National Energy Board

Reasons for Decision

Westcoast Energy Inc.

RH-1-89

September 1989

Tolls

National Energy Board

Reasons for Decision

In the Matter of

Westcoast Energy Inc.

Application dated 14 April 1989 for new tolls effective 1 Novermber 1989

RH-1-89

September 1989

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Abbreviations

10^3m^3	thousand cubic metres
$10^3m^3/d$	thousand cubic metres per day
10^6m^3	million cubic metres
APMC	Alberta Petroleum Marketing Commission
B.C.	British Columbia
B.C. Ministry	British Columbia Ministry of Energy, Mines and Petroleum Resources
BC Gas	BC Gas Inc.
BCPC	British Columbia Petroleum Corporation
CNR Case	*Minister of Agriculture of British Columbia v. Canadian National Railway Company*, [1959] S.C.R. 229
COFI	Council of Forest Industries of British Columbia
CPA	Canadian Petroleum Association
Cominco	Cominco Ltd.
Foothills	Foothills Pipe Lines (Yukon) Ltd.
gross	gross cost of service
IPAC	Independent Petroleum Association of Canada
Inland	Inland Natural Gas Co. Ltd.
LDC	Local Distribution Company
Mcf	Thousand cubic feet
MDVO	Maximum Daily Volume Obligation
MH-2-88 NCO Reasons for Decision	"National Energy Board Reasons for Decision in the matter of Applications by North Canadian Oils Limited for Orders Requiring Foothills Pipelines (Yukon) Ltd. to Transport Gas and Provide Facilities for the Transportation of Gas for North Canadian Oils Limited"
MMcf	Million cubic feet

MMcfd	Million cubic feet per day
1985 Natural Gas Agreement	Agreement among the Governments of Canada, Alberta, British Columbia and Saskatchewan on Natural Gas Markets and Prices - 31 October 1985
NCO	North Canadian Oils Limited
NEB Act	*National Energy Board Act*
NEB or the Board	National Energy Board
net	net cost of service
Northwest	Northwest Pipeline Corporation
Northwest Natural	Northwest Natural Gas Company
OD	Operating Demand
Ocelot	Ocelot Chemicals Inc.
PCEC	Pacific Coast Energy Corporation
PNG	Pacific Northern Gas Ltd.
RFSF or Request	Request For Service Form
RH-1-88 Phase I TransCanada Reasons for Decision	"National Energy Board Reasons for Decision in the matter of an Application of TransCanada PipeLines Limited dated 5 February 1988 for certain orders respecting tolls - November 1988"
RH-2-87 Westcoast Reasons for Decision	"National Energy Board Reasons for Decision in the Matter of an Application of Westcoast Energy Inc. dated 19 December 1986 for new tolls effective 1 January 1987 and 1 January 1988 - November 1987"
RH-3-86 TransCanada Reasons for Decision	"National Energy Board Reasons for Decision in the matter of an Application of TransCanada PipeLines Limited dated 14 July 1986 for new tolls effective 1 January 1987 - May 1987"
RH-5-85 TransCanada Reasons for Decision	"National Energy Board Reasons for Decision on the matter of a hearing held pursuant to Subsections 17(1), 20(3) and Part IV of the *National Energy Board Act* - May 1986"
Remington	Remington Energy Ltd.
TSNLH	Transportation Service Northern Long Haul

TSS	Transportation Storage Service
TransCanada	TransCanada PipeLines Limited
Unocal	Unocal Canada Limited
Westcoast or the Company	Westcoast Energy Inc.
Westcoast/Northwest Agreements	The Westcoast/Northwest Letter Agreements dated 14 and 15 September 1987

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* and the Regulations made thereunder; and

IN THE MATTER OF an application by Westcoast Energy Inc. for, among other things, Orders respecting tolls under Sections 59, 60, 62 and 63 of the *National Energy Board Act*; and

IN THE MATTER OF the National Energy Board Directions on Procedure RH-1-89.

HEARD in Vancouver, British Columbia on 12, 13, 14, 15, 16, 19, 20, 21 and 22 June and 5, 6, 7, 10, 11, 12 and 13 July, and in Ottawa, Ontario on 18 July 1989.

