



May 14, 2019

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| <b>NRLP AND NRGP APPLICATION FOR EXEMPTION<br/>EXHIBIT A-6</b> |
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The Honourable Michelle Mungall  
Minister of Energy, Mines and Petroleum Resources  
PO Box 9060, Stn Prov Govt  
Victoria, BC V8W 9E2  
MEM.Minister@gov.bc.ca

**Re: NorthRiver Midstream Operations LP and North River Midstream Operations GP Inc. - Application for an Exemption under Section 88(3) of the *Utilities Commission Act* – Project No. 1598989 – Panel Report**

Dear Minister Mungall:

On January 7, 2019, the British Columbia Utilities Commission (BCUC) received an application from NorthRiver Midstream Operations LP and NorthRiver Midstream Operations GP Inc. (collectively, NorthRiver Midstream) for an exemption under section 88(3) from Part 3 of the *Utilities Commission Act* (UCA) (Application). NorthRiver Midstream is the pending owner and operator of six natural gas processing plants with total operating capacity of 1.6 billion cubic feet per day and associated raw gas pipelines (the Field Services Assets) that are currently owned and operated by Westcoast Energy Inc. doing business as Spectra Energy Transmission.

The BCUC initiated a proceeding on January 30, 2019, by Order G-22-19, to establish 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. No stakeholder submissions were received by the BCUC.

By Order G-49-19 dated March 6, 2019, the BCUC amended the regulatory timetable establishing a workshop, which was held on March 18, 2019, and attended by representatives of NorthRiver Midstream and the BCUC.

Final argument was submitted by NorthRiver Midstream on March 27, 2019.

The BCUC has considered the Application, the evidence and submissions of the parties and considers that an exemption is warranted. We therefore seek the advance approval of the Minister of Energy, Mines and Petroleum Resources to issue an order under section 88(3) based on the draft order attached.

The BCUC encloses the following documents in support of the described exemption:

- Panel Report as Appendix A
- Draft Order as Appendix B
- Application dated January 7, 2019

Documents filed in connection with this matter are available on the proceeding webpage, which can be found on our website at [www.bcuc.com](http://www.bcuc.com) under “Current Applications.”

Sincerely,

*Original signed by:*

Patrick Wruck  
Commission Secretary

DB/jo  
Enclosures

cc: Mr. Paul Wieringa, Executive Director  
Ministry of Energy, Mines and Petroleum Resources  
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NorthRiver Midstream Operations LP and North River Midstream Operations GP Inc.  
Application for an Exemption Pursuant to Section 88(3) of the *Utilities Commission Act*

PANEL REPORT

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## 1.0 INTRODUCTION

The British Columbia Utilities Commission (BCUC), under the jurisdiction of the *Utilities Commission Act* (UCA), regulates public utilities as defined in the UCA. Under section 1 of the UCA, a public utility “means a person..., who owns or operates in British Columbia, equipment or facilities for (a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation.”<sup>1</sup>

On January 7, 2019, the BCUC received an application from NorthRiver Midstream Operations LP and NorthRiver Midstream Operations GP Inc. (collectively, NorthRiver Midstream) for an exemption under section 88(3) from Part 3 of the UCA with respect to their pending ownership and operation of six natural gas processing plants (Application),<sup>2</sup> with a total operating capacity of 1.6 billion cubic feet per day (bcf/d) and associated raw gas pipelines (the Field Services Assets). The Field Services Assets are currently owned and operated by Westcoast Energy Inc. (Westcoast) doing business as Spectra Energy Transmission and are regulated by the National Energy Board (NEB).

Under section 88(3) of the UCA, the BCUC may, with the advance approval of the Minister responsible for the administration of the *Hydro and Power Authority Act*, exempt a person from any or all provisions of the UCA.

