the Minister

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Our File number:
10700-40-54493

April 8, 2019

Raymond Larkin, QC
Pink Larkin
201 - 1463 Park Street
Halifax, NS B3J 3S9

Dear Raymond Larkin:

Re: Section 137 Appeal - Approval No. 2008- 061384-A03 dated January 20, 2016 to Alton Natural Gas Storage LP

Thank you for your written submissions on behalf of Sipekne'katik, which were received on July 17, 2017, in response to the Warner Report and the OAA material respecting Approval No. 2008- 061384-A03, dated January 20th, 2016 to Alton Natural Gas Storage LP or Alton Gas (referred to here as IAA03).

As you are aware, the period elapsed since receipt of your submission was due to several joint requests to delay my decision to allow Alton Gas and Sipekne'katik opportunity to pursue a mutual benefits agreement.

Based on the Record, your submissions, including all of the documents contained in the compendium of documents, and the Book of Authorities you have provided, and taking into consideration such future or potential information concerning any adverse effect we may receive regarding IAA03, I have determined that the consultations with Sipekne'katik have been sufficient in the circumstances of this matter, but that an amendment to IAA03 is necessary in the circumstances of this appeal. The reasons for my decision are as follows:

A. OAA Consultation Record

The documents before me identify the broad and meaningful extent of discussion and interaction between the Nova Scotia Office of Aboriginal Affairs (OAA) and Sipekne'katik regarding the establishment of financial support for consultation with Sipekne'katik for Approval IAA03 and for future projects. The record clearly demonstrates the interaction between OAA and Sipekne'katik to fund consultation.

With respect to the several technical meetings held with representatives of Sipekne'katik, I understand the purpose of these meetings was to encourage discussions between OAA and Sipekne'katik and to provide a better understanding of all relevant technical information concerning IAA03. These various meetings also permitted a free exchange of ideas and concerns Sipekne'katik or other parties might have had while issues relating to the Alton Natural Gas Storage project were being discussed. The Record discloses that a necessary and satisfactory consultation on the issues and concerns raised was achieved. The concerns raised during these consultations and meetings were used to formulate the terms and conditions imposed on IAA03, which terms and conditions were designed to mitigate those concerns that were raised with Alton Natural Gas Storage project, particularly with respect to the operations to be performed under IAA03.

During consultation, it is apparent that the primary concern put forward by Sipekne'katik during consultation was fish and fish habitat and the impact the project would have on fish and fish habitat.

The third-party review report by Conestoga Rovers & Associates (CRA) assessed the potential impacts the operations would have on these two components. The CRA report identified a number of information gaps and made recommendations as to how best to address those gaps. CRA's recommendations are reflected in the terms and conditions imposed on IAA03.

The Record discloses that the potential impact to the rights and claims raised by Sipekne'katik, including historic and fishing practices, was discussed throughout prior consultations held when the community was a member of the Assembly and then continuing throughout the direct consultation process engaged upon with Sipe'knekatik solely, beginning in 2014 and continuing into 2016.

The Record further shows that the Province worked collaboratively with Sipekne'katik for many months because it wanted to make a decision that protected Mi'kmaq rights while allowing for responsible and sustainable development that was a benefit to all Nova Scotians. There was an independent third party review and a risk analysis with representatives of KMKNO, Dalhousie University, provincial and federal regulators which Sipekne'katik participated in as observers. During the risk analysis process, the Province worked with Sipekne'katik to reach consensus on permit requirements wherever possible. All the substantive issues raised during technical meetings were addressed in IAA03. The draft IAA03 and supporting documents were sent to Sipekne'katik on December 15, 2015.

The information and analysis done throughout the consultation process is captured by the correspondence between Sipekne'katik and the Province leading up to the issuance of IAA03. All of the potential outstanding environmental impacts which were identified by Mi'kmaq through the robust consultation process were identified and avoided or mitigated through the terms and conditions of IAA03 and the proponent's monitoring plan.

The Record and the material submitted by Sipekne'katik reflects extended efforts by the Province to understand, explain and mitigate against the impacts the Alton Natural Gas Storage project, particularly IAA03, would have on fish, fish habitat and aboriginal rights. I conclude that the level of consultation was appropriate to the circumstances and to the aboriginal and treaty rights as asserted.

B. The Warner Report

Sipekne'katik submitted there was no meaningful consultation on the brine storage facility project at the heart of IAA03. Based on the Record and documents submitted by you, I conclude that the Province provided significant opportunities for Sipekne'katik to sufficiently understand the project, to identify potential adverse impacts to aboriginal rights, fish and fish habitat, and to fully participate in the approval process.