BEFORE:

W.G. Stewart	Presiding Member
J.R. Jenkins	Member
D.B. Smith	Member

APPEARANCES:

J. Lutes R. Sirett	Westcoast Energy Inc.
J.B. Ballem, Q.C. T.M. Hughes	Canadian Petroleum Association
R.B. Wallace	Council of Forest Industries of British Columbia; Cominco Ltd.; Ocelot Chemicals Inc.
J.A. Snider	Independent Petroleum Association of Canada
A.A. Fradsham	Alberta and Southern Gas Co. Ltd.
C.D. Johnson D.M. Masuhara	BC Gas Inc.; Inland Natural Gas Co. Ltd.; Peace River Transmission Company Limited; Fort Nelson Gas Ltd.
F.C. Basham	BP Resources Limited
J.M. Pelrine R. Milner	British Columbia Petroleum Corporation
D. Andrews	Canadian Hydrocarbons Marketing Inc.
H. Chivers	Coast Pacific Management Inc.
D. Clark	Czar Resources Ltd.
C.B. Woods W.L. Oostenbrink	Mobil Oil Company

S.K. Ackerman	Northwest Natural Gas Company
C.R. Rich	Northwest Pipeline Corporation
J. Hopwood, Q.C.	NOVA Corporation of Alberta
C.W. Sanderson	Pacific Coast Energy Corporation
W. Hough	Pacific Northern Gas Ltd.
D.A. Dawson K.L. Meyer	Pan-Alberta Gas Ltd. and Northwest Pacific Energy Marketing Inc.
K. Ormon	Petro-Canada Inc.
J.D. Rooke, Q.C.	Remington Energy Ltd.
D. Sutton	Shell Canada Limited
D. Horner	Unocal Canada Limited
H. Scott	Wainoco Oil Corporation
E.B. McDougall	Washington Natural Gas Company
G.W. Toews M. Samuel	Western Gas Marketing Limited
L. Manning P. McGovern	Alberta Petroleum Marketing Commission
M.M. Moseley	British Columbia Ministry of Energy, Mines and Petroleum Resources
D. Bursey M. Fowke	National Energy Board

Overview

(Note: This overview is provided solely for the convenience of the reader and does not constitute part of this Decision or the Reasons, to which readers are referred for the detailed text and tables.)

Capacity Allocation

In the RH-2-87 Westcoast Reasons for Decision, the Board directed Westcoast to develop a capacity allocation policy in concert with the concerned parties and to submit the policy to the Board for approval. In March 1989 Westcoast filed its proposed capacity allocation policy with the Board.

Capacity Available l November 1989

This issue dealt with the allocation of the capacity formerly used to accommodate export sales to Northwest which will become available 1 November 1989.

Subject to some modifications, the Board found Westcoast's proposal to hold an open season for the capacity becoming available 1 November 1989 to be reasonable in the circumstances. The open season was to be held at a time chosen by Westcoast, but was to commence no later than 31 July 1989. During the open season priority had to be given to existing shippers who were currently serving the export market and who could demonstrate either a firm market or a firm supply.

Capacity Available l November 1991

This issue dealt with the allocation of the capacity currently used to accommodate domestic sales to BC Gas and Inland, both of whose sales contracts expire on 31 October 1991.

The Board accepted Westcoast's proposal to reserve the sales capacity becoming available 1 November 1991 for ripe deals serving the core market, but changed the reservation date from 1 November 1990 to 1 May 1991. The Board also accepted BC Gas/Inland's proposal that they be given a right of first refusal for any remaining capacity as at 1 May 1991, up to a maximum of their OD volumes at that time. The Board considered that this approach would provide an adequate safeguard for gas supply to the B.C. core market. Any capacity remaining after 1 May 1991 will be allocated on the basis of the existing queue.

Queuing Procedures

Westcoast filed extensive queuing procedures which were not seriously disputed by the interested parties and were generally consistent with the guidelines established on the Foothills system. For the most part, the Board was satisfied that Westcoast's proposed queuing procedures will ensure fair and equitable access to Westcoast system capacity. The Board accepted Westcoast's queuing procedures, subject to certain modifications.

Renewal Rights

Currently, renewal rights are not included in Westcoast's tariff; however, since 1985 they have been granted to shippers with firm service contracts in accordance with the Company's current policy. The Board was of the view that subject to some limitations shippers with firm service contracts should

have renewal rights and that in order to exercise these rights, firm shippers must demonstrate either a firm gas supply or a firm market, and provide Westcoast with sufficient notice of their intention to renew.

Self-Displacement

Self-displacement occurs when a distributor replaces any portion of its currently contracted firm gas supply with an alternate supply or makes any other arrangement that accomplishes the same end.

The Board believed that the principles espoused in its RH-1-88 TransCanada Reasons for Decision apply to the Westcoast system. The circumstances on the Westcoast system suggest that a transition to market-sensitive prices for the BC Gas/Inland markets will occur by 1 November 1991 at the latest. Having assessed this and the situation of PNG, the Board decided to rescind its policy of prohibition of self-displacement on the Westcoast system, effective 1 November 1991.

Throughput

The Board found Westcoast's proposal to file, by 1 October 1989, its forecasts of firm demand and of annual deliveries for the 14-month period commencing 1 November 1989 to be reasonable.

Promotional Tolls for Service to the Vancouver Island Project

The Board denied Westcoast's request to allow a promotional toll for the transportation of natural gas on its system for the Vancouver Island Pipeline Project.