## 2.0 THE APPLICANT

NorthRiver Midstream is the pending owner and operator of the Field Services Assets that are currently owned and operated by Westcoast.<sup>3</sup> Westcoast is a wholly owned subsidiary of Enbridge Inc. (Enbridge).<sup>4</sup>

On July 4, 2018, NorthRiver Midstream signed two agreements to acquire 100 percent of Enbridge's Western Canadian natural gas gathering and processing business (the G&P Business).<sup>5</sup> The G&P 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.<sup>6</sup>

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

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<sup>1</sup> *Utilities Commission Act [RSBC 1996] Chapter 437*. Retrieved from [http://www.bclaws.ca/civix/document/id/complete/statreg/96473\\_01#section1](http://www.bclaws.ca/civix/document/id/complete/statreg/96473_01#section1)

<sup>2</sup> Exhibit B-1, p. 1.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Exhibit B-1, p. 3.

<sup>6</sup> *Ibid.*, pp. 3–4.

systems.<sup>7</sup> The Provincial Facilities are subject exclusively to provincial jurisdiction and are exempt from Part 3 of the UCA through BCUC exemption orders, including recent BCUC orders G-12-19A and G-13-19.<sup>8</sup>

The Field Services Assets make up the remaining six processing plants, with a total operating capacity of 1.6 bcf/d and are contained in the G&P Business together with their associated raw gas gathering systems. The Field Services Assets are currently subject to regulation at a federal level by the NEB.<sup>9</sup> Should NorthRiver Midstream acquire the Field Services Assets, the six processing plants would transfer to provincial regulation under the BCUC.

NorthRiver Midstream states they have entered into two separate purchase and sale agreements (PSA) as follows:

- a purchase and sale agreement pursuant to which NorthRiver Midstream agreed to directly and indirectly acquire 100% of certain subsidiaries of Enbridge that own the Provincial Facilities (the Legacy PSA); and
- a purchase and sale agreement pursuant to which NorthRiver Midstream will acquire the Field Services Assets (the Field Services PSA).<sup>10</sup>

NorthRiver Midstream confirmed the Legacy PSA closed on October 1, 2018, and that NorthRiver Midstream now itself either owns or is the owner of the entities that own the Provincial Facilities. The closing of the Field Services PSA is subject to the receipt of various approvals and exemptions which are listed in the Application, including the requested exemption order from the BCUC.<sup>11</sup>

### 3.0 THE APPLICATION

The Application is made pursuant to section 88(3) of the UCA for an order exempting NorthRiver Midstream and the Field Service Assets from all provisions of Part 3 of the UCA. In the Application, NorthRiver Midstream intends to acquire the Field Services Assets provided that certain closing conditions are satisfied or waived prior to a closing of the transaction anticipated in mid-2019.<sup>12</sup> One condition is obtaining the requested exemption order, with all facilities to be regulated on a complaint basis under Part 4 of the UCA.

NorthRiver Midstream desires that the post-closing regulatory regime will continue to be complaints based, employing the processes and principles that are comparable to those currently in effect.<sup>13</sup> Therefore, NorthRiver Midstream has adapted a complaints-based process and principles from the Framework for Light-Handed Regulation (Westcoast Framework) which has been in use for the Field Services Assets over the last 20 years under NEB regulation.<sup>14</sup> NorthRiver Midstream is requesting that in addition to an exemption from Part 3 of the UCA, the BCUC will adopt both the adapted complaints-based process and the principles for use in adjudicating complaints.<sup>15</sup> The adapted complaints-based process and principles are set out in Appendix II and III of the Application.<sup>16</sup>

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<sup>7</sup> Exhibit B-1, p. 4.

<sup>8</sup> BCUC Orders [G-12-19A](#) and [G-13-19](#) each continued exemptions in the name of NorthRiver Midstream.

<sup>9</sup> Exhibit B-1, p. 4.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid., pp. 4–6.

<sup>12</sup> Ibid., p. 1.

<sup>13</sup> Ibid., p. 6.

<sup>14</sup> Exhibit A2-1.

<sup>15</sup> Exhibit B-1, p. 16.

<sup>16</sup> Ibid., Appendix II and III.

