

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE MINISTER OF ENERGY, MINES
AND PETROLEUM RESOURCES

Utilities Commission Act

Ministerial Order No. M211

I, Michelle Mungall, Minister of Energy, Mines and Petroleum Resources, order that pursuant to Section 88(3) of the *Utilities Commission Act*, approval is given to the British Columbia Utilities Commission to make exemptions from the indicated provisions of the *Utilities Commission Act* (related to NorthRiver Midstream Operations LP and NorthRiver Midstream Operations GP Inc.) as set out in the attached draft order of the British Columbia Utilities Commission.

June 17, 2019

Date



Minister of Energy, Mines and Petroleum Resources

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Utilities Commission Act*, R.S.B.C. 1996, s. 88(3)

Other: _____



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ORDER NUMBER

G-xx-xx

IN THE MATTER OF

the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

NorthRiver Midstream Operations LP and NorthRiver Midstream Operations GP Inc.
Application for an exemption pursuant to section 88(3) of the *Utilities Commission Act*

BEFORE:

B. A. Magnan, Panel Chair

T. A. Loski, Commissioner

on [Date]

DRAFT ORDER

WHEREAS:

- A. On January 7, 2019, NorthRiver Midstream Operations LP (NRLP) and NorthRiver Midstream Operations GP Inc. (NRGP) (collectively, NorthRiver Midstream) filed an application with the British Columbia Utilities Commission (BCUC) for an exemption from Part 3 of the *Utilities Commission Act* (UCA), pursuant to section 88(3) of the UCA, with respect to natural gas processing plants and associated raw gas pipelines (Application);
- B. In accordance with section 1 of the UCA, NorthRiver Midstream will fall within the definition of “public utility” upon completion of the transaction with Westcoast Energy Inc;
- C. Section 88(3) of the UCA states: “The commission may, on conditions it considers advisable, with the advance approval of the minister responsible for the administration of the *Hydro and Power Authority Act*, exempt a person, equipment or facilities from the application of all or any of the provisions of this Act or may limit or vary the application of this Act”;
- D. By Order G-22-19 dated January 30, 2019, the BCUC established a regulatory timetable for review of the Application, which included one round of BCUC information requests, submissions from stakeholders, NorthRiver Midstream responses to stakeholder submissions and further process to be determined;
- E. No stakeholder submissions were received by the BCUC;
- F. By Order G-49-19 dated March 6, 2019, the BCUC amended the regulatory timetable to establish a workshop, which was held on March 18, 2019 and attended by representatives of NorthRiver Midstream, Brookfield Asset Management Inc. and the BCUC;
- G. Final argument was submitted by NorthRiver Midstream on March 27, 2019;

- H. By Ministerial Order XXX dated XXX attached as Appendix XX to this order, the Minister for Energy, Mines and Petroleum Resources responsible for the administration of the *Hydro and Power Authority Act* granted advance approval to the BCUC for the proposed exemption; and
- I. The BCUC has reviewed the Application and considers that NorthRiver Midstream's request for exemption is warranted.

NOW THEREFORE the British Columbia Utilities Commission orders as follows:

1. Pursuant to section 88(3) of the *Utilities Commission Act (UCA)*, the BCUC, having been granted advance approval by the Minister responsible for the administration of the *Hydro and Power Authority Act*, approves for NRLP (as owner) and NRGP (as operator), an exemption from Part 3 of the UCA, of the facilities identified in Appendix I (the Field Services Assets), with respect to the transmission and processing of natural gas for others, effective as of the date specified in Directive 2 of the herein Order.
2. This Order becomes effective on the closing date of the purchase and sale transaction in which NRLP will acquire the Field Service Assets.
3. NorthRiver Midstream are directed to provide notice to the BCUC of:
 - (a) the month in which they expect the closing of the transaction where NRLP will acquire the Field Service Assets, no later than five (5) business days before the end of that month; and
 - (b) the day on which the transaction actually closed, no later than five (5) business days after the closing occurs.
4. Regulation of the Field Service Assets will be on a complaint basis in accordance with the process set out in Schedule I to this Order.
5. In determining a complaint heard in accordance with the process set out in Schedule I, the BCUC will apply the principles set out in Schedule II to this Order.
6. The BCUC, on finding it to be in the public interest to do so, may revise the declaration in Directive 1 herein to name any person that succeeds in interest to NRLP and NRGP provided that person is controlled, directly or indirectly, by Brookfield Asset Management Inc., and has assumed the right and obligation to own or operate all or some of the Field Service Assets.
7. NRGP is directed to inform the BCUC, in writing, of any facility that is not identified in the Field Service Assets and which NRLP has acquired or NRGP intends to operate, to transmit or process natural gas for others, so that the BCUC, on finding that the exemption of such facility is in the public interest, can, by further order, issue a revised order.
8. NRGP is responsible for the safe and proper operation of its facilities in the Field Service Assets consistent with the requirements of the Oil and Gas Activities Act and other applicable regulatory requirements.
9. NRGP is directed to file an annual report with the BCUC regarding the exempted facilities in the form set out in Appendix II or as the BCUC may otherwise require, and to distribute copies to any customer(s) using the Field Service Assets.
10. NRGP is directed to pay fees to the BCUC in the amounts the BCUC determines are necessary to defray regulatory costs associated with the regulation of the Field Service Assets.

