



May 14, 2019

Sent via email/eFile

NRLP AND NRGP APPLICATION FOR EXEMPTION EXHIBIT A-6
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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 under “Current Applications.”

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

DB/jo
Enclosures

cc: Mr. Paul Wieringa, Executive Director
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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

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.”¹

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),² 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.³ Westcoast is a wholly owned subsidiary of Enbridge Inc. (Enbridge).⁴

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).⁵ 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.⁶

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

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

² Exhibit B-1, p. 1.

³ *Ibid.*

⁴ *Ibid.*

⁵ Exhibit B-1, p. 3.

⁶ *Ibid.*, pp. 3–4.

systems.⁷ 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-13-19.⁸

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.⁹ 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).¹⁰

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.¹¹

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-2019.¹² 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.¹³ 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.¹⁴ 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.¹⁵ The adapted complaints-based process and principles are set out in Appendix II and III of the Application.¹⁶

⁷ Exhibit B-1, p. 4.

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

⁹ Exhibit B-1, p. 4.

¹⁰ Ibid.

¹¹ Ibid., pp. 4–6.

¹² Ibid., p. 1.

¹³ Ibid., p. 6.

¹⁴ Exhibit A2-1.

¹⁵ Exhibit B-1, p. 16.

¹⁶ 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.¹⁷ 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.¹⁸

By Order G-61-19 dated March 19, 2019, the BCUC amended the regulatory timetable and established NorthRiver Midstream's final argument submission date.¹⁹ 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.²⁰

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 3.²¹ NorthRiver Midstream highlights that

¹⁷ Exhibit A-2.

¹⁸ Exhibit A-4.

¹⁹ Exhibit A-5.

²⁰ Exhibit B-1, pp. 11–12.

²¹ *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.²²

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.²³ NorthRiver Midstream believes that all market participants are now "highly sophisticated"²⁴ and that the market has transitioned to be increasingly competitive.²⁵ NorthRiver Midstream contends that today, in a highly competitive market, any market power that could be exerted historically has been substantially reduced.²⁶ 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.²⁷

Panel Determination

The test for granting a section 88(3) exemption order is found in the Reasons for Decision attached to BCUC Order G-167-07,²⁸ 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."²⁹ 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.³⁰ This would be the case where the BCUC found that there were sufficient market forces at play to protect the interests of the ratepayer.³¹

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

²² Ibid.

²³ NRLP and NRGF Final Argument, p. 3.

²⁴ Ibid.

²⁵ Workshop Transcript Volume 1, pp. 30–31.

²⁶ Ibid.

²⁷ Exhibit B-2, BCUC IR 1.2.1, pp. 3–4.

²⁸ 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](#)

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

³⁰ [FEI AES Inquiry Report](#), p. 19.

³¹ 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.³² 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.³³ Therefore, ongoing ownership and operation of the Field Services Assets should also be free from traditional cost of service or other active financial regulation.³⁴

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.³⁵

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.³⁶ NorthRiver Midstream argues that customers would “be under no compulsion, economic or otherwise, to take the service from NorthRiver Midstream”³⁷ 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.³⁸ Rather it is based upon their market value, on the assumption that those facilities will continue to operate in a competitive market environment.³⁹ 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.⁴⁰

³² Schedule I and II attached to the draft order in this report.

³³ Exhibit B-1, p. 13.

³⁴ Ibid.

³⁵ NRLP and NRG Final Argument, p. 12.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Exhibit B-2, BCUC IR 3.3, p. 33.

⁴⁰ 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.⁴¹ 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.⁴²

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.⁴³ 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.⁴⁴ NorthRiver Midstream states that without obtaining regulatory clarity there is a material risk that the transaction will not close.⁴⁵

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.⁴⁶

NorthRiver Midstream believes that establishing rules that affect the commercial negotiation process in the absence of a complaint has the potential to reduce flexibility.⁴⁷ 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.⁴⁸ NorthRiver Midstream states that this will also help maintain the existing balance between the interests of NorthRiver Midstream and its customers.⁴⁹ NorthRiver Midstream's position is that contracting

⁴¹ Exhibit B-1, Appendix III, p. 1.

⁴² 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.

⁴³ Exhibit B-1, pp. 14–15.

⁴⁴ Ibid.

⁴⁵ Exhibit B-2, BCUC IR 3.5, pp. 39.

⁴⁶ Ibid., BCUC IR 4.5.1, p. 51.

⁴⁷ Ibid.

⁴⁸ Exhibit B-1, p. 15.

⁴⁹ 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.⁵⁰

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.⁵¹ 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.⁵² NorthRiver Midstream argues that it is only asking the BCUC to do so “expressly and transparently to provide the necessary certainty”⁵³ 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 4.⁵⁴

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.⁵⁵ 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

⁵⁰ Exhibit B-2, BCUC IR 4.5, p. 50.

⁵¹ Ibid., BCUC IR 3.3.1, p. 34.

⁵² NRLP and NRG Final Argument, p. 13.

⁵³ Ibid.