## 4.0 REGULATORY PROCESS FOLLOWED

By Order G-22-19 dated January 30, 2019, the BCUC initiated a written proceeding and established a regulatory timetable for review of the Application which included one round of BCUC information requests (IRs), submissions from stakeholders, NorthRiver Midstream responses to stakeholder submissions and further process to be determined.<sup>17</sup> No stakeholder submissions were received by the BCUC.

Following NorthRiver Midstream's response to IRs on February 21, 2019, the BCUC amended the regulatory timetable by Order G-49-19 dated March 6, 2019, to establish a workshop, which was held on March 18, 2019 and attended by representatives of NorthRiver Midstream and the BCUC.<sup>18</sup>

By Order G-61-19 dated March 19, 2019, the BCUC amended the regulatory timetable and established NorthRiver Midstream's final argument submission date.<sup>19</sup> Final argument was submitted by NorthRiver Midstream on March 27, 2019.

## 5.0 REQUEST FOR EXEMPTION

Under section 88(3) of the UCA the BCUC 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 the UCA or may limit or vary the application of the UCA.

NorthRiver Midstream raised several issues in the initial Application and throughout the course of proceedings. The Panel has given these issues due consideration and addresses each in turn below.

### 5.1 Qualifying as a Public Utility under the UCA

Section 1 of the UCA defines public utility as follows:

"public utility" means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for

- (a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation, ...

As affirmed by NorthRiver Midstream, the ownership and operation of the Field Services Assets falls within the UCA definition of a public utility and the requested exemption is consistent with the approach the BCUC has taken whenever other similar facilities in British Columbia have sought exemptions.<sup>20</sup>

### 5.2 Exemption from Part 3 of the UCA

NorthRiver Midstream states that owners and operators of provincially regulated natural gas processing and gathering facilities have never been actively regulated under Part 3 of the UCA and since 1996, the BCUC has exempted those that have applied from all or the majority of Part 3.<sup>21</sup> NorthRiver Midstream highlights that

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<sup>17</sup> Exhibit A-2.

<sup>18</sup> Exhibit A-4.

<sup>19</sup> Exhibit A-5.

<sup>20</sup> Exhibit B-1, pp. 11–12.

<sup>21</sup> *Ibid.*, pp. 13–14.

typically these exemptions have been granted subject to a provision for regulation on a complaint basis similar to that which is employed under Part 4 of the UCA.<sup>22</sup>

NorthRiver Midstream explains that during the last 20 years the marketplace for gas gathering and processing services in British Columbia has evolved and Westcoast's market share has declined.<sup>23</sup> NorthRiver Midstream believes that all market participants are now "highly sophisticated"<sup>24</sup> and that the market has transitioned to be increasingly competitive.<sup>25</sup> NorthRiver Midstream contends that today, in a highly competitive market, any market power that could be exerted historically has been substantially reduced.<sup>26</sup> NorthRiver Midstream states that the Application is based on the proposition that significant competitive forces will exist to make active regulation inappropriate, and that NorthRiver Midstream and its customers should be assured that regulation under Part 3 of the UCA will not be imposed.<sup>27</sup>

### *Panel Determination*

The test for granting a section 88(3) exemption order is found in the Reasons for Decision attached to BCUC Order G-167-07,<sup>28</sup> and set out in BCUC Order G-41-06, which states that "a section 88(3) exemption order should be issued, with the advance approval of the LGIC [Lieutenant Governor in Council], when such exemption serves the objects and purposes of the Act and it is in the public interest to do so."<sup>29</sup> As noted in these decisions, one of the objects and purposes of the UCA is the need to protect consumers.

The Panel must therefore decide, in determining whether to seek LGIC approval, whether such an exemption would leave NorthRiver Midstream in a position where it is able to exert significant monopoly or market power by discriminating on the basis of price or service, withdrawing service or setting rates which are unreasonable. In the circumstances of this Application, the consideration of the public interest includes not only the owner and operator but also the customers it provides service to. Therefore, it must be shown that all customers will continue to receive safe and reliable service at rates that are not unjust or unreasonable.