Westcoast had asked the Board to approve a discount from the normal toll paid by other shippers for the first three years of the project. The lower toll would allow time for the market to be served by the project to develop a system load that would make it economically viable.

The Board was of the view that the arguments supporting the promotional toll did not justify a lower toll for the Vancouver Island Project than that paid by other pipeline users, and that such a toll would result in an involuntary contribution to the project being imposed on other shippers using the Westcoast system.

Interruptible Tolls

(a) Westcoast proposed the elimination of the second tier of domestic interruptible service in all zones for operational and administrative reasons.

    The Board has decided to eliminate Tier 2 service in Zones 1 and 2 having regard to the operational difficulties in those zones. However, the Board has decided to maintain two tiers of service in Zones 3 and 4 during the winter period. The lower tier of winter service will be available to all shippers who agree to have matching contracts in both Zones. There will be only one tier of service in the summer period.

(b) Westcoast proposed the introduction of summer and winter interruptible tolls. The winter interruptible toll for the period 1 November to 31 March would be based on a 50 percent load

factor. The summer toll would remain at the current Tier 1 level, which is based on a 75 percent load factor.

The Board approved the introduction of summer and winter tolls and set the Tier 1 and Tier 2 winter interruptible tolls at 60 percent and 75 percent load factors, respectively. The summer interruptible toll has been set at an 80 percent load factor.

(c) The Board approved Westcoast's request that it be allowed to continue to determine firm and interruptible tolls on a gross rather than a net basis, with monthly crediting of interruptible revenues, for the period 1 November to 31 December 1989 and for the 1990 test year. The Board directed the Industry Task Force to examine whether and when this methodology should be changed for a future test year.

(d) Westcoast proposed discontinuing streaming interruptible revenues between the domestic and export markets because the express need to stream revenues no longer exists as Northwest is no longer a customer on the system.

The Board directed Westcoast to discontinue streaming interruptible revenues. Interruptible revenues in each zone are to be credited each month to all shippers based on each shipper's pro rata share of the total demand revenue generated from all firm sales and service in the zone.

Zone 2 - Processing Treatment Tolls

Westcoast proposed eliminating the Small Plant processing toll for gas processed at the Sikanni Plant. Westcoast also proposed that the Sikanni Plant users pay the same demand and commodity treatment tolls as apply to users of other processing plants. To achieve this, Westcoast developed a new treatment curve. Westcoast also recommended that future adjustments to the curve be made on a unit rather than percentage basis.

The Board approved Westcoast's request to eliminate the Small Plant toll and directed that the Sikanni Plant users pay demand and commodity tolls determined on a rolled-in basis, with the demand toll being determined using the new treatment curve. The Board denied Westcoast's request to make future adjustments to the treatment curve using the unit basis and directed the Company to use the percentage method.

Zone 3 - Single Postage-Stamp Toll

The Board approved Westcoast's proposal to combine the two long-haul subzones for tolling purposes, and to charge a single postage-stamp toll for long-haul movements of gas within Zone 3. The Board also approved the retention of the short-haul toll for movements of gas not exceeding 75 kilometres.

Transportation Storage Tolls

The Board approved the continuation of the existing method of determining the firm Transportation Storage Service tolls. The Board also approved the Company's proposal that an interruptible transportation toll, equivalent to one-half of the Zone 3 long-haul toll, be charged for each movement of gas into or out of storage. The Board directed that this interruptible toll be charged for all storage

gas including sweet gas and out-of-province gas. Westcoast wanted to have this favourable interruptible toll apply only to gas processed at plants owned by it.

Upstream and Downstream Diversion

The Industry Task Force was successful in reaching agreement on the issue of upstream diversions before the commencement of the hearing but was unable to resolve the issues relating to downstream diversions. During the hearing Westcoast stated that an agreement amongst the parties had been reached on the downstream issues.

The Board directed Westcoast to amend its general terms and conditions to reflect the agreed-upon upstream and downstream diversion policy.

Industry Task Force

An Industry Task Force composed of representatives of Westcoast and its shippers was established after the last Westcoast hearing to resolve operating and other toll and tariff matters outside of the hearing process. Of the 34 issues dealt with by the task force, only five were brought before the Board for resolution in this proceeding; one of these, downstream diversions, was resolved to the satisfaction of the parties during the hearing.

The Board strongly encourages the task force to continue its work. Recommendations that are brought forward to the Board for consideration and approval reduce the length of public hearings.

Force Majeure and Contract Demand Credits

The Board approved Westcoast's requested change to its tariff provision that would eliminate the Company's obligation to provide demand charge credits when an event of force majeure occurs downstream of the Westcoast system.

Letter of Credit

The task force requested, and Westcoast agreed, to amend the period between the receipt and payment of the monthly invoices from five calendar days to five working days. Consequently, Westcoast requested approval to amend its general terms and conditions for service to extend the required number of days provision contained in a letter of credit from 62 to 64 days. The Board approved the Company's request.