⁵⁴ Exhibit B-2, BCUC IR 3.3.2, p. 36.

⁵⁵ 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.⁵⁶ 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.⁵⁷

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.⁵⁸ 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.⁵⁹

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.⁶⁰ NorthRiver Midstream states this was explicitly known and understood by parties concerned.⁶¹ Further to this, NorthRiver Midstream informed the BCUC that they have discussed the customers' potential contractual right to the Westcoast Framework.⁶² 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.⁶³

NorthRiver Midstream consulted with potentially impacted First Nations both prior to and throughout the application process.⁶⁴ 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.⁶⁵ 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

⁵⁶ Exhibit B-1, p. 10.

⁵⁷ NRLP and NRG Final Argument, p. 1.

⁵⁸ Exhibit B-2, BCUC IR 6.1, pp. 57–58.

⁵⁹ Ibid.

⁶⁰ Workshop Transcript Volume 1, pp. 35–37.

⁶¹ Ibid.

⁶² NRLP and NRG Final Argument, pp. 7–8.

⁶³ Ibid.

⁶⁴ Exhibit B-2, BCUC IR 6.3, p. 61.

⁶⁵ 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.⁶⁶

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 14th day of May 2019.

Original signed by:

B. A. Magnan
Panel Chair

Original signed by:

T. A. Loski
Commissioner

⁶⁶ 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

- 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.



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BCUC File 59583
Batch 59731

January 7, 2019

DELIVERED

British Columbia Utilities Commission
Sixth Floor – 900 Howe Street
Vancouver, B.C. V6Z 2N3

Attention: Patrick Wruck, Commission Secretary

Dear Mr. Wruck:

Application of NorthRiver Midstream Operations LP (NRLP) and North River Midstream Operations GP Inc. (NRGP) for an Order pursuant to section 88 (3) of the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 (the Act)

We are counsel to NRLP and NRGP in connection with the enclosed application for an exemption for both from Part 3 of the Act pursuant to section 88(3) of the Act.

This application relates to facilities that NRLP has agreed to acquire and NRGP has agreed to operate that are currently owned and operated by Westcoast Energy Inc. (Westcoast) and are subject to regulation under the *National Energy Board Act*. Completion of this transaction is subject to a number of regulatory approvals being obtained including the relief sought in this application and including an order that will be sought from the National Energy Board giving Westcoast leave to sell and transfer the facilities. The change in ownership that will occur at closing will result in the facilities becoming subject to provincial as opposed to federal jurisdiction. It will also cause the transfer of approximately 500 employees of Westcoast.

To assist in the timely review of this application, Westcoast has consulted with its existing customers in connection with the transaction and NRGP has provided notice to those customers of the impending change of ownership and its intention to file this application. It is also providing a link to this application to all customers contemporaneous with this filing. NRLP and NRGP respectfully request that the Commission establish a review process for this application designed as far as possible to permit a decision and provide certainty to employees before the end of the second quarter of 2019.

Chris W. Sanderson, Q.C.
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Any questions with respect to this application should be directed to Ian Webb at 604 631 0117 or Bob Bissett at 403 699 1912.

Yours very truly,

LAWSON LUNDELL LLP



Chris W. Sanderson, Q.C.*

CWS/beg

Enc.

*Law Corporation

**APPLICATION OF NORTHRIVER MIDSTREAM OPERATIONS LP AND
NORTHRIVER MIDSTREAM OPERATIONS GP INC. FOR AN ORDER PURSUANT
TO SECTION 88(3) OF THE *UTILITIES COMMISSION ACT***

1. Executive Summary

This is an application by NorthRiver Midstream Operations LP ("**NRLP**") and NorthRiver Midstream Operations GP Inc. ("**NRGP**") (collectively, "**NorthRiver Midstream**") to the British Columbia Utilities Commission (the "**Commission**") for an exemption order pursuant to section 88(3) of the *Utilities Commission Act* (the "**UCA**")¹ on terms and conditions more fully described below (the "**Order**").

NRLP and NRGP are the pending owner and operator respectively of six natural gas processing plants with total operating capacity of 1.6 bcf/d 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 ("**Westcoast**"). Westcoast is a wholly owned subsidiary of Enbridge Inc. ("**Enbridge**"). Enbridge has agreed to cause Westcoast to sell, and NRLP will acquire, the Field Services Assets provided that certain closing conditions are satisfied or waived prior to a closing anticipated to be in mid-2019. One of those conditions is obtaining the Order.

The Field Services Assets comprise facilities that currently make up a substantial part of Zones 1 and 2 of the Westcoast interprovincial pipeline system which is regulated by the National Energy Board (the "**NEB**") pursuant to the *National Energy Board Act* (the "**NEB Act**")². Regulatory jurisdiction over the Field Services Assets was in doubt until the Supreme Court of Canada confirmed their federal character in 1998. 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.

Until the mid-1990s, the Field Services Assets formed a substantial portion of all the natural gas gathering and processing facilities located in British Columbia. Beginning in 1998, regulation of

¹ RSBC 1996, c 473.

