

February 2, 2007

Mr. Max Ruelokke, P.Eng.
Chairman & CEO
Canada-Newfoundland and Labrador
Offshore Petroleum Board
Fifth Floor, TD Place
140 Water Street
St. John's, NL A1C 6H6

Dear Mr. Ruelokke:

I write further to your letter of January 31, 2007. I am disappointed that the Board has chosen to write a letter which attempts to provide additional reasons for the Board's decision and challenge the reasons for my decision.

The reasons for my decision were clearly set out in my correspondence to you. I have repeatedly stated that while the Board and the Province have similar objectives, our perspectives may differ. Unfortunately, the Board's recent letter has not shown me this same courtesy.

As you are no doubt aware, the fundamental decision process under the Accord Acts contemplates that the Board makes a decision and then that decision is provided to the federal and provincial Ministers of Natural Resources for their review. The Ministers may choose to approve or disapprove of the decision within 30 days. The Ministers have the final say on a fundamental decision; there is no provision for further review of the Ministers' decisions by the Board. Any effort by the Board to engage in such an exercise is inappropriate at best.

I am reluctant to engage in further discussion regarding the reasons for my decision, but for the sake of ensuring better understanding between the Province and the Board, I provide you with an example of where our perspectives differ. As you know, the Province indicated that it had questions regarding assessment of alternative modes of development. While the Decision Report did not address this issue, your recent correspondence attempted to provide some perfunctory discussion of one alternative mode of development (subsea). Even if this information had formed part of the Decision Report, it is insufficiently detailed to permit the Province to meaningfully consider this issue.

As a matter of law, I review the Board's decision and reasons for it, outlined in the Decision Report. If there were additional facts or analysis that the Board considered and that should have formed part of the Decision Report, the inclusion of those facts was in the Board's hands. The Board had ample opportunity to deal with these issues in its lengthy Decision Report, yet it chose not to do so. Efforts to now address significant issues after the fact and with such limited analysis offer little assistance to the Province or the process set out in the Accord Acts.

Your correspondence raises some concerns with respect to the procedure for consultation with the Province followed by the Board. At all times, the Province has taken pains to respect the Board's autonomy and permit the Board to make its own assessment of the application. In meetings with Board officials, departmental officials raised concerns and advised that they were interested in the Board's analysis of the issues. Finally, when briefings on November 30 and December 1

suggested that the Board was not intending to address some of the Province's concerns as part of its Decision Report, the Deputy Minister of Natural Resources took the significant step of writing to you to outline some of the Province's questions. We were provided with a letter in reply that did not fully address the substance of the Province's concerns. Then less than one week later, we were provided with the Board's Decision Report, which contained no further analysis of these issues.

While I am unsure as to what further steps the Province may have taken to make its concerns clearer to the Board, if there is some other mechanism to ensure that the Board better understands the Province's position, we would like to find it.

Your letter also queries whether the Board may still make use of its power to impose conditions as a tool in approving fundamental decisions. On many past occasions, fundamental decisions have been approved with technical conditions. I believe this can be a useful mechanism when used appropriately. Unfortunately, in the case of the Hibernia South decision, the Board's conditions addressed issues of fundamental importance to the Province. Conditions which go to the core of the Province's fundamental decision power are not appropriate.

I have recently met with representatives of HMDC, and they have indicated they are prepared to provide the Province with the information we require in order to make a well-informed decision. They have indicated that they intend to file a new Development Plan Amendment Application which contains additional information. We look forward to resolving these issues with HMDC expeditiously and in a way that ensures the Province's best interests are being met.

I note with interest the recent Newfoundland and Labrador Supreme Court Trial Division decision which affirmed that one of the Board's mandates is to ensure that appropriate levels of benefits flow to the respective levels of government. In my view, the Board's Hibernia South decision evidenced less of this mandate than may have been expected. Instead of keeping benefits for the Province at the forefront of its analysis, the Board appears to have focused on "net present value" of the Project for the Proponents. This apparent shift in focus is of concern to the Province.

As a final note, your correspondence notes that the Board employs competent, diligent and experienced professional staff. I could not agree more. The Province holds the professional expertise of the Board staff in high regard. The capabilities of these professionals are an important component of managing our offshore resource.

We welcome the opportunity to meet with you. It is our hope that the Board and the Province can work together to ensure excellent management of our offshore resource now and into the future.

Sincerely,

KATHY DUNDERDALE, MHA
Minister

cc. Honourable Gary Lunn, P.C., M.P.
Minister of Natural Resources