



## Nova Scotia Utility and Review Board

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August 1, 2018

Chief Michael P. Sack  
Sipekne'katik First Nation  
522 Church Street, General Delivery Micmac Post Office  
Hants Co., Indian Brook, NS B0N 1W0

Dear Chief Sack:

**M08579 - Pieridae Energy (Canada) Ltd. Application for Permit to Construct LNG Facility (NG-PIER-PC-01)**

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The Board has reviewed your letter of July 18, 2018, which provides as follows:

Given the Board's limited role that it can only consider issues of public safety, the Band is left questioning how potential adverse impacts on asserted and/or established Aboriginal and Treaty rights can be addressed, if at all. Until this confusion is addressed, and potential impacts can be reconciled with the Board's limited scope, the Band is left in the unfortunate position of being unable to adequately address your letter of June 21st.

Sipekne'katik has developed a consultation process and we extend an offer to meet and discuss this further at your convenience.

The Board Panel assigned to this matter is: Roland A. Deveau, Q.C., Vice Chair; Steven M. Murphy, MBA, P.Eng., Member; and Richard J. Melanson, LL.B., Member.

As outlined in the Board's letter of April 13, 2018, the recent decisions issued by the Supreme Court of Canada in *Chippewas of the Thames First Nations v. Enbridge Pipeline Inc.*, 2017 SCC 41 (CanLII) and *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40 (CanLII) require the Board to consider whether adequate Crown consultation with First Nations has occurred, if the concern is raised before it. Regardless of the Board's role in the application, which in this matter is to consider the application by Pieridae Energy (Canada) Ltd. for the issuance of a Permit to Construct a Liquefied Natural Gas (LNG) Facility at Goldboro, Nova Scotia, the Board must understand the scope of the asserted Aboriginal or Treaty rights to assess whether adequate Crown consultation has taken place.

Further, the Board notes, as indicated in your letter, that Sipekne'katik has developed a consultation process and your letter extends an offer to meet and discuss the issue.

The Board's role on the matter of consultation is limited to determining whether the Crown's duty to consult has been carried out. The duty to consult falls on the Crown and not the Board. Accordingly, it would not be appropriate for representatives of the Board to meet with you at this

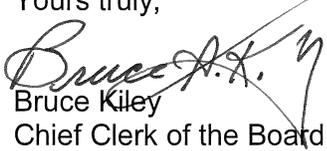
point to canvass matters of consultation respecting asserted Aboriginal or Treaty rights, as the Board may eventually be called upon to determine whether the Province has carried out its duty to consult. Such consultation must be carried out with the Crown.

In conclusion, the Board repeats its request that Sipekne'katik provide its response to the following three questions:

- 1) What are the asserted Aboriginal or Treaty rights over which you claim a duty to consult is required?
- 2) How will the Board's issuance of a Permit to Construct the LNG Facility potentially have an adverse impact on your asserted Aboriginal or Treaty rights?
- 3) Please explain whether, and if so how, your asserted Aboriginal or Treaty rights could be accommodated by conditions ordered by the Board to be included in the Permit to Construct?

The Board directs that your response to these questions be filed no later than September 28, 2018.

Yours truly,

  
Bruce Kiley  
Chief Clerk of the Board

- c. Office of Aboriginal Affairs  
Pieridae Energy (Canada) Ltd.  
Jennifer Copage, Consultation Coordinator, Sipekne'katik ([jcopage@sipeknekatik.ca](mailto:jcopage@sipeknekatik.ca))  
S. Bruce Outhouse, Q.C., Board Counsel