Allocation of Interruptible Capacity

Evidence indicated that the existing procedure for allocating interruptible capacity encourages shippers to over-estimate their actual requirements during periods of curtailment. Under the existing methodology, customers with large interruptible contracts can increase their pro rata allocation by nominating volumes in excess of their actual requirements. Last winter, this resulted in under-utilization of the system.

A number of proposals were put forth as solutions. Of the two proposals that were examined at length in this proceeding, the Board was of the view that a "use it or pay" solution was preferable to

Westcoast's "cap" on the level of large interruptible nominations because it would not discriminate against shippers on the basis of the size of their interruptible contracts. The Board directed that the "use it or pay" method be applied so that a shipper will pay for the transportation of at least 80 percent of the monthly authorized volumes regardless of the shipper's actual takes during the month.

Unutilized Service Credits

Westcoast has been directed to develop the necessary procedures to eliminate unutilized service credits in Zones 3 and 4 by the 1992 test year. In the meantime, the Board directed the Company to use the revenue credit method to determine such credits in both zones. The Board recognized that it is currently not possible to eliminate these credits in Zones 1 and 2.

Unauthorized Overran Revenue

The Board has decided to credit unauthorized overrun penalty revenue, less any related Westcoast costs, to all shippers other than this shipper incurring the penalty. The Board had previously allowed Westcoast to retain such revenue.

Expiration Date for Service and Storage Contracts

Westcoast proposed that all contracts, except those for transportation storage have a 31 October expiry date. It also proposed that storage contracts have a 30 April expiry date. The Board denied Westcoast's proposals, believing that some flexibility in contracting for service ought to be retained.

Chapter 1
Background and Application

On 3 February 1989, the National Energy Board ("the Board" or "NEB") informed Westcoast Energy Inc. ("Westcoast" or "the Company") and interested parties that it would be holding a public hearing later in the year to examine the tolls to be charged by Westcoast for the period 1 November to 31 December 1989 and for the 1990 and 1991 test years.

In a letter dated 27 February 1989, the Board deferred issuing directions on procedure until a meeting involving Westcoast, shippers on the Westcoast system and other interested parties could be held, and a report on the meeting filed with the Board. It was hoped that agreement reached by members of the industry would improve the overall efficiency of the toll-hearing process.

In a letter dated 23 March 1989, the Board informed Westcoast and interested parties that the examination of Westcoast's tolls would be held in two hearings. The Phase I hearing would include examination of Westcoast's capacity allocation policy, self-displacement and other toll design and tariff issues. Rate base, cost of service and rate of return would be addressed in the Phase II hearing.

The letter further directed Westcoast to file its Phase I application for the 1990 and 1991 test years and written evidence by 17 April 1989. Subsequently, on 6 April 1989, the Board decided to require Westcoast to file an application only for the 1990 test year.

On 12 April 1989, the Board issued Hearing Order RH-1-89 which set out Directions on Procedure for the Phase I hearing. Westcoast filed an application dated 14 April 1989 for an order respecting its tolls pursuant to Part IV of the *National Energy Board Act* ("NEB Act").

The Phase I hearing was divided into two parts. The first, which dealt with capacity allocation and self-displacement, commenced in Vancouver on 12 June 1989 and continued for nine days. On 5 July 1989 the Board issued its decision and preliminary reasons concerning these issues and the hearing reconvened in Vancouver for a further seven days to examine all remaining toll design and tariff matters. Parties were given the option of filing written argument or presenting oral argument. Written argument was to be filed by 17 July 1989 and oral argument was heard in Ottawa on 18 July 1989.

Chapter 2
Capacity Allocation

In its RH-2-87 Westcoast Reasons for Decision, the Board directed Westcoast and concerned parties to develop a capacity allocation policy and submit the policy to the Board for approval. In response to the Board's directive, Westcoast initiated discussions, and convened meetings with those parties, starting in early 1988.

In March 1989, Westcoast filed its proposed capacity allocation policy with the Board, noting that while a consensus was reached on most issues, several still awaited resolution. The major area of dispute centred around whether any party should have a prior or pre-emptive right to the capacity associated with sales contracts expiring in 1989 and 1991; Westcoast's proposal did not provide any party with such rights. Other areas addressed in the Company's draft policy included the issue of renewal rights, as well as the queuing procedures that should be put in place by Westcoast for the allocation of capacity on its system. The differences of opinion on these outstanding issues were considered significant enough by Westcoast that it called upon the Board to address them in an upcoming toll hearing. Westcoast requested that its capacity allocation policy be the first matter dealt with at the toll hearing, with the Board rendering a decision on the matter as soon as possible.[1]

These issues are discussed in more detail in Sections 2.1 to 2.4 of this Decision.