² RSC 1985, c N-7.

the Field Services Assets has been accomplished under a light handed regulatory framework based on a negotiated settlement approved by the NEB. The users of the Field Services Assets were then and remain sophisticated British Columbia gas producers with knowledge of the competitive options available to them.

The light handed regulatory framework (the "**Westcoast Framework**") provided for a new model of financial regulation for Westcoast's gathering and processing services to address increasing competition in the provision of those services and the requirements of Westcoast's shippers for arrangements which met their individual competitive situations. The Westcoast Framework provided for regulation on a complaint basis and established the contracting practices under which Westcoast shippers would have access to the Field Services Assets. 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.

Through this Application, NorthRiver Midstream seeks to establish a provincial regulatory regime that essentially maintains the status quo relating to the Field Services Assets, with all facilities to be regulated on a complaint basis and subject to such other conditions and related orders as are reasonable in the circumstances. To that end, 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.

2. Introduction

This is an Application by NorthRiver Midstream to the Commission pursuant to section 88(3) of the *UCA* for an order exempting NorthRiver Midstream and the Field Services Assets from Part 3 of the *UCA*.

For the convenience of the Commission, a suggested draft Order is attached as Schedule 1 to this Application. The draft Order indicates the specific form of order sought.

3. The Applicants

NRLP and NRGP, which is the general partner of NRLP, are indirectly managed and controlled (through affiliates) by Brookfield Asset Management Inc. ("**Brookfield**"). Brookfield is one of

the world's leading asset managers with a 115-year history of owning and operating real assets. Brookfield operates in over 30 countries with 750 investment professionals and 80,000 operating employees. Brookfield offers investors the opportunity to be involved in a range of public and private investment strategies and, through its listed public affiliates, private funds, and public securities portfolios, currently has \$285 billion of assets under management.

Brookfield has extensive experience owning and operating businesses in the natural resource and extraction sectors in British Columbia. Brookfield's current investments include five hydroelectric facilities spanning six river systems and over 40 years of operating experience in the forestry industry. Historically, Brookfield has held a 49.8% ownership interest in MacMillan Bloedel Ltd., successfully restructured Western Forest Products, has owned and developed major operating mines in the gold and copper sector, and has invested in oil and gas exploration and production through its ownership in Canadian Hunter Exploration and Norcen Energy.

Brookfield has established and controls investment funds that focus on particular classes of real assets. One of these funds is Brookfield Infrastructure Fund III ("**BIF III**"), which is Brookfield's current flagship global private infrastructure investment fund. BIF III invests in infrastructure projects throughout the world through various investment structures by creating limited partnerships to own specific investments and corporate entities to act as general partners of their limited partnerships. NRLP is one of the limited partnerships which BIF III has founded. NRLP was established as the investment vehicle through which BIF III intends to invest to complete the transaction described in section 4 below.

From time to time, Brookfield may reassess its corporate and investment structure, resulting in changes to the ownership of the Field Services Assets or to the identity of the corporation responsible for operating them. However, Brookfield intends to continue to control both the owner and the operator of all the Field Services Assets so long as it remains affiliated with them.

4. Overview of the Transaction between NorthRiver Midstream and Enbridge Inc.

On July 4, 2018, Grizzly Acquisitions Inc. ("**Grizzly**"), a company wholly owned by BIF III, signed two agreements to acquire 100% of Enbridge's Western Canadian natural gas gathering and processing business (the "**G&P Business**"). Grizzly changed its name to NorthRiver Midstream Inc. ("**NRMI**") on September 11, 2018 and the new name will be used to refer to Grizzly throughout this Application. 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. The G&P Business also gathers raw gas from producers, utilizing approximately 3,350 kilometres 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. They include some of the initial facilities in British Columbia's natural gas industry.

To effect the overall transaction, Enbridge and NRMI entered into two separate purchase and sale agreements as follows:

- a purchase and sale agreement pursuant to which NRMI 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, *inter alia*, NRLP will acquire the Field Services Assets (the "**Field Services PSA**").

The Legacy PSA closed on October 1, 2018 and NRMI now itself either owns, or is the owner of the entities that own the Provincial Facilities. Under the Field Services PSA, NRMI has designated NRLP to be the acquirer of the Field Services Assets and NRGP will manage those facilities on behalf of NRLP.

The closing of the Field Services PSA is subject to the receipt of various approvals and exemptions which are to be obtained as soon as is reasonably practical. Specifically, the obligation of the parties to complete the transactions set out in the Field Services PSA is subject to the parties, *inter alia*, having obtained, at or prior to the closing, the "**Regulatory Approvals**". The Field Services PSA defines "Regulatory Approvals" as follows:

"Regulatory Approvals" means, collectively, the Competition Act Clearance, the Canada Transportation Act Clearance, the NEB Approval, and the Provincial Regulatory Approvals.

The Competition Act and Canada Transportation Act clearances were obtained on August 7, 2018 and August 31, 2018 respectively. The NEB Approval is more fully described in section 7(b) below.

