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February 14, 2019

Sent via email/eFile

**NRLP AND NRGD APPLICATION FOR EXEMPTION
EXHIBIT A-3**

Mr. Chris W. Sanderson, Q.C.
Lawson Lundell LLP
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925 West Georgia Street
Vancouver, BC V6C 3L2
csanderson@lawsonlundell.com

**Re: NorthRiver Midstream Operations LP and NorthRiver Midstream Operations GP Inc.
Application for an exemption pursuant to section 88(3) of the *Utilities Commission Act* – Project No.
1598989 – BCUC Information Request No. 1**

Dear Mr. Sanderson:

Further to your January 7, 2019 filing of the above-noted application, please find enclosed British Columbia Utilities Commission Information Request No. 1. In accordance with the regulatory timetable established by Order G-22-19, please file your responses on or before Thursday, February 21, 2019.

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

/jo
Enclosure



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

INFORMATION REQUEST NO. 1 TO NORTHRIVER MIDSTREAM

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A. CLARIFICATION OF THE REQUESTED EXEMPTION

- 1.0 Reference: OVERVIEW OF THE TRANSACTION BETWEEN NORTHRIVER MIDSTREAM AND ENBRIDGE INC.
Exhibit B-1, Application, p. 5
Exemption from Part 3 of the UCA**

Page 5 of the NorthRiver Midstream Operations LP and NorthRiver Midstream Operations GP Inc. (together, NorthRiver Midstream) Application for an exemption pursuant to section 88(3) of the *Utilities Commission Act* (UCA) (Application), requests an order:

...pursuant to Section 88(2) [sic] of the Utilities Commission Act (British Columbia) exempting Buyer (and any related entity) and the FS Facilities and FS Pipelines **from all of the provisions of Part 3** [emphasis added] of the Utilities Commission Act (British Columbia) with all facilities to be regulated under the Utilities Commission Act (British Columbia) on a complaint basis, with a complaint taking the form of a written application to the BCUC from a Person whose interests are affected...

- 1.1 Please confirm, or explain otherwise, that NorthRiver Midstream is seeking exemption from Part 3 of the UCA pursuant to section **88(3)** [emphasis added] of the UCA.
- 1.2 Please confirm, or explain otherwise, that the requested exemption is for the entirety of Part 3 of the UCA.
 - 1.2.1 If confirmed, please discuss why the exemption from all provisions of Part 3 is requested.
 - 1.2.2 Please discuss what effect would exemption from Part 3 of the UCA, with the exceptions of sections 24 and 25, have on the Application.
- 1.3 Please confirm, or explain otherwise, if NorthRiver Midstream is seeking relief or exemption from any provision of Part 4 of the UCA.
 - 1.3.1 If confirmed, please discuss the relief or exemption sought.

**2.0 Reference: OVERVIEW OF THE TRANSACTION BETWEEN NORTHRIVER MIDSTREAM AND ENBRIDGE INC.
Exhibit B-1, p. 1, pp. 3–5, p. 9
Location of Assets and Required Regulation**

On page 1 of the Application, NorthRiver Midstream states:

The Field Services Assets comprise facilities that currently make up a substantial part of Zones 1 and 2 of the Westcoast interprovincial pipeline system... If the pending transaction with Enbridge is completed, the Field Services Assets will move from federal to provincial jurisdiction because they will no longer be functionally integrated with and subject to common control, direction and management by Westcoast and operated as a single enterprise with Westcoast's interprovincial pipeline system.

On pages 3 and 4 of the Application, NorthRiver Midstream states:

The G&P Business [natural gas gathering and processing business], including the Field Services Assets, processes raw natural gas at 19 natural gas processing plants and natural gas liquids handling facilities with a total operating capacity of 3.3 bcf/d. The G&P Business also gathers raw gas from producers, utilizing approximately 3,350 kilometers of raw gas gathering pipelines in Northeast British Columbia and Northwest Alberta.

The G&P Business comprises facilities that do not form part of the Westcoast interprovincial pipeline system (the "**Provincial Facilities**") and the Field Services Assets which currently do. The Provincial Facilities comprise 13 of the 19 processing plants with a total operating capacity of 1.7 bcf/d and their associated raw gas gathering systems. The Provincial Facilities have long been subject exclusively to provincial jurisdiction.