DATED at the City of Vancouver, in the Province of British Columbia, this [XX] day of [Month Year].

BY ORDER

B. A. Magnan
Commissioner

DRAFT

Appendix I
List of Exempted Facilities

- Aitken Creek gas plant area – pipelines, plants and related facilities
- Charlie Lake complex area – pipelines, plants and related facilities
- Dawson Creek gas plant area – pipelines, plants and related facilities
- Fort Nelson gas plant area – pipelines, plants and related facilities
- Fort Nelson gathering system including all booster stations
- Fort Nelson North gas plant area – pipelines, plants and related facilities
- Fort St. John gathering system including all booster stations
- McMahon gas plant area – pipelines, plants and related facilities
- Sikanni gas plant area – pipelines, plants and related facilities

Appendix II

Annual Report Requirements

NRGP will file a report within ninety days after its fiscal year end for each separate, significant pipeline system or processing facility.

Previous Year Actuals:

- Facility name, location, function and capacity.
- Any significant changes in capacity during the year.
- Throughput during the year.
- Names, address, contact name, and telephone number for each customer.

Schedule I Complaints Process

1. The objectives of the complaint process are to provide:
 - (a) effective regulatory oversight;
 - (b) an avenue for redress to any customers or potential customers who believes that NorthRiver Midstream Operations LP ("**NRLP**") or NorthRiver Midstream Operations GP Inc. ("**NRGP**") (collectively, "**NorthRiver Midstream**") is not complying with the policies and practices set out in Schedule II or who is unable to reach a satisfactory contractual arrangement with NorthRiver Midstream;
 - (c) timely and cost-effective resolution of complaints; and
 - (d) parties with the option of using an alternative dispute resolution mechanism.
2. While the following procedure for processing complaints arising from, or related to, the conditions established by this Order is generally to apply, nothing herein is intended to restrict parties from negotiating dispute resolution provisions in their contracts.
3. A complaint may proceed to:
 - (a) mediation, at the option of the complainant;
 - (b) arbitration, by the agreement of NorthRiver Midstream and the complainant; and/or
 - (c) subject to subsection 3(a), adjudication by the BCUC, at the option of either NorthRiver Midstream or the complainant.
4. The complainant will submit its complaint in writing, along with supporting documents, if any, to the BCUC via its Secretary and to NRGP.
5. Complaints will include the following information:
 - (a) name of complainant;
complainant address;
contact at complainant;
contact's phone number;
date of complaint;
general description of complaint; general nature of the relief sought; and
 - (b) following any mediation, the specific relief requested.
6. Mediation:

The complainant may choose whether or not to pursue mediation, and NorthRiver Midstream will accept the complainant's choice. The complainant and NorthRiver Midstream will have ten days following the filing of the complaint to choose a mutually acceptable mediator. If NorthRiver Midstream and the complainant cannot agree upon the choice of a mediator, one may be appointed by the BCUC. With the agreement of the BCUC, NorthRiver Midstream and the complainant, the staff of the BCUC may act as the mediator. In the event that the BCUC is unable or unwilling to appoint a mediator, the complainant may request that a mediator be appointed by the British Columbia International Commercial Arbitration Centre or the ADR Institute of Canada ("**ADR**").