The Field Services PSA further defines **"Provincial Regulatory Approvals"**, **"BC OGC Approvals"** and **"BCUC Exemption Orders"** as follows:

"Provincial Regulatory Approvals" means Buyer shall have obtained the BC OGC Approvals and the BCUC Exemption Orders, in each case, on terms and conditions that are satisfactory to each of Enbridge and Buyer, acting reasonably.

"BC OGC Approvals" means (i) all Permits required from the BC OGC under the Oil and Gas Activities Act for Buyer to own and operate the Field Services Assets, and (ii) all consents required from the BC OGC in connection with the transfer of all Crown statutory rights of way associated with the FS Pipelines from Westcoast to Buyer.

"BCUC Exemption Orders" means (i) 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 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, with such additional reasonable conditions or reasonable related orders as may have been contained in Buyer's

application to the BCUC, and (ii) a modification to BCUC order G-68-02 issued September 26, 2002 exempting McMahon Power Holdings Limited Partnership ("MPHLP") from Part 3 of the Utilities Commission Act (British Columbia) to allow MPHLP to continue to be exempt from Part 3 of the Utilities Commission Act (British Columbia) when controlled by Buyer and not by Westcoast.

The Field Services Assets are comprised of the "FS Facilities" and "FS Pipelines" as defined in the Field Services PSA.

The parties' obligation to complete the transactions set out in the Field Services PSA is therefore subject to obtaining all the Regulatory Approvals, including an exemption order from the Commission as described in (i) in the above definition of BCUC Exemption Orders, which is the exemption order being sought in this Application. From NRMI's perspective, the purpose of these conditions requiring the BCUC Exemption Orders to be obtained is to allow it to satisfy itself before closing of the Field Services PSA that the post-closing regulatory regime will continue to be complaints based employing the processes and pricing principles that are analogous to those currently employed.

In January 2019 NorthRiver Midstream will cause a separate application to be made to the Commission to modify BCUC Order G-68-02 so it continues to exempt MPHLP notwithstanding the proposed change of ownership as described in (ii) in the above definition of BCUC Exemption Order.

5. Description of the Field Services Assets

The Field Services Assets are listed in Appendix I to Schedule 1.

6. Historical Regulation of the Field Services Assets

Westcoast Transmission Company Ltd., later renamed Westcoast, was incorporated by a Special Act of Parliament in 1949. Under the Special Act, Westcoast was authorized, subject to the provisions of any general legislation relating to pipelines, to construct and operate any and all interprovincial and international pipelines within the provinces of Alberta and British Columbia or outside of Canada for the transmission and transportation of gas, including all works relative

thereto for use in connection with such pipelines. In 1955, Westcoast began construction on its first pipeline and began to transport natural gas through the pipeline in 1957.

It was also in 1957 that the Canadian government set up a Royal Commission to examine whether a new national regulator for interprovincial and international energy activities should be established. This resulted in the November 1959 proclamation of the *NEB Act*. The *NEB Act* transferred responsibility for pipelines to the new NEB and granted the NEB responsibility for regulating the tolls and tariffs on federal pipelines. The NEB established a cost of service form of financial regulation for the entire Westcoast pipeline system, including its gathering and processing facilities, and set rates for the sale of all natural gas transmitted through any part of the system.

From 1957 to 1994, Westcoast continued to develop its gathering and processing facilities including the Field Services Assets as part of its "pipeline" as defined in the *NEB Act*. In 1994, the question of whether these assets fell within the meaning of "pipeline" in the *NEB Act* and whether they were subject to federal regulation at all came before the NEB and ultimately the courts. The Province of British Columbia, amongst others, argued that Westcoast's gathering and processing facilities did not fall under federal jurisdiction and suggested instead that these assets were an important part of the provincial industry and thus should be regulated provincially like all other gathering and processing facilities in the province. On March 19, 1998 the Supreme Court of Canada confirmed that Westcoast's gathering and processing facilities including the Field Services Assets were subject to federal regulation by the NEB as the gathering and processing facilities and Westcoast's interprovincial and international mainline transmission facilities were functionally integrated and subject to common control, direction and management by Westcoast and operated in common as a single enterprise.

Meanwhile, while regulatory jurisdiction over Westcoast's gathering and processing facilities was in dispute, Westcoast and its shippers sought to develop a practical form of regulation for these assets that took into account the increasingly competitive nature of the gathering and processing business in British Columbia that was emerging as a result of the deregulation of the natural gas industry. Negotiations amongst Westcoast, its shippers and the Canadian Association of Petroleum Producers resulted in an agreement that provided for parameters under which Westcoast could negotiate individual toll and service agreements with its shippers using the

Westcoast gathering and processing facilities and providing for a complaint process if a shipper or a potential shipper disputed the level and price of service available to them (this was the Westcoast Framework).

The NEB approved the Westcoast Framework on June 25, 1998 and it has been in effect ever since. The Westcoast Framework provides for a complaint based process. 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.