The remaining six processing plants, with a total operating capacity of 1.6 bcf/d, that are contained in the G&P Business together with their associated raw gas gathering systems comprise the Field Services Assets and are currently subject to regulation by the NEB [National Energy Board]...

- 2.1 Please provide a map of Zones 1 and 2 of the Westcoast Energy Inc. (Westcoast) interprovincial pipeline and explain how each zone is categorized.
 - 2.1.1 Please confirm, or explain otherwise, that all Field Service Assets are located in Zones 1 and 2 and do not include any of Westcoast's transmission facilities.
- 2.2 Please provide a map with the name, location, description and status of the 19 natural gas processing plants and natural gas liquids handling facilities (the G&P Business).
- 2.3 Do the 6 Field Services Assets operationally differ from the 13 Provincial Facilities? Please discuss.
- 2.4 Please confirm, or explain otherwise, that the British Columbia Utilities Commission (BCUC) regulation for the Provincial Facilities will remain as it currently is.
- 2.5 Please confirm, or explain otherwise, that all the Field Service Assets, including the respective raw gas pipelines, are located entirely within British Columbia.
 - 2.5.1 If any facilities are located in Alberta, please discuss how these will be regulated and if any exemptions have been sought from the Alberta Utilities Commission.
- 2.6 Please explain what is meant by "functionally integrated".
 - 2.6.1 Please confirm, or explain otherwise, that the Field Service Assets are currently functionally integrated with Westcoast's interprovincial pipeline system.

- 2.6.2 Please discuss if any of the Provincial Facilities form part of the interprovincial pipeline system.
- 2.7 Please discuss how these assets will no longer be functionally integrated with Westcoast's interprovincial pipeline system upon completion of the transaction with Enbridge Inc. (Enbridge).

On page 9 of the Application, NorthRiver Midstream states:

When the Field Services Assets are transferred to provincial jurisdiction, existing provincial regulation of the facilities will continue and the authority exercised by the NEB will be replaced with regulatory authority in the BC Oil and Gas Commission (the "BC OGC") and the Commission. The former will be responsible for prescribing the detailed regulations governing operation and safety issues including engineering standards, integrity management plans and general oversight of physical operation and the latter will assume the obligation to establish an appropriate framework for economic regulation...

- 2.8 Please confirm, or explain otherwise, that the transfer of regulatory jurisdiction from the NEB to the BCOGC and BCUC applies only to the 6 Field Services Assets.

B. COMPLAINTS PROCESS

3.0 Reference: HISTORICAL REGULATION OF THE FIELD SERVICES ASSETS Exhibit B-1, p. 2, p. 8, pp. 14–15; Appendix II Complaints-based Process and Part 4 of the UCA

On page 2 of the Application, NorthRiver Midstream states:

The Westcoast Framework has worked well and all contracts for service utilizing the Field Services Assets have been negotiated on the basis of market pricing with almost no need to invoke the complaint process since the Westcoast Framework was established more than 20 years ago.

On page 8 of the Application, NorthRiver Midstream states:

...In the 20 years that the Westcoast Framework has been in effect, only two complaints have ever been commenced. One of these was resolved between the parties shortly after it was filed. The other required the NEB to determine whether Westcoast was required to transport and handle through its facilities acid gas extracted in a producer-owned gas plant that Westcoast thought detrimental to its facilities.

- 3.1 Please confirm when Enbridge or its predecessors obtained the 13 Provincial Facilities and when each was exempted from Part 3 of the UCA.
- 3.1.1 Please provide details of any complaints made to the BCUC with respect to the Provincial Facilities and how they were resolved.
- 3.2 Please provide details of the two complaints as described in the preamble, including the basis on which they were resolved.
- 3.3 Please discuss the necessity of the Westcoast Framework complaints-based process considering its infrequent application.
- 3.3.1 What advantages and disadvantages does the Westcoast Framework complaints-based process have? Please discuss.

- 3.3.2 Please highlight the differences between the complaints-based process requested in the Application and the requirements under Part 4 of the UCA.
- 3.4 Please confirm, or explain otherwise, that the Provincial Facilities and Field Service Assets would have a different complaints and resolution process if the BCUC approves the Application.
 - 3.4.1 If confirmed, please discuss how the complaints resolution under Part 4 of the UCA is suitable for the Provincial Facilities but is not adequate for the Field Services Assets.