As noted in the FortisBC Energy Inc. Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives report (FEI AES Inquiry report), the Panel recognizes that if a regulated activity has limited monopoly characteristics and limited consumer protection is required, there may be opportunities to use lighter forms of regulation such as market based pricing or regulatory exemption.<sup>30</sup> This would be the case where the BCUC found that there were sufficient market forces at play to protect the interests of the ratepayer.<sup>31</sup>

The Panel acknowledges that for the last 20 years the Field Services Assets have been operating in an increasingly competitive environment and that the Westcoast Framework and the form of regulation used by the NEB have worked effectively and without any significant issues. The Panel considers that because of the nature of the proposed transaction and the competitive market that currently exists, there is benefit in keeping with the form of regulation currently employed by the NEB. This will allow for services to be negotiated on a

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<sup>22</sup> Ibid.

<sup>23</sup> NRLP and NRG Final Argument, p. 3.

<sup>24</sup> Ibid.

<sup>25</sup> Workshop Transcript Volume 1, pp. 30–31.

<sup>26</sup> Ibid.

<sup>27</sup> Exhibit B-2, BCUC IR 1.2.1, pp. 3–4.

<sup>28</sup> Unocal, Application for Approval of the Disposition of its Interests in the Aitken Creek Storage Facility to its Wholly-Owned Subsidiary, [Order G-167-07](#)

<sup>29</sup> BC Hydro/Fortis BC, Joint Application for Exemptions from the Act regarding the Canal Plan Agreement and reasons for Decision, [Order G-41-06](#)

<sup>30</sup> [FEI AES Inquiry Report](#), p. 19.

<sup>31</sup> Ibid.

market basis and maintain the continuation of safe and reliable service at rates that are reasonable for customers.

The Panel recognizes that customers have an avenue for redress on any issues that may arise, and the process which governs complaints for the Field Service Assets is considered and laid out in this decision.<sup>32</sup> Therefore, active regulation is not required at this time to protect the public from potential monopolistic behaviour on the part of NorthRiver Midstream with respect to the provision of services with the Field Service Assets or to ensure stakeholders can access quality service at a fair price. The Panel considers that the requested exemption from Part 3 of the UCA for NorthRiver Midstream is appropriate, is in the public interest, and would serve the objects and purpose of the UCA at this time.

**Therefore, the Panel finds that an exemption from Part 3 of the UCA, with respect to the Field Service Assets and the transmission and processing of natural gas for others is warranted and seeks the advance approval of the Minister responsible for the administration of the *Hydro and Power Authority Act* pursuant to section 88(3) of the UCA. Regulation on a complaint basis, as set out in this report, is the appropriate method of regulation by the BCUC at this time.**

### 5.3 Cost of Service Regulation

Throughout the proceeding, NorthRiver Midstream raised a concern that in the future there may be a potential for cost of service regulation imposed by the BCUC should an exemption be granted. NorthRiver Midstream states that the Field Services Assets have been free from traditional cost of service regulation and instead subject to complaint based financial regulation for over 20 years.<sup>33</sup> Therefore, ongoing ownership and operation of the Field Services Assets should also be free from traditional cost of service or other active financial regulation.<sup>34</sup>

NorthRiver Midstream expects that any concerns of existing or potential customers would be resolved through negotiation. However, NorthRiver Midstream believes that in the absence of the requested order, a complainant could argue for a cost of service rate based on historical net book value costs and that the BCUC may consider this argument.<sup>35</sup>

NorthRiver Midstream are concerned that fixing such a rate in a competitive environment would be unworkable due to the existing market-established rates where potential customers have numerous cost-effective alternatives.<sup>36</sup> NorthRiver Midstream argues that customers would “be under no compulsion, economic or otherwise, to take the service from NorthRiver Midstream”<sup>37</sup> in the face of available alternatives.