If the transactions set out in the Field Services PSA are completed, the Field Services Assets will be owned and operated by NorthRiver Midstream and will become subject to provincial jurisdiction because they will no longer be subject to common control, direction and management by Westcoast as part of its interprovincial and international pipeline system.

7. Regulatory Framework Governing the Field Services Assets

(a) Current Regulatory Environment

As described in section 6 above, the Field Services Assets have historically been subject to federal regulation under the *NEB Act*. The *NEB Act* invests the NEB with authority over economic regulation of “pipelines” (currently including the Field Services Assets) as that term is defined in the *NEB Act* and also gives it the responsibility over the construction, operation and abandonment of pipelines including determination of detailed routes and approval thereof, land acquisition, expropriation, safety and security including the power to promulgate regulations in connection with those matters, providing for terms and conditions governing abandonment, establishing liability for loss, damage, cost and expenses associated with intended or uncontrolled release of oil gas or any other commodity from a pipeline and to adjudicate claims arising from same. As well, the NEB is empowered to appoint inspection officers with broad authority to access, inspect and test pipelines and make orders requiring compliance with officers and NEB directions.

In addition to the substantial powers conferred upon the NEB, provincial legislation of general application also applies to federal pipelines (including processing facilities), particularly in the context of environmental and public safety regulations. Thus, the operation of the Field Services Assets must also comply with provincial legislation such as the *Environmental Management Act*,³ the *Water Sustainability Act*,⁴ and the *Safety Standards Act*.⁵

(b) Post Closing Regulatory Environment

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. NEB jurisdiction with respect to the operation of the Field Services Assets will cease. Accordingly, contemporaneous with this Application, Enbridge is bringing an application for leave pursuant to section 74 of the *NEB Act* to sell the Field Services Assets. Following the closing of the Field Services PSA, all existing NEB orders applicable to the Field Services Assets will be either revoked or amended to reflect the sale. The purpose of this Application and the application to the BC OGC described below is to permit the operation of those assets to continue under provincial jurisdiction upon closing of the Field Services PSA.

In addition to this Application, NorthRiver Midstream will be applying to the BC OGC for authority to operate the Field Services Assets. NorthRiver Midstream currently estimates that it will require some 145 permits of a highly detailed nature specifying the operating conditions for each of the gathering pipelines and processing plants and related facilities that comprise the Field Services Assets. NorthRiver Midstream anticipates a series of rolling permit applications to the BC OGC during 2019 and is working closely with BC OGC's staff to facilitate its rigorous review of these existing operations in a way that permits the facilities to continue to provide service seamlessly to customers while at the same time permitting the BC OGC to assume the

³ *Environmental Management Act*, SBC 2003, c 53.

⁴ *Water Sustainability Act*, SBC 2014, c 15.

⁵ *Safety Standards Act*, SBC 2003, c 39.

responsibilities previously exercised by the NEB in this connection upon closing of the Field Services Assets PSA. Once the BC OGC assumes the responsibilities previously exercised by the NEB, operation of the Field Services Assets will be subject to detailed BC OGC permit requirements and will be monitored for compliance with BC OGC's regulations which govern the operating and safety issues described above including maintenance requirements and emergency response capability and all other aspects of the physical regime required to ensure safe and reliable operation of these facilities.

8. Consultations

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. The A&N Agreements provide the consent of customers to the assignment of their specific contracts to NorthRiver Midstream upon closing of the Field Services PSA. Customers were under no obligation to accept a new operator as a counter party but, with a few exceptions, they have consented to the upcoming change and have entered into an A&N Agreement. The few customers that have not yet signed an A&N Agreement have not done so because they either (i) have contracts that will expire before the transaction closes and do not anticipate requiring future services from NorthRiver Midstream; or (ii) while not being opposed to NorthRiver Midstream stepping in as operator do not provide consents such as those contained in the A&N agreements as a matter of corporate policy prior to the underlying transaction closing. Enbridge has advised NorthRiver Midstream that no customer has indicated it takes exception to NorthRiver Midstream seeking the Order or intends to oppose this Application.

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 to ensure their needs are being met and intends to extend that outreach to potential customers that it has identified. To date, it has identified no customer or potential customer that takes exception to the relief being sought in this Application.

9. Principles for Granting an Exemption Under Section 88(3) of the UCA

The *UCA* specifically provides for the situation where a person falls within the definition of "public utility" but regulation as a public utility is not warranted. Section 88(3) of the *UCA* provides as follows:

88(3) 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.

In the Commission's final report dated December 27, 2012 regarding its *Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives* (the "**AES Inquiry Report**"), the Commission recommended the use of section 88(3) exemptions where regulation is not warranted, explaining that:

The definition of public utility is set out in the *UCA* but, given the discussion on the economic purposes of regulation, applying the legal definition of public utility does not always lead to an outcome that makes the most economic sense. The Panel notes that the *UCA* was developed at a time when many of the technologies at issue in this Proceeding were not contemplated. The current energy market requires a practical definition of public utility. There would be greater clarity if the Government were to amend the *UCA* to exclude regulation of activities where competitive forces are found to provide sufficient protection to the public. Given the current lack of clarity in the *UCA* the Commission Panel recommends the use of exemptions, which are contemplated under the *UCA*, where the Commission finds regulation is not warranted.⁶

⁶ AES Inquiry Report, pages 15-16.