2.1 Capacity Available 1 November 1989

As a result of Northwest Pipeline Corporation ("Northwest") repudiating the Fourth Service Agreement in late 1988, Westcoast introduced an interim policy to allocate the 15 581 $10^3m^3/d$ (550 MMcfd) of capacity formerly used to accommodate sales to Northwest. Under this interim policy requests for service would expire 31 October 1989, unless the party making the request could demonstrate the existence of a ripe deal, namely both a firm market and a firm supply. All but 93.5 $10^3m^3/d$ (3.3 MMcfd) of the capacity formerly used by Northwest was taken up by the British Columbia Petroleum Corporation ("BCPC") and several other shippers, primarily producers. During the hearing, these shippers were referred to as the "550 shippers".

The issues to be resolved dealt with the policy to be put in place to allocate the capacity, formerly used to accommodate sales to Northwest, which would become available 1 November 1989.

Under Westcoast's original proposal, Northwest sales capacity would first be allocated to shippers who could demonstrate ripe deals. In this regard, Westcoast indicated that beyond 31 October 1989, some 300 MMcfd of the 550 MMcfd had been allocated to shippers demonstrating the existence of ripe deals. Westcoast entered into these arrangements as part of its normal day-to-day operations, recognizing that the Board had not yet approved the Company's formal capacity allocation policy.

Any remaining capacity would be allocated at the completion of a proposed open season to be held in July 1989. Such capacity would be allocated first to those shippers demonstrating either a firm market

[1] On 5 July 1989 the Board rendered its decision with preliminary reasons on capacity allocation and self-displacement.

or a firm supply. To the extent any capacity was still available, it would be allocated to shippers with neither a firm market nor a firm supply, with the term of the contract limited to one year. If there were insufficient capacity available to meet all requests, Westcoast proposed giving first priority to those shippers requesting the longest term.

Objections raised by various parties focussed for the most part on Westcoast's stated intention to give priority to ripe deals and the granting of renewal rights to the "550 shippers" who contracted for Northwest capacity as a result of the unusual circumstances encountered in late 1988.

The Independent Petroleum Association of Canada ("IPAC") and the Canadian Petroleum Association ("CPA") put forward the position that the "550 shippers" should have the right to renew their existing service agreements. In this regard, they acknowledged that several of the service contracts included a clause that precluded these "550 shippers" from having any renewal rights to their contracted capacity; however, both these intervenors noted Westcoast's admission that the only reason for the inclusion of such a clause was to ensure that the Board had the final say as to whether these contracts should have renewal rights. In argument, IPAC submitted that it was not until parties received Westcoast's draft policy in March 1989 that the "550 shippers" were fully aware of the preferential treatment to be given to ripe deals.

During argument, Westcoast indicated that it would be prepared to modify its proposal so that any of the Northwest capacity remaining after the allocation of capacity to ripe deals would, at the close of the open season, be allocated, first, to those shippers demonstrating the existence of either a firm supply or a firm market and seeking to renew an existing agreement. CPA welcomed Westcoast's compromise proposal as a move in the right direction, but IPAC and BCPC found it to be insufficient because ripe deals would still have priority. The concern was that there was still the possibility that some of the "550 shippers" would not be able to obtain capacity.

Westcoast's proposal to hold an open season in the summer of 1989 was opposed by CPA, with BCPC supporting CPA's position. CPA proposed that capacity should be allocated on the basis of the existing queue, with entry into the queue established on a first-come, first-served basis. While this approach is consistent with Westcoast's proposed permanent queuing procedures, the Company was of the view that its open season approach, in the context of a transitional period of converting from sales to service, was appropriate in the circumstances of this case. Westcoast did not view a first-come, first-served principle as being fair or practical to the shippers during such a transitional phase. This position was supported by IPAC.

Views of the Board and Decision

In general, the Board finds Westcoast's proposal to hold an open season for the capacity becoming available l November 1989 to be reasonable in the circumstances. The Board agrees with Westcoast that a first-come, first-served approach would not be fair and equitable during this transitional period. As well, the open season concept better suits the relatively short period of time in which the allocation of this capacity must be resolved. Such an open season is to be held at a time chosen by Westcoast, but is to commence no later than 31 July 1989.[1]

[1] The open season was held during the period 31 July to 14 August 1989 inclusive.

The Board confirms that capacity taken up by ripe deals which were in place as of the date of this decision (5 July 1989) will not form part of the open season. However, the Board finds merit in certain of the concerns raised by the intervenors in this proceeding. In particular, the Board is of the view that any of the "550 shippers" wishing to renew their existing service contracts should have ample opportunity to do so. This is consistent with Westcoast's informal policy regarding renewal rights for other service contracts. Also, the Board is cognizant of the views expressed during the hearing that unlimited access to ripe deals may restrict the capacity available to those shippers wishing to renew. Accordingly, the Board has decided to modify the proposed allocation hierarchy during the open season, as follows:

(i) Priority will be given to any of the "550 shippers" who can demonstrate either a firm market or a firm supply (by the end of the open season);

(ii) Next, priority will go to new shippers who, by the end of the open season, can demonstrate the existence of a ripe deal;

(iii) New shippers demonstrating either firm supply or firm market will he given next priority; and

(iv) Finally, to the extent capacity is still available, it will be allocated to those shippers who can demonstrate neither a firm supply nor a firm market. These parties would be limited to a one-year term.