On pages 14 to 15 of the Application, NorthRiver Midstream states:

...the substantial investment NRMI will be making to close the acquisition of the Field Services Assets and the importance to it and interested parties of obtaining regulatory clarity means that it is now time effective and indeed necessary to establish guidelines setting out the process that will be employed to hear any complaint that may arise and the substantive considerations that will govern the disposition of any complaint...

- 3.5 In the event NorthRiver Midstream's request for the complaints-based process is denied, please discuss the implications with respect to the overall transaction.
- 3.6 Please discuss any alternative complaints processes that have been considered by NorthRiver Midstream.

C. THE WESTCOAST FRAMEWORK

- 4.0 **Reference: BASIS FOR REQUESTED EXEMPTION ORDER
Exhibit B-1, p. 2, pp. 14–15, p. 17; Appendix III; SCHEDULE E – Westcoast Energy Inc.
Framework for Light Handed Regulation
Complaint-based Regulation and Core Contracting Principles**

On page 2 of the Application, NorthRiver Midstream states:

...NorthRiver Midstream seeks an exemption from Part 3 of the *UCA* subject to conditions that allow interested parties to file complaints of a kind similar to complaints under Part 4 of the *UCA* and employing a complaint process and pricing principles that are analogous to those contained in the Westcoast Framework.

On page 15 of the Application, NorthRiver Midstream states:

The basis for the Westcoast Framework was that shippers knew that pricing for the services offered at these facilities was constrained by the price at which each customer could acquire those services from other producers, from other third party providers, or by constructing the facilities themselves. The Westcoast Framework also provided Westcoast with flexibility to respond in real time to the demands of the market place just as its competitors had to. To maintain these attributes, NorthRiver Midstream requests that the core contracting principles and complaint process set out in the Westcoast Framework be adopted by the Commission so as to maintain the existing balance between the interests of NorthRiver Midstream and its customers.

- 4.1 What are the "pricing principles" NorthRiver Midstream is referring to? Please explain.
 - 4.1.1 Please discuss if the "pricing principles" are synonymous with core contracting principles.
- 4.2 Please confirm, or explain otherwise, that NorthRiver Midstream is requesting adoption of only

the complaints-based process from the Westcoast Framework, not the entirety of the Westcoast Framework.

- 4.2.1 If confirmed, please explain why core contracting principles are also being requested by NorthRiver Midstream, as described in the above preamble.
 - 4.2.2 Please provide a copy of the core contracting principles.
- 4.3 Is the adoption of the core contracting principles dependent on adoption of the complaint process or are they independent of one another? Please discuss.

On page 17 of the Application, NorthRiver Midstream states:

Paragraph 5 incorporates Appendix III which sets out the core contracting principles from the Westcoast Framework that continue to have relevance to establish the basis on which NorthRiver Midstream and its customers will negotiate price and other terms and conditions of service and the manner in which the Commission will resolve a complaint. The principles recognize the competitive nature of NorthRiver Midstream's business and identify the factors that were set out in Part A, paragraphs 3 -6 and Part C of the Westcoast Framework. Reference to groups of customers negotiating together has been dropped because no group negotiations have occurred over the past 20 years. In addition the reference to comparisons between supply areas has been removed because of the growth of competitive alternatives available to customers in all service areas.

Together with the complaint process established by paragraph 4, incorporation of these principles establishes that a complaint will be determined on a basis similar to that of an interested party under the Common Carrier and Common Processor sections of Part 4 of the UCA.

- 4.4 Please discuss why the principles set out in Appendix III are necessary for complaints to be determined on a similar basis under Part 4 of the UCA.
- 4.5 Please confirm if the principles set out in Appendix III apply only to the requested complaints process and not contracting or pricing practices.
 - 4.5.1 If confirmed, please discuss why the principles are necessary solely for the purpose of adjudicating complaints.
 - 4.5.2 If not confirmed, please explain in the context of the requested exemption from Part 3 of the UCA, why principles that apply to contracting or pricing practices would be necessary.