With respect to the circumstances where exemption is appropriate, the Commission made the following determinations in its AES Inquiry Report:

Regulation is costly, time-consuming, and limited by informational asymmetries. It is only in natural monopoly situations where consumer protection is needed that these limitations are outweighed by the benefits of regulation.

Based on the above, the Commission Panel finds as a fundamental principle that regulation is only appropriate where required and is driven by the inability of competitive forces to operate with greater efficiency and effectiveness than a sole service provider.⁷

The Commission has also acknowledged that light handed regulation may be an appropriate middle ground in certain circumstances. In particular, it has explained in the context of newly regulated activities that have only limited monopoly characteristics, that only limited protection is needed:

... there may be opportunities to use lighter handed forms of regulation such as market based pricing or regulatory exemption. This would be the case where the Commission found that there were sufficient market forces at play to protect the interests of the ratepayer. Long term contracts setting out rates and terms and conditions of service may also provide sufficient consumer protection under light handed regulation."⁸

The principles established in the AES Inquiry Report were very recently reaffirmed in the Commission's Phase 1 Report (the "**Charging Services Report**") in an Inquiry into the Regulation of Electric Vehicle Charging Services dated November 26, 2018. In that report, the Commission gave detailed consideration to the extent to which competitive businesses that fall within the definition of "public utility" should be exempted from the provision of Part 3 of the UCA. The Commission concluded that such business should be excluded from all sections of Part 3 except section 25 and 38 to the extent they related to safety. The Commission

⁷ AES Inquiry Report, page 14.

⁸ AES Inquiry Report, section 2.2, page 19.

recommended it retain its jurisdiction over safety with respect to electric charging stations until some issues concerning the application of the *Safety Standards Act*⁹ to those facilities could be determined. The jurisdiction of the BC OGC over safety issues at processing plants and gathering systems is unquestioned and has long been exercised by the BC OGC over the many provincially regulated natural gas processing plants and gathering systems that are currently subject to provincial jurisdiction. Accordingly, there is no need to maintain the applicability of section 25 and 38 in respect of the Field Services Assets.

The Order proposes a condition requiring NRGP to operate the Field Services Assets in a manner that is consistent with the requirements of the BC OGC.

10. Basis for Requested Exemption Order

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. The ongoing ownership and operation of the Field Services Assets by NorthRiver Midstream should also be free from traditional cost of service or other active financial regulation based upon application of the tests set out in section 9 above. The Field Services Assets operate in a competitive environment and market forces are fully capable of operating with greater efficiency and effectiveness than could be accomplished through active regulation by the Commission. Three characteristics stand out in this regard.

- (a) *Owners and operators of provincially regulated natural gas processing and gathering facilities have never been actively regulated under Part 3 of the UCA*

Provincially regulated gas gathering and processing facilities located in British Columbia, including certain of the Provincial Facilities that are used to provide third party gathering and processing services, have never been actively regulated under Part 3 of the *UCA*. Prior to 1996, the Commission had taken no steps to regulate such facilities at all. In 1996, the Commission expressly considered the extent to which it might be necessary to regulate them and concluded that active regulation was not appropriate and an exemption from Part 3 of the *UCA* was appropriate. Since 1996, the Commission has routinely exempted all those that have applied from all or the bulk of Part 3 of the *UCA*, usually subject to a provision for regulation on a

⁹ *Supra*, n 5.

complaint basis similar to that which is employed under Part 4 of the *UCA*. This approach is wholly consistent with the approach adopted by the NEB under the Westcoast Framework and with the approach contemplated in the AES Inquiry Report and the Charging Services Report. A list of the natural gas and processing facilities that have been granted exemptions from Part 3 of the *UCA* since 1996 is set out in Schedule 2. This list clearly demonstrates that the applied for exemption is consistent with the approach the Commission has taken whenever other similarly situated facilities in British Columbia have sought exemptions.

The Commission set out its reasons for taking this approach in its letter decision L-39-96 dated September 19, 1996, which was issued when the Commission first determined that provincial upstream facilities which are entirely or partially used to provide gas transportation and processing for others fall within the definition of "public utility". Having determined that upstream facilities were subject to regulation under the *UCA*, the Commission elaborated the manner of regulation in Letter Decision L-64-96 dated December 10, 1996. That letter established that complaint-based regulation would be appropriate and would take a form similar to an application under what is now Part 4 of the *UCA*. The Commission acknowledged that it might be helpful to establish guidelines for complaint regulation but concluded that the effort of doing so "would not be time effective... at this time."¹⁰

Since 1996, no complaint has been determined by the Commission and no further guidance on the criteria to be applied if a complaint is made or on the resulting process has been provided. The language adopted in most of the exemption orders issued subsequent to these Letter Decisions has been as follows:

The facilities identified in Appendix I will continue to be regulated under the Act on a complaint basis, with a complaint taking a form similar to that of an application by an interested Party under the Common Carrier and Common Processor sections of Part 4 of the Act with respect to a facilities operated by a person declared to be a common carrier or common processor.