NorthRiver Midstream states that the multibillion-dollar investment being made (if the acquisition of the Field Services Assets closes) has not been based on the historical net book value of the Field Services Assets.<sup>38</sup> Rather it is based upon their market value, on the assumption that those facilities will continue to operate in a competitive market environment.<sup>39</sup> NorthRiver Midstream contended during the workshop that any future possibility of imposing cost of service rates based on historical net book value should be removed in order to support a decision to complete the transaction.<sup>40</sup>

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<sup>32</sup> Schedule I and II attached to the draft order in this report.

<sup>33</sup> Exhibit B-1, p. 13.

<sup>34</sup> Ibid.

<sup>35</sup> NRLP and NRG Final Argument, p. 12.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Exhibit B-2, BCUC IR 3.3, p. 33.

<sup>40</sup> Workshop Transcript Volume 1, pp. 25–27.

NorthRiver Midstream aimed to remove this possibility by including in the Application (in Appendix III 1[c]) a principle that limits the BCUC's discretion regarding a rise in prices for service.<sup>41</sup> The adoption of these principles is considered further in section 5.4 of this report.

### *Panel Determination*

The Panel considers that in the presence of an actively competitive market, there appears to be limited circumstances that would justify the use of a cost of service model. The applicability of a cost of service model has been examined in previous BCUC decisions and the Panel has taken this into account when examining the issue raised by NorthRiver Midstream.<sup>42</sup>

**Therefore, considering the factors outlined above and the evidence submitted in this proceeding, the Panel acknowledges that at the current time and under the current conditions, a cost of service model does not appear warranted in this instance.**

The Panel is of the view that it is unnecessary to impose such a model on NorthRiver Midstream at this time, and based on the evidence submitted in this proceeding, market pricing appears to be the most appropriate model for use by the NorthRiver Midstream. However, there can be no guarantee that the competitive situation and market will not evolve in such a way as to require a reconsideration and re-evaluation of the model employed in the light of new evidence. As such, the Panel makes no determination on the appropriate model for the future.

## **5.4 Complaints Process**

NorthRiver Midstream requests that, in addition to an exemption from Part 3 of the UCA, the BCUC sets out the complaint process and principles that will govern the disposition of a complaint with regards to the Field Services Assets.<sup>43</sup> NorthRiver Midstream feel that this is necessary given the substantial investment proposed to close the acquisition of the Field Services Assets and the importance of obtaining regulatory clarity to NorthRiver Midstream and other interested parties.<sup>44</sup> NorthRiver Midstream states that without obtaining regulatory clarity there is a material risk that the transaction will not close.<sup>45</sup>

The Field Services Assets are currently operating under light-handed regulation by the NEB. NorthRiver Midstream believes that the adoption of portions of the Westcoast Framework, particularly the complaints-based process and principles, will create predictable outcomes and promote negotiated solutions between NorthRiver Midstream and its customers.<sup>46</sup>

NorthRiver Midstream believes that establishing rules that affect the commercial negotiation process in the absence of a complaint has the potential to reduce flexibility.<sup>47</sup> NorthRiver Midstream believes that adopting the complaints-based process and principles adapted from the Westcoast Framework will help maintain the same level of flexibility that Westcoast enjoyed when dealing with its customers under the existing form of regulation by the NEB.<sup>48</sup> NorthRiver Midstream states that this will also help maintain the existing balance between the interests of NorthRiver Midstream and its customers.<sup>49</sup> NorthRiver Midstream's position is that contracting

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<sup>41</sup> Exhibit B-1, Appendix III, p. 1.

<sup>42</sup> FortisBC Energy Inc., Certificate of Public Convenience and Necessity for Approval of Contracts and Rate for Public Utility Service to Provide Thermal Energy Services to Delta School District Number 37, [Decision](#), p. 83.

<sup>43</sup> Exhibit B-1, pp. 14–15.

<sup>44</sup> *Ibid.*

<sup>45</sup> Exhibit B-2, BCUC IR 3.5, pp. 39.

<sup>46</sup> *Ibid.*, BCUC IR 4.5.1, p. 51.

<sup>47</sup> *Ibid.*

<sup>48</sup> Exhibit B-1, p. 15.