Within each of these priority categories with the exception of item (iv), to the extent Westcoast is unable to satisfy all requests for capacity, first priority shall be given to those shippers requesting the longer term. Upon completion of the open season, any unsatisfied requests for capacity will go into a queue, with all parties having the same position in the queue as determined by the date of the closing of the open season. Shippers showing neither a firm market nor a firm supply will not qualify for entry into the queue. If capacity subsequently becomes available, it will be allocated to shippers in the queue on a first-come, first-served basis, with the following exception to accommodate the open season: if more than one party is in the queue as of the same date (as all shippers applying during the open season will be), capacity is to be allocated among the parties on a pro rata basis. To the extent a request remains unsatisfied, the party, if it so wishes, would remain in the queue for that unsatisfied part.

2.2 Capacity Available 1 November 1991

Also at issue was the allocation of the capacity currently used to accommodate sales of BCPC gas by Westcoast to BC Gas Inc. ("BC Gas") and Inland Natural Gas Co. Ltd. ("Inland"), whose current sales contracts with Westcoast expire on 31 October 1991. Specifically, discussion centred on which party, if any, should have priority to the capacity becoming available on 1 November 1991. The issue arises because Westcoast took the position that neither BC Gas/Inland nor BCPC have pre-emptive rights to the capacity upon the expiry of the sales contracts. Also, Westcoast does not wish to continue its gas sales role.

Several proposals were put forward, focussing, to varying degrees, on the need to:

(i) provide for an equal opportunity for buyers and sellers to gain access;

(ii) recognize that historically the capacity had been used by BCPC and BC Gas/Inland and provide them with an opportunity to negotiate a settlement on the allocation of the available capacity; and

(iii) ensure that the security of supply to the domestic core market[1] is not adversely affected during the transition period.

The last point was stressed by the British Columbia Ministry of Energy, Mines and Petroleum Resources ("B.C. Ministry") during this proceeding.

Under Westcoast's proposal, this capacity would be reserved until 1 November 1990 for any shipper who could demonstrate the existence of a ripe deal into the BC Gas/Inland market. After 1 November 1990, to the extent any of this capacity remains available, Westcoast would allocate it to shippers who could demonstrate the existence of a ripe deal into any market. Westcoast proposed holding an open season shortly after 1 November 1990 to allocate any capacity that had not been allocated to ripe deals. At the end of the open season, the Company would first allocate available capacity to shippers demonstrating either a firm market or a firm supply, then to those shippers who could demonstrate neither a firm market nor a firm supply. The latter would be able to contract only for a period of one year. As in the case of the allocation of the Northwest capacity (see Section 2.1), if there is insufficient capacity to meet all requests, Westcoast proposed to give priority based on the length of the contract term.

The Company also indicated that, consistent with existing contractual obligations, it would make raw gas transmission and processing capacity available at each plant based on a pro rata reduction of the BCPC maximum daily volume obligations ("MDVOs") behind each plant. The total capacity made available would equal the net reduction in Westcoast's sales commitments resulting from the termination of the BC Gas/Inland firm sales contracts. The Board notes that this was not at issue during the proceeding.

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[1] As defined in the "British Columbia Natural Gas Core Market Policy" dated June 1988, the core market includes all residential, institutional, commercial and industrial customers, who are not currently purchasing natural gas directly, but purchase their gas from a local distribution company ("LDC") in British Columbia.

BC Gas proposed that the capacity currently used to provide sales gas to meet the operating demand ("OD") requirements of BC Gas/Inland should be reserved for any ripe deals to the core market served by BC Gas and Inland, until 1 May 1991. In requesting that the reservation date be moved from 1 November 1990 to 1 May 1991, BC Gas noted that the six-month notice period that would then prevail would be consistent with the notice period for renewals granted to service customers. Further, BC Gas viewed the time extension as necessary to allow sufficient time to assess the potential for alternate sources of gas supply. At the completion of the reservation period, BC Gas believed that it should have the right to sign a firm service contract with Westcoast for the balance, or any requisite portion, of the reserved capacity that would be needed to serve the core market.

In argument, BC Gas put forward the view that all parties were of the opinion that the security of supply into the core market should not be adversely affected during the transition from sales to service. To this end, BC Gas argued that its proposal would ensure that capacity equal to the operational demand of the present sales contracts is available for the core market upon the expiration of the BC Gas/Inland sales contracts.