- (a) Standard Terms of Reference for Mediation
 - (i) The representatives of NorthRiver Midstream and the complainant who take part in the mediation must have authority to settle the dispute.
 - (ii) As soon as practical after the appointment of the mediator, the complainant and NorthRiver Midstream will agree upon an appropriate mediation procedure (in this regard, they may wish to consider the ADR's National Mediation Rules). The mediation procedure should address issues of confidentiality.
 - (iii) NorthRiver Midstream and the complainant may choose to authorize the mediator to make a report to the senior management of NorthRiver Midstream and the complainant in the event that mediation is unsuccessful.
- (b) Both the complainant and NorthRiver Midstream will exchange their submissions within ten days of the filing of the complaint, or such other time period to which they may agree, and deliver their submissions to the mediator.
- (c) Additional information which describes the complaint in the submissions to the mediator should include the following:
 - (i) how long the problem described has been going on;
 - (ii) a description of any other actions which have been taken to resolve the problem; and
 - (iii) the current status of negotiations.
- (d) Upon request by the mediator, NRGP will prepare a spreadsheet which summarizes the significant components of any negotiated service contract. The customer holding the contract will approve the accuracy of the description of the components included in the spreadsheet which, once approved, may not be changed without approval of the customer. The spreadsheet will be made available to the mediator on a confidential basis for the purpose of determining whether or not the mediator requires any of the contracts to complete their duties. The spreadsheet and any contracts provided by NorthRiver Midstream to the mediator will not be available to the complainant.
- (e) The complainant and NorthRiver Midstream will have thirty days from the appointment of the mediator, or such other time period to which they may agree, to resolve the dispute via mediation. The positions taken in the mediation are without prejudice to the position either may take in a subsequent proceeding. If the complaint is not resolved through mediation, NorthRiver Midstream and the complainant may both agree to move to arbitration, or either NorthRiver Midstream or the complainant may pursue adjudication by the BCUC.

7. Arbitration

- (a) If NorthRiver Midstream and the complainant agree to proceed to arbitration, the arbitration will be conducted pursuant to the terms of a written arbitration agreement between the parties (including any prior agreement concerning arbitration negotiated by the parties in conjunction with a contract) that will identify the issues to be resolved and the procedures to be adopted in the arbitration, that subject to paragraph 8 may include the commercial arbitration rules of the British Columbia International Arbitration Centre or the ADR.
- (b) NorthRiver Midstream and the complainant may agree to pursue "final offer" arbitration, for example, if a price is in dispute.

- (c) All hearings before an arbitrator will be designed to preserve confidentiality in the following manner:
 - (i) the arbitrator will make an order of confidentiality and the recipients of Confidential Information will enter into confidentiality agreements with NorthRiver Midstream as a condition to the receipt of such information; or
 - (ii) the arbitration hearing will be conducted in accordance with the procedure set out in section 8.

8. Confidential Hearing Procedure

To provide for confidential treatment of all information disclosed in the arbitration process, the following rules will apply:

- (a) Confidential Information shall be marked "**Confidential**".
- (b) Confidential Information may only be disclosed to a legal counsel or other advisor to a party to the hearing who has filed an appropriate Declaration and Undertaking with the arbitrator or the BCUC. The advisor must not be a director, servant or employee of the party. The arbitrator or the BCUC may grant access or, for sufficient reason, may deny access to any such counsel or advisor.
- (c) A legal counsel or advisor granted access to Confidential Information shall not, subject to the direction of the arbitrator or the BCUC, divulge that information to any person, except a person who has also been granted access to such information or to the arbitrator or to personnel of the BCUC who have access to such information. For greater certainty, but without limiting the foregoing, such information shall not be divulged to the client of the legal counsel or of the advisor. (Note: this restriction on communication does not apply to information that is already in the possession or knowledge of the party.)
- (d) Confidential Information, subject to the direction of the arbitrator or the BCUC, shall not be photocopied or otherwise reproduced and shall not be communicated by facsimile or telephone.
- (e) Confidential Information shall be kept in a secure storage device.
- (f) Confidential Information provided to a legal counsel or other advisor, including:
 - notes, charts and memoranda based on such information, shall be returned to the arbitrator or the BCUC or destroyed within ten days of the participation of the counsel or advisor in the proceeding coming to an end. In the case of a change of legal counsel or advisor, the Confidential Information, including notes, charts and memoranda based on such information, may, subject to the direction of the arbitrator or the BCUC, be entrusted to the new counsel or advisor who has filed a Declaration and Undertaking and been granted access to the Confidential Information.
- (g) Any violation of these procedures or any change in the facts upon which access to Confidential Information was granted shall be reported immediately to the arbitrator or the BCUC by the person who has committed the violation or whose facts have changed.
- (h) Where Confidential Information is filed in confidence in a hearing before the BCUC, a copy of the document from which all confidential information has been deleted will be filed as part of the information available to the public. (Arbitration hearings are private.) Confidential Information shall be examined in a hearing before the arbitrator or the BCUC in a confidential session attended only by persons having access to Confidential Information and the information disclosed in the confidential session is itself Confidential Information governed by