<sup>49</sup> *Ibid.*

practices will reflect the commercial circumstances it encounters and the fact that both parties understand the principles that will apply in the event of a dispute will provide a framework for those commercial discussions.<sup>50</sup>

NorthRiver Midstream submits that the overwhelming advantage of basing the complaints-based process and the principles on the Westcoast Framework is that this maintains the key elements of the status quo with all interested parties.<sup>51</sup> NorthRiver Midstream does not believe that it is asking the BCUC to include in the order any policy that the BCUC has not employed in the past.<sup>52</sup> NorthRiver Midstream argues that it is only asking the BCUC to do so “expressly and transparently to provide the necessary certainty”<sup>53</sup> for NorthRiver Midstream to move forward with the transaction. NorthRiver Midstream submits that the principles are consistent with the requirements of Part 4 of the UCA and within the range of principles that the BCUC is empowered to adopt under Part 4.<sup>54</sup>

### *Panel Determination*

The Panel acknowledges the unique circumstances attached to the Field Services Assets, stemming from their historical regulation under the Westcoast Framework with the NEB. Therefore, in moving from federal to provincial regulation, the Panel sees benefit in maintaining consistency with the existing Westcoast Framework, where appropriate, providing there exists no inconsistencies with the process set out in Part 4 of the UCA.

The Panel generally agrees with NorthRiver Midstream’s view that it would be beneficial to minimize regulatory changes and put in place a regulatory regime that is consistent with the competitive environment and complaint-based regime under which the Field Services Assets are currently operating. The Panel agrees that adopting those portions of the Westcoast Framework that are currently relevant and familiar to customers will continue to be important after NorthRiver Midstream replaces Westcoast.

**Therefore, the Panel adopts both the complaints-based process and principles proposed in the Application, set out in Appendix II and III respectively, for use by the BCUC in adjudicating complaints with respect to the Field Services Assets, subject to the changes below, which are included in Schedule I and II of this report. Adoption of the complaints-based process and principles is dependant on this unique process remaining consistent with the requirements of Part 4 the UCA.**

The Panel notes that while the proposed principles and complaint-based process are not disparate with regulation under the UCA, some of the adapted language proposed by NorthRiver Midstream may have a binding connotation on the BCUC. At the workshop, BCUC staff raised this potential conflict and noted that prescriptive language may fetter the BCUC’s discretion.<sup>55</sup> The following changes have been made to ensure the BCUC’s discretion is not fettered and the Panel finds these items, when amended, to align with the purpose and meaning of Part 4 of the UCA under which they will operate.

- Appendix II, paragraph 1(b): Clarified by substituting the words “customers or potential customers” for the word “person” in the first line of paragraph 1(b) and inserting the word "or" after the words "Appendix III". This amendment is to clarify the avenues of redress for customers.
- Appendix II, paragraph 9(b): A change of the word “will” to “may” regarding the manner in which the BCUC writes its decisions. This amendment is to remove the prescriptive nature of the wording.
- Appendix III, paragraph 1(c): A change of the words ‘will not’ to ‘may’ regarding the BCUC applying its discretion to permit prices for service to rise. This amendment is necessary to remove any

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<sup>50</sup> Exhibit B-2, BCUC IR 4.5, p. 50.

<sup>51</sup> Ibid., BCUC IR 3.3.1, p. 34.

<sup>52</sup> NRLP and NRG Final Argument, p. 13.

<sup>53</sup> Ibid.

<sup>54</sup> Exhibit B-2, BCUC IR 3.3.2, p. 36.

<sup>55</sup> Workshop Transcript Volume 1, p. 31.

possible fettering of the BCUC's discretion. The Panel considers that NorthRiver Midstream proposed adoption of this principle to safeguard against the possibility of a cost of service model being imposed by the BCUC. However, as previously discussed in section 5.3, the Panel notes that there can be no guarantee that a change in circumstances will not arise and therefore require a reconsideration of the model in use. The Panel emphasizes that even if such a guarantee could be given, section 99 of the UCA provides the BCUC with the power to reconsider, vary or rescind any order or decision made by it and therefore any guarantee could be superseded at a later date.