CPA, BCPC and IPAC took the position that BC Gas/Inland and BCPC should be given ample opportunity to negotiate a settlement on the allocation of sales capacity becoming available 1 November 1991. CPA submitted that there are three basic factors that need to be considered in the allocation of this sales capacity:

(i) the need to protect the core market;

(ii) the moral rights of BCPC and BC Gas/Inland as a result of their historic participation in the core market; and

(iii) the efficient allocation of raw gas transmission and processing capacity.

CPA's proposal, which was generally supported by BCPC, called for negotiations to take place between BC Gas/Inland and BCPC, with the core market reserved for these parties until 31 October 1990. Then, BC Gas/Inland and BCPC would have an additional six-month period to implement whatever arrangements were necessary to enable them to apply to the Company for the required service capacity. CPA and BCPC differed in their respective approaches as they related to what should be done with any capacity that remained available at the end of the reservation period. CPA believed it appropriate to allocate such capacity on the basis of the queue in place at that time. BCPC would prefer that the Board allocate this capacity between the two parties; if the Board decided not to allocate this capacity, then BCPC's second choice would be to rely on the existing queue as suggested by CPA.

IPAC proposed that BC Gas/Inland and Pacific Northern Gas Ltd. ("PNG") should have until 31 October 1990 to convert from sales to service arrangements, utilizing BCPC's gas supply. Such conversion would be limited to the existing OD levels. As suggested by Westcoast, any capacity still available at the conclusion of the reservation period would form part of an open season. During the open season, any party who could show either a firm supply or a firm market would be able to contract with Westcoast for the required capacity, with the allocation of such capacity determined on the basis of length of contract term.

In suggesting that an open season follow the reservation period, IPAC was of the view that queuing procedures are an effective method of allocating capacity under normal circumstances. However, given the size of the capacity becoming available and the uncertainty involved in the transition from sales to service, IPAC considered that an open season concept was a reasonable approach. In this regard, BC Gas pointed out that, under Westcoast's proposal to hold an open season after the reservation period, the security of supply to the core market could be adversely affected, given that at that point in time Westcoast proposed making any remaining capacity available, without a restriction as to the markets served. BC Gas also had concerns regarding CPA's queuing proposal for remaining capacity. In BC Gas's view, CPA's approach could also adversely affect the core market by allowing the capacity to be made available to shippers serving any market.

During the course of the hearing the B.C. Ministry developed a compromise proposal, basing it to a certain extent on the positions espoused by the various parties to the proceeding. As was the case with other proposals presented during the hearing, the B.C. Ministry emphasized the need to ensure the continued existence of sufficient capacity to serve the core market. Having stated its desire that the core market be protected, the B.C. Ministry voiced concerns about any proposal that would automatically allocate a portion of this sales capacity to any particular party. Under the B.C. Ministry's proposal, BC Gas and BCPC would be allowed to negotiate an allocation of the capacity becoming available up to 1 November 1990. Prior to this date, Westcoast could not offer service agreements to ripe deals involving parties other than BC Gas and BCPC. The B.C. Ministry then suggested that a six-month open season be established, but restricted to the core market. If at the end of the open season any capacity remained available, it should be left in reserve for the core market for a further six months, given the B.C. Ministry's view that the core market will ultimately require that capacity on 1 November 1991.

Views of the Board and Decision

In reaching its decision, the Board has given considerable weight to the view expressed during the hearing that the security of supply to the core market in B.C. should not be adversely affected. Accordingly, the Board has decided to accept Westcoast's proposal to reserve the sales capacity currently used to serve sales to BC Gas/Inland for ripe deals serving the core market, but has moved the reservation date from 1 November 1990 to 1 May 1991. In so doing, the Board is of the view that this approach gives BC Gas/Inland and BCPC sufficient time to reach a negotiated settlement while at the same time allowing for an even-handed approach by giving all parties access to the capacity if they have ripe deals. The Board considers that this approach provides an adequate safeguard for gas supply to the B.C. core market.

The Board also finds merit in BC Gas/Inland's proposal and accepts that they be given priority to any remaining capacity as at 1 May 1991, up to a maximum of their OD volumes at that time. In this regard, the Board is cognizant of BC Gas/Inland's statements that they will assume the financial commitment associated with acquiring such capacity. Any remaining capacity will be allocated on the basis of the existing queue. The Board gave consideration to granting BCPC a priority to any remaining capacity but felt that this was not required

since BCPC should be able to protect its interests by choosing an appropriate date for entry into the queue.

In deciding that any remaining capacity should be allocated on the basis of the existing queue, the Board believes that a date of 1 May 1991 gives sufficient time for the queue to be in place and for all parties to understand the Company's queuing procedures. Accordingly, the Board is of the view that an open season to allocate any remaining capacity is not required in these circumstances.

With regard to the release of the Zone 1 and Zone 2 sales capacity used to serve the requirements of BC Gas/Inland, the Board accepts the Westcoast proposal to determine the available capacity on the basis of the MDVOs of BCPC's producers.

2.3 Queuing Procedures

In its RH-2-87 Westcoast Reasons for Decision, the Board directed Westcoast to develop a capacity allocation policy in concert with those parties affected and to submit such a policy for Board approval. In response to the Board's directive, Westcoast filed its proposed queuing procedures. That procedure was fully set out by Westcoast during the hearing,[1] and envisaged the following steps:

1. Shipper delivers a completed Request For Service Form ("RFSF" or "Request") to Westcoast.

2. Westcoast signs and date stamps the Request and returns a copy of the Request to the shipper.

3. Westcoast informs the shipper within 10 days of receipt of the Request of any deficiencies with respect to the Request.

4. Shipper provides Westcoast with the information, if any, required to complete the Request.

5. Where Westcoast has determined that capacity is available:

   (i) Westcoast prepares a service agreement and sends the service agreement to the shipper for execution. The service agreement will contain a representation and warranty to the effect that the shipper has either a firm market or firm supply.

   (ii) Shipper executes the service agreement within 21 days and returns it to Westcoast. If shipper fails to return the service agreement within 21 days and in the interim another shipper has delivered a Request to Westcoast for the available capacity, then shipper will lose its right to that capacity. If shipper returns the service agreement later than 21 days, then the agreement will be deemed to constitute a new Request as of the date on which the executed service agreement is received by Westcoast

[1] Source: Exhibit B-16.

(iii) Westcoast executes the service agreement and returns an executed copy to the shipper.

(iv) Service commences as specified in the service agreement.

6. Where Westcoast has determined that capacity is unavailable:

(i) The Request is placed in the queue based on the date and the time of receipt by Westcoast of a satisfactorily completed Request.

(ii) Westcoast advises the shipper of its position in the queue.

(iii) Westcoast determines whether or not the construction of additional facilities to accommodate the requested service is required.

(iv) If Westcoast determines that additional facilities are not required, then as capacity becomes available, Westcoast will allocate the capacity sequentially to the shippers in the queue. Service agreements will then be offered to shippers who have been allocated capacity, in accordance with the procedures set out in step 5 above.

(v) If Westcoast determines that additional facilities are required:

(a) Westcoast obtains the necessary information and documentation from the shipper to support a facilities application, including the following:

- evidence that the intended market is secure and long term;
- evidence that the shipper has a secure and long-term source of supply;
- evidence that the shipper will obtain all associated regulatory approvals in a timely manner;
- other financial assurances satisfactory to Westcoast; and
- a firm service agreement for a term sufficient to ensure financing for the expansion and for protecting the financial integrity of the pipeline system.

If the shipper fails to return the service agreement within 21 days, then the shipper will lose its position in the queue. If the shipper returns the service agreement later than 21 days, then the agreement will be deemed to constitute a new Request as of the date on which the executed service agreement is received by Westcoast.

(b) Westcoast prepares and files a facilities application with the NEB.

(c) The NEB approves construction of additional facilities.

(d) Additional facilities are constructed.

(e) Service commences as specified in the service agreement

7. Westcoast will make available to any person, upon request, a copy of the queue list which will contain the following information:

   - the names of the shippers in the queue;
   - the position of each shipper in the queue;
   - the date on which Westcoast received a satisfactorily completed Request from each shipper in the queue;
   - the volume requested by each shipper in the queue; and
   - the requested commencement and termination dates for service.

8. Where the capacity allocated to a shipper is less than that requested by it, the shipper may choose to either accept the available capacity and retain its position in the queue for the balance of the requested capacity or reject the available capacity and maintain its position in the queue.

Westcoast noted that its proposed capacity allocation policy was not disputed by the interested parties and is generally consistent with the MH-2-88 North Canadian Oils Limited ("NCO") Reasons for Decision which set out the principles of a queue and criteria of acceptance for firm shippers on the Foothills Pipe Lines (Yukon) Ltd. ("Foothills") system.

In responding to whether the Board's procedures as set out in the MH-2-88 NCO Reasons for Decision might be appropriate in the case of the Westcoast system, Westcoast noted, among other things, that the proposed Project Status Summary identified on page 7, paragraph (c), of that Decision may not be appropriate in the case of the Westcoast system where new facilities are contemplated. Westcoast argued that an informal approach was more appropriate in its case, since the information needed would vary depending upon the kind of facility to be constructed. Westcoast noted that its system is different from either the Foothills or TransCanada PipeLines Limited ("TransCanada") systems because Westcoast owns and operates raw gas transmission and processing facilities in addition to mainline transmission facilities. Westcoast was of the opinion that these differences made it impossible to determine a minimum term of service required to support a facility expansion. It argued that every expansion would be unique and thus supported by its own minimum term of service.

Westcoast noted that in setting any access policy or procedure, it is impossible to envisage and therefore