At a high level, that is the approach sought in this Application. However, the substantial investment NRMI will be making to close the acquisition of the Field Services Assets and the

¹⁰ British Columbia Utilities Commission Letter Decision L-64-96 dated December 10, 1996 at p. 2.

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. The transaction providing for the acquisition of the Field Services Assets by NRLP is of unprecedented scale in the history of the British Columbia natural gas processing industry. While the Field Services Assets do not have the significance for the industry they once did, the investment being undertaken by NRMI is very substantial and the central physical locations of the Field Services Assets ensure their continued prominence in the industry. To confirm that completion of the transaction is financially prudent, NRMI needs to understand the regulatory regime to which NorthRiver Midstream will be subject after closing of the transaction.

(b) The customers have accepted and are used to the proposed form of regulation

Past Commission decisions and the *UCA* itself do not specify what sort of process might result from a complaint nor what principles might be applied by the Commission upon hearing that complaint. However, the Westcoast Framework has identified a complaint process and articulated contracting principles for the Field Services Assets that can serve the Commission's objectives and maintain the key elements of the status quo with which all interested parties have become familiar over the past 20 years.

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. 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.

(c) ***Many customers have long term contracts for use of the Field Services Assets***

Most use of the Field Services Assets has occurred and is continuing to occur under long term contracts. Currently the long term contracts in Westcoast's portfolio with shippers have remaining terms varying from one month to 15 years. NorthRiver Midstream will have to honour the terms of existing longer term contracts previously freely negotiated by the shippers with Westcoast. Additional regulatory oversight would not be in the public interest nor would it serve the purposes of the *UCA* to disrupt existing contracts or limit the competitive options available to NorthRiver Midstream and its customers or potential customers in the future. As the Commission has observed,¹¹ long term contracts provide customers with sufficient customer protection to render active regulation unnecessary.

11. Proposed Order and Conditions

For the reasons discussed above, NorthRiver Midstream seeks, on both an entity basis and for the Field Services Assets, an exemption from Part 3 of the *UCA* but acknowledges that these exemptions should be subject to appropriate conditions that will ensure the Commission has jurisdiction to adjudicate a complaint by an interested party that alleges that access to the Field Services Assets has been unfairly limited or that NorthRiver Midstream's pricing of services is not appropriate. The Commission has established that it is appropriate for it to play this role in past decisions but has not set out the process that will be employed nor established principles upon which a complaint will be adjudicated.

This Application requests the Commission establish both the process and the principles that will apply to a dispute should a customer ever have reason to complain about the service it is receiving or wishes to receive. The proposed conditions are set out in Appendices II and III to the proposed order found in Schedule 1. The rationale for each of the conditions follows below:

Paragraph 1 of the proposed Order grants the exemptions sought in this Application.

Paragraph 2 establishes the effective date of the exemption as being the closing date of the Field Services PSA transaction which is when NRLP becomes owner and NRGP becomes operator of the Field Services Assets and the Field Services Assets therefore become subject to provincial jurisdiction.

¹¹ *Supra*, note 8.

Paragraph 3 requires NRLP and NRGP to provide the Commission with notice of the month in which the closing date is expected to occur and if the transaction closes, the date that closing occurred.

Paragraph 4 incorporates a similar complaint process to that used in the Westcoast Framework, substituting the Commission in the role formerly played by the NEB.

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*.

Paragraph 6 allows the Commission to extend the exemption to a new owner or operator of the Field Services Assets, provided that the new owner or operator continues to be directly or indirectly controlled by Brookfield without the need for a new Ministerial approval under section 88(3) of the *UCA*.

Paragraph 7 allows the Commission to revise the exemption to cover additional facilities not listed in Appendix I that NorthRiver Midstream may build, acquire or operate without the need for a new Ministerial approval under section 88(3) of the *UCA*.

Paragraph 8 confirms that NRGP will be required to meet the standards set out in the *Oil and Gas Activities Act*¹² and other regulatory requirements.

¹² *Oil and Gas Activities Act*, SBC 2008, c 36.

Paragraph 9 requires that NRGP keep the Commission current by filing an annual report that contains the prescribed information set out in Appendix IV to Schedule 1.

Paragraph 10 provides for NRGP to cover the Commission's costs associated with regulating the Field Services Assets.

12. Conclusion

NorthRiver Midstream submits that granting the Application on the terms sought would be consistent with:

- the general manner in which all other similarly situated facilities have been regulated in British Columbia since 1996; and
- the existing form of regulation by the NEB that has worked well for over 20 years.

In these circumstances, granting the Order sought would manifestly serve the objectives and purposes of the *UCA* and the public interest.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated this 7th day of January, 2019.