## 5.5 Adequacy of Consultation

NorthRiver Midstream states that Enbridge (of which Westcoast is the subsidiary) has informed it that no customer indicated taking exception to NorthRiver Midstream seeking the order or an intention to oppose the Application.<sup>56</sup> NorthRiver Midstream highlights that no parties have considered it necessary to make any submissions on process for the Application, participate in the BCUC held workshop or otherwise participate in this proceeding.<sup>57</sup>

NorthRiver Midstream indicates that since beginning operations as a business on October 1, 2018, it has been meeting extensively with its customers, other industry participants and stakeholders to, among other things, introduce the company and describe the conditions required for the closing of the sale of the Field Services Assets.<sup>58</sup> NorthRiver Midstream states it has discussed with customers the regulatory approvals being sought, including the Application to the BCUC and the order being sought from the NEB regarding Westcoast's sale and transfer of the Field Services Assets.<sup>59</sup>

NorthRiver Midstream explained that if the transaction was completed, customers were aware that the assets would cease to be regulated by the NEB, come under provincial jurisdiction, and that the Westcoast Framework, in its entirety, would no longer apply.<sup>60</sup> NorthRiver Midstream states this was explicitly known and understood by parties concerned.<sup>61</sup> Further to this, NorthRiver Midstream informed the BCUC that they have discussed the customers' potential contractual right to the Westcoast Framework.<sup>62</sup> NorthRiver Midstream state that each customer has specifically acknowledged and agreed in its Assignment and Novation Agreement that the Westcoast Framework will cease to apply to all services provided by NorthRiver Midstream under its service contract.<sup>63</sup>

NorthRiver Midstream consulted with potentially impacted First Nations both prior to and throughout the application process.<sup>64</sup> NorthRiver Midstream explained that after the close of the sale of the Provincial Facilities on October 1, 2018, the Westcoast employee who had carried out the First Nations consultation for Westcoast transferred to NorthRiver Midstream and continued consulting with those First Nation communities, associations and organizations who had expressed an interest in meeting.<sup>65</sup> NorthRiver Midstream and Westcoast have jointly requested meetings with eight First Nations communities in order to introduce NorthRiver Midstream and to provide an opportunity to raise any questions or concerns. NorthRiver Midstream

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<sup>56</sup> Exhibit B-1, p. 10.

<sup>57</sup> NRLP and NRG Final Argument, p. 1.

<sup>58</sup> Exhibit B-2, BCUC IR 6.1, pp. 57–58.

<sup>59</sup> Ibid.

<sup>60</sup> Workshop Transcript Volume 1, pp. 35–37.

<sup>61</sup> Ibid.

<sup>62</sup> NRLP and NRG Final Argument, pp. 7–8.

<sup>63</sup> Ibid.

<sup>64</sup> Exhibit B-2, BCUC IR 6.3, p. 61.

<sup>65</sup> Ibid., BCUC IR 6.3 & 6.3.1, pp. 61–64.

advised that further meetings will be scheduled when, or if, NorthRiver Midstream receives responses from other First Nations.<sup>66</sup>

*Panel Determination*

The Panel notes that there were no applications to intervene or letters of comment in the proceeding. It received no submissions from any other parties other than NorthRiver Midstream. The Panel acknowledges that both NorthRiver Midstream and Westcoast have published the necessary proceeding information on their websites and reached out to customers and impacted First Nations to inform them of the Application. **The Panel is satisfied that to the point of this report, NorthRiver Midstream has adequately consulted with potentially affected parties in respect of its purchase of the Field Service Assets.**

**DATED** at the City of Vancouver, in the Province of British Columbia, this 14<sup>th</sup> day of May 2019.

*Original signed by:*

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B. A. Magnan  
Panel Chair

*Original signed by:*

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T. A. Loski  
Commissioner

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<sup>66</sup> Exhibit B-2, BCUC IR 6.3 & 6.3.1, pp. 61–64.



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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**

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- 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**

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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

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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.