- 5.0 **Reference:** **BASIS FOR REQUESTED EXEMPTION ORDER**
Exhibit B-1, p. 15; NEB A97167-2, Westcoast Energy Inc., doing business as Spectra Energy Transmission, Application Pursuant to Paragraph 74(1)(a) of the *National Energy Board Act* for Leave to Sell Certain Gathering System and Processing Facilities to NorthRiver Midstream Operations LP (Westcoast NEB application), p. 9
Comparison to Westcoast's NEB Application

On page 15 of the Application, NorthRiver Midstream states:

...NorthRiver Midstream requests that the core contracting principles and complaint process set out in the Westcoast Framework be adopted by the Commission so as to maintain the existing balance between the interests of NorthRiver Midstream and its customers. Imposing unique regulatory restrictions or compliance requirements upon

NorthRiver Midstream or in respect of the Field Services Assets would not only be unfair to NorthRiver Midstream but would also deprive NorthRiver Midstream and its customers and potential customers of the level of responsiveness and flexibility that would otherwise be available to them.

On page 9 of the Westcoast NEB application¹, Westcoast states:

The Transfer Facilities will come under British Columbia provincial jurisdiction following the closing of the transaction and will no longer be subject to Westcoast's Pipeline Tariff or the Framework for Lighthanded Regulation approved by NEB Order TG-4-98 ("**Framework**"). NorthRiver will apply to the BCUC to have the Transfer Facilities regulated by the BCUC on a complaint-basis under the *Utilities Commission Act* (British Columbia), similar to the manner in which other gathering and processing facilities within British Columbia owned by midstream service providers are regulated.

- 5.1 Please discuss how Westcoast's statement aligns with NorthRiver Midstream's request for part adoption of the Westcoast Framework.
- 5.2 Please confirm, or otherwise explain, that the complaint-based process for the "Transfer Facilities" described in the above preamble refers to regulation under Part 4 of the UCA.
 - 5.2.1 If confirmed, please discuss how the approvals sought in this Application align with the NEB Application and regulation under Part 4 of the UCA.

D. CONSULTATION PROCESS

6.0 Reference: CONSULTATION Exhibit B-1, p. 10; NEB A97167-2, Westcoast NEB application, pp. 5–7 Notification and Consultation Process

On page 10 of the Application, NorthRiver Midstream states:

Consultation relevant to this Application has taken two forms.

First, Enbridge has sought conditional assignment and novation agreements ("**A&N Agreements**") with each of its approximately 40 customers...

Second, for its part NorthRiver Midstream has provided advance notice to all customers that it will be bringing this Application and will provide a link to it to each customer at the time of filing. In addition, it has begun the process of reaching out to its existing customers...

- 6.1 Please discuss in greater detail the steps taken by NorthRiver Midstream to consult with existing and potential customers with regards to this transaction. Please provide any consultation documents or correspondence with your response.
- 6.2 Please confirm if customers are aware that the Application by NorthRiver Midstream proposes adopting only part of the Westcoast Framework and not the entire Westcoast Framework which was established.
 - 6.2.1 If not confirmed, please explain how NorthRiver Midstream proposes to inform its customers that it proposes adopting only part of the Westcoast Framework.

¹ Westcoast NEB application, retrieved from <https://apps.neb-one.gc.ca/REGDOCS/File/Download/3745927>

- 6.3 Please confirm if First Nations consultation has taken place.
 - 6.3.1 If confirmed, please discuss the adequacy of the consultation process and provide detailed results of any workshops, correspondences, responses received, arrangements and/or outcomes reached.
 - 6.3.2 If not confirmed, please clarify what steps will be taken to consult with First Nations.

On page 5 of the Westcoast NEB application, Westcoast states:

While Westcoast does not anticipate any adverse impacts on third parties as a result of the transaction, it has notified potentially interested parties of the transaction and this Application and will continue engagement, as follows.

Between July 4 and July 18, 2018, information packages containing a letter with information about the transaction, contact information for Westcoast and the NEB, and a map showing the location of the Transfer Facilities, were sent to the following potentially interested parties:

- 6.4 Please confirm if NorthRiver Midstream is aware of the consultation program Westcoast detailed in its application to the NEB.
 - 6.4.1 If confirmed, please discuss if NorthRiver Midstream has consulted with any of the parties and what consultation took place.