Per: 
Chris W. Sanderson, Q.C.
Counsel to the Applicant

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Schedule 1

Draft Commission Order

NOW THEREFORE, THE Commission orders as follows:

1. Pursuant to section 88(3) of the Act, the Commission approves, for NorthRiver Midstream Operations LP (NRLP) (as owner) and NorthRiver Midstream Operations GP Inc. (NRGP) (as operator), an exemption from Part 3 of the Act, of the facilities (the Field Service Assets) identified in Appendix I with respect to the transmission and processing of natural gas for others, effective as of the date specified in paragraph 2 herein.
2. This Order will become effective on the closing date of the purchase and sale transaction in which NRLP will acquire the Field Services Assets.
3. NRLP and NRGP are directed to provide notice to the Commission of:
 - (a) the month in which they expect the closing of the transaction by which 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 employing the process set out in Appendix II.
5. In determining a complaint heard in accordance with the process set out in Appendix II, the Commission will apply the principles set out in Appendix III.
6. The Commission, on finding it to be in the public interest to do so, may revise the declaration in paragraph 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 advise the Commission, in writing, of any facility that is not identified in Appendix I and which NRLP has acquired or NRGP intends to operate, to transmit or process natural gas for others, so that the Commission, on finding that the exemption of such facility is in the public interest, can, by Order, issue a revised Appendix I.
8. NRGP is responsible for the safe and proper operation of the facilities identified in Appendix I 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 regarding the exempted facilities in the form set out in Appendix IV or as the Commission may otherwise require, and to distribute copies to any customer(s) using the facility.

10. NRGP is directed to pay fees to the Commission in the amounts the Commission determines are required to defray the costs associated with the regulation of the Field Service Assets.

Appendix I to the Proposed Order

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
- McMahan gas plant area – pipelines, plants and related facilities
- Sikanni gas plant area – pipelines, plants and related facilities

Appendix II to the Proposed Order

Complaint Process

1. The objectives of the complaint process are to provide:
 - (a) effective regulatory oversight;
 - (b) an avenue for redress to any person 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 Appendix III 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 Commission, 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 Commission 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
 - (a) 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 Commission. With the agreement of the Commission, NorthRiver Midstream and the complainant, the staff of the Commission may act as the mediator. In the

event that the Commission 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**").

- (b) 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.
- (c) 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.
- (d) 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.
- (e) Upon request by the mediator, NRGF 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.
- (f) 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 Commission.

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 Commission. The advisor must not be a director, servant or employee of the party. The arbitrator or the Commission 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 Commission, 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 Commission 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 Commission, 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 Commission 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 Commission, 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 Commission 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 Commission, 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 Commission 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 Commission

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

Appendix III to the Proposed Order

Principles to be applied by the Commission to Resolve Complaints

1. When resolving any complaint made pursuant to this Order, the Commission 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 Commission will not 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 Commission.

- (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.

Appendix IV to the Proposed Order

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 2

List of British Columbia Natural Gas and Processing Facilities that have been Granted Exemptions from Part 3 of the *UCA*¹³

Commission Order	Applicant	Facilities Exempted from Part 3 Regulation
G-90-97	Westcoast Gas Services Inc.	Jedney I area Buckinghorse area
G-91-97	Westcoast Gas Services Inc.	Boundary Lake Facilities
G-89-97	Novagas Canada Limited Partnership	Peggo, Midwinter and Tooga area Caribou Area
G-77-98	Novagas Canada Ltd.	Peggo, Midwinter and Tooga area Caribou area West Stoddart area
G-76-98	Westcoast Gas Services Inc.	Jedney I area Buckinghorse area Jedney II area Highway area
G-96-00	Canadian Midstream Services Ltd.	Peggo, Midwinter and Tooga area
G-97-00	Coastal Canada Field Services Limited Partnership	Caribou area of Northeastern British Columbia area

¹³ This list does not include BCUC orders that continued and reissue orders under a new name. These orders include G-101-05, G-101-07, and G-138-07.

G-99-00	JJH Equipment Trust	Jedney I area Jedney II area Highway area
G-13-01	Williams Energy (Canada) Inc.	West Stoddart area
G-22-05	Keyspan Energy Canada Partnership	Caribou area of Northeastern British Columbia area
G-30-06	Duke Energy Field Services Canada Partnership	Peggo, Midwinter and Tooga areas Sunrise area
G-38-06	Canadian Natural Resources Limited	West Stoddart area
G-21-07	Pesh Facilities Holding Partnership	Peggo, Midwinter and Tooga areas
G-148-07	AltaGas Ltd.	Blair Creek area of Northeastern British Columbia
G-25-08	Spectra Energy Midstream	Sunrise area West Doe area
G-26-08	Spectra Energy Midstream Corporation	Peggo, Midwinter and Tooga area Sunrise area Jedney I area Jedney II area Boundary Lake area Highway area West Doe area
G-81-12	Quicksilver	Fortune Creek system of Northeastern British Columbia –

	Resources Inc.	1.0 Compressor facility, dehydrator, pipelines and related facilities.
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