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October 25, 2013

SPP%CĆره Qikiqtaaluk

Arctic Bay

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Re: Comments and Questions on NEB Draft Financial Viability and Financial Responsibility Guidelines

Nunavut Tunngavik Incorporated (NTI), the Kitikmeot Inuit Association (KitIA), the Kivalliq Inuit Association (KivIA), and the Qikiqtani Inuit Association (QIA) would like to thank the National Energy Board for the opportunity to comment on the Draft Financial Viability and Financial Responsibility Guidelines. The following represent comments and questions NTI, KitIA, KivIA, and QIA have regarding the draft guidelines, and is submitted on behalf of the NTI and the three Regional Inuit Associations.

Reference to Requirements under the Nunavut Land Claims Agreement

There is a general lack of reference to the Nunavut Land Claims Agreement (NLCA), which includes specific requirements regarding compensation, consultation, and participation, and which holds precedence over both NEB guidelines and regulations, and COGOA regarding these issues. The primary focus of the guidelines is clearly based on the Beaufort Sea area and the Inuvialuit Settlement Area, which is understandable given that the region has historically had the highest level of industry interest and which, in the near term, is the area likely to experience advanced development.

If it is not contemplated at this time to include the Nunavut-specific requirements within the guidelines that reflect the NLCA, we recommended that the guidelines include a specific requirement indicating they will be updated to reflect the specific requirements of the NLCA if the type of development covered by the draft guidelines occurs within the Nunavut, and especially within the Nunavut Settlement Area.

Amount of Absolute Liability

Page 2, second paragraph

The Guidelines state that "in the case of COGOA, this absolute liability is limited to the prescribed amounts found in the *Oil and Gas Spills and Debris Liability Regulations* or the *Arctic Waters Pollution Prevention Regulations* for the Canadian Arctic offshore. In a news release dated June 18, 2013, The Department of Natural Resources announced plans to support jobs and enhance Canada's world-class offshore petroleum drilling regime by raising the absolute liability for companies operating in the Atlantic and the Arctic to \$1 billion from \$30 million

- The above paragraph in NEB's draft guidelines must be updated to reflect the new limit for absolute liability for operators.
- Is there a cap on liability, and for what amount, or will the operator(s) be liable for the entire amount?

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Compensation for third parties

The guidelines state that in the event of an incident the Board expects the Operator to clean up the spill and debris and pay out all claims as appropriate (page 3), they also require the operator to include compensation for affected third parties in the cost estimate for its worst case scenario (page 4).

- The guidelines do not outline how compensation for affected third parties (Inuit) will be calculated, timelines involved, or who will determine if compensation is adequate.
- The guidelines do not reference the requirements for Inuit compensation as indicated in the Nunavut Land Claims Agreement.

Page 6, Section 3c

Explains that it is the applicant's responsibility to engage with affected parties and provide the board with an estimated cost for compensating. Several examples of what the estimate should include are: costs to replace community water source and food sources and the value of the land to the northern people and communities.

- It is important that the guidelines clearly state how and when the applicant is to consult with potentially affected third parties.
- The list of factors to be considered in developing a cost estimate are very broad, in order to develop an accurate estimate for compensation, the methodology or calculation used to determine the cost of replacing a food source, income from hunting and the value of the land to Inuit should be clearly outlined.

Page 5 Section 3b

The guideline indicates that the cost of cleaning up the environment should include the availability of suitable infrastructure, skilled and capable personnel and adequate and appropriate equipment.

Suitable infrastructure, skilled personnel and appropriate equipment may not be readily
available in the north for the clean-up an oil spill, therefore it is expected that the true cost of
these factors should be incorporated in the cost estimate of cleaning up the environment.

Letter of Credit

Page 7, Part 6. Paragraph 4 and Part 6.i

Regarding the Letter of Credit required by the NEB:

- What are the replenishment requirements for the Letter of Credit if the NEB is required to draw on it in whole or in part?
- What would happen in a scenario where the NEB is administering the site under care and maintenance (i.e., the operator/holder of the authorization, for whatever reason, is unable to manage the site)? Would the NEB use the unfettered funds for care and maintenance operations? If so, how and when would the letter of credit be replenished? What would trigger a closure decision for the NEB under such a scenario?

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Spill Response in the North

Page 3, 4th paragraph

The guidelines state that the NEB have trained emergency management specialists that could take over management of a spill response in the event that the company's emergency response activities are not adequate.

An oil spill on or under the ice in the arctic would be precedence setting, in order to take on the
responsibility of managing a spill response in arctic conditions the guidelines should
demonstrate and take into account the NEB's expertise in similar ice covered conditions.

Industry Expectations

Recent feedback from industry (CBC article) has argued that the new security guidelines would make it more onerous for small companies and would not leave them with enough money to do business. The standards presented in the guidelines are similar to those in other jurisdictions and according to NRCan's news release a more modern offshore liability regime will ensure that accountability for operators is updated and in line with international standards.

• The precedence setting nature of a potential oil spill in the arctic, the severity of potential environmental impacts and the unknown cost of compensation are some examples that justify the need for higher security costs.

Finally, we would again like to emphasize that the NLCA includes specific requirements for petroleum development as well as requirements for consultation and compensation that are a requirement for operating in Nunavut and which must be recognized by operators contemplating development.

If you have any questions, please direct them to Keith Morrison, Senior Advisor – Minerals, Oil and Gas, Nunavut Tunngavik Incorporated, kmorrison@tunngavik.com.

We thank you for the opportunity to comment on the draft guidelines.

Sincerely,

Keith Morrison Senior Advisor – Minerals, Oil and Gas Nunavut Tunngavik Incorporated

Cc Geoff Clark, Director – Lands and Environment, Kitikmeot Inuit Association
Luis Manzo, Director of Lands, Kivalliq Inuit Association
Bernie MacIsaac, Director of Lands, Qikiqtani Inuit Association
Carson Gillis, Director of Lands and Resources, Nunavut Tunngavik Incorporated

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