In your submissions, you refer to the Supreme Court's decision in *Gitxaala*, noting that public consultation is not a substitute for consultation. I conclude that consultation on aboriginal and treaty rights was substantial and was conducted separately from public consultation.

Sipekne'katik raised concerns during consultation that its domestic economy and cultural and social life would be impacted by IAA03. Sipekne'katik pointed out that that the community uses and depends on the Shubenacadie river as a source of food and surrounding land for sustenance and spiritual practices, as well as for medicinal purposes, ceremonial, conservation and cultural knowledge purposes. Such use of the river and surrounding land by Sipekne'katik and its people was taken into account in the consultation and informed on the development of IAA03.

Sipekne'katik submits that aboriginal title claims were not adequately addressed during consultation. The significance of Sipekne'katik's proximity to the project area and history as a Mi'kmaq community was taken into consideration by the Province, as the depth and length of the consultation process is reflective of the serious nature of both the aboriginal and treaty rights asserted, though not set out in detail by Sipekne'katik.

Sipekne'katik submits the Warner Report did not correctly or adequately address the Erika Perrier opinions and concerns regarding adult salmon. Further, it was submitted that the Conestoga Rovers & Associates (CRA) third party review report confirmed that the 7-year monitoring study did not examine or track adult salmon. The CRA report also addressed the potential for the disruption of fish spawning by the operation as proposed under IAA03.

A second report (also noted in the Erika Perrier affidavit) titled "*Exposure Pathway Assessment Framework for Aquatic and Non-Aquatic Species in Relation to the Alton Gas Natural Gas Storage & Alton Natural Gas Storage Environmental Monitoring*" (EPAF), dated November 18, 2015, considers the life cycle of 19 species of fish and reviews the impact the operations under will have on fish species.

I find that both reports (CRA & EPAF) give due consideration to the potential adverse impact on fish species at various life stages at brine outflow and that both reports identify any potential adverse impact as either inconsequential in the circumstances or call for on-going monitoring to occur at the commencement of the brine release and water intake to further assess the impacts, if any, and to establish an appropriate response to mitigate any adverse effect caused. Both of these reports resulted in the terms and conditions in IAA03 that followed.

With respect to Ground #2 raised by Sipekne'katik in its submissions, the technical concerns and questions raised by Sipekne'katik are similar to those concerns raised by other aggrieved persons.

The concerns and interests of Sipekne'katik and other aggrieved persons have been balanced with broader societal interests, including social and economic interests. The proposed project is an important one for Nova Scotians. It will support jobs and economic growth. It will provide lower cost energy during periods of high demand, help reduce greenhouse gas emissions, and provide opportunities for energy related projects including the reduction in use of other fossil fuels.

I conclude that the concerns of Sipekne'katik regarding potential harms were appropriately considered and find that they are sufficiently mitigated against by the terms and conditions imposed in IAA03.

Raymond Larkin

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I note I am authorized by s. 137(4) of the *Environment Act* to make any decision the administrator could have made. I am concerned that the terms and conditions applicable to IAA03 ought to be broadened to take into account the possibility that circumstances might arise during the life of IAA03 which might require considering the regulatory requirements of other agencies or authorities and how those requirements affect the operations under IAA03. For example, another governmental agency with regulatory authority over the project might issue directions or requirements which might impact the operation under IAA03. Therefore, to mitigate against any such adverse consequence, under my s. 137(4) authority, I hereby direct the administrator to immediately amend IAA03 to include as a term and condition the following:

Despite the issuance of this Approval, the Approval Holder remains responsible for complying with or obtaining any other requirement or authorization that may be required to carry out the activity, including those which may be necessary under provincial, federal or municipal law.

This term and condition will capture any requirement to comply with another agency's regulatory provision. Any requirement to comply with another provision may result in amendment or change in the operating conditions of IAA03. Any such potential change to IAA03 may result in the need for further consultation with Sipekne'katik.

I have also added the following term and condition to ensure our established and valued relationship with the Mi'kmaq continues.

The Approval Holder shall develop a communication plan for the purposes of sharing information between the Approval Holder and Sipekne'katik on environmental issues that may require an amendment to this Approval. Alton Gas shall contact Sipekne'katik to request their participation in the development of the communication plan, including mechanisms for Sipekne'katik to identify any questions or concerns about the communication plan or information that may be supplied to them in the future on environmental issues.

Pursuant to Section 138 of the *Environment Act*, you have thirty (30) days to appeal my decision to the Supreme Court.

Sincerely,



Margaret Miller, MLA
Minister of Environment