this procedure. A separate confidential transcript may be maintained. Where witnesses are examined in a confidential session, the witnesses shall not be referred to Confidential Information other than Confidential Information that is already in the possession or knowledge of the witnesses. A summary of the confidential session, which excludes any reference to Confidential Information, may be prepared and filed as part of the information available to the public.

- (i) The Declaration and Undertaking shall state the facts necessary to be granted access to Confidential Information, that the person is aware of the requirements concerning Confidential Information, that the person will comply with these requirements, and will be signed by the person making the Declaration and Undertaking.

9. Adjudication by the BCUC

- (a) NorthRiver Midstream or the complainant may elect to have the BCUC adjudicate the complaint even after arbitration is concluded. At the request of the BCUC, parties will provide their positions and any decision in arbitration and, in light of all relevant circumstances, the BCUC may decide to make an order having regard to the positions or the arbitration decision.
- (b) The BCUC may write its decisions in a manner that, while respecting confidentiality, provides guidance to all industry participants as to how the BCUC decided the issues.

All of the contracts, and information concerning the contracts, negotiated between NorthRiver Midstream and its customers (collectively "**Confidential Information**") are commercial in nature, to be treated as confidential by the customers and NorthRiver Midstream and disclosure of Confidential Information could result in a material loss or gain to the customers or NorthRiver Midstream, or could be expected to prejudice the competitive position of the customers or NorthRiver Midstream. The BCUC, in any complaint proceeding, will exercise its powers under section 14 of the Rules of Practice and Procedure of the Commission and take all measures and make all orders necessary to ensure the confidentiality of the Confidential Information. Subject to the application of the Rules of Practice and Procedure of the Commission, appropriate measures for the BCUC could include:

- (i) the conduct of a non-public hearing with respect to the complaint with appropriate safeguards such as restricting the participation in the hearing to NorthRiver Midstream and the complainant and issuing an order imposing confidentiality on the parties or imposing requirements that the recipients of Confidential Information enter into confidentiality agreements with NorthRiver Midstream as a condition to the receipt of such information to ensure the confidentiality of Confidential Information; or
- (ii) adoption of all or part of the procedures set out in section 8 of this Schedule.

Schedule II
Principles Applied by the BCUC to Resolve Complaints

1. When resolving any complaint made pursuant to this Order, the BCUC will have regard to the following principles and circumstances:
 - (a) customers are knowledgeable and have significant information about the provision of gathering and processing services and in many cases have options in how to obtain these services;
 - (b) all customers, regardless of size, resources, location or the evidence of competitive attendance should be treated fairly;
 - (c) the BCUC may apply its discretion to permit prices for service to rise to a level that would simply reflect the replacement cost of existing facilities; and
 - (d) prices for services may vary to reflect market-based considerations and new contracts for small volume captive customers will be priced consistent with service provided to customers who have greater bargaining power.

2. The prices for services provided by the Field Services Assets will be governed by the contracts negotiated with each individual customer.

In determining whether it is unreasonable to distinguish between two or more customers, the parameters of the service desired by each customer are relevant. The goal is to permit negotiations to include any item of value that could be the subject of bargaining in a competitive market. The parameters may allow for recognition of different circumstances and hence different pricing and terms and conditions of service between contracts.

The following list provides a non-exclusive list of the type of service parameters to which value may be ascribed during adjudication by the BCUC.

- (a) Term of contract.
- (b) Volume under contract.
- (c) Land dedication.
- (d) Reserve dedication.
- (e) Drilling commitments.
- (f) Existence of an economic alternative.
- (g) Renewal rights.
- (h) Conditions and circumstances existing at the date of execution of the contract.
- (i) The extent of compensation for non-performance by NorthRiver Midstream.
- (j) Credit worthiness of the customer.
- (k) Gas composition (absolute gas composition and the composition of the gas relative to the available capacity of the plant when the service is requested).
- (l) Location of facilities.
- (m) Receipt and delivery points.

- (n) Length of haul.
- (o) The extent of new facilities, if any, required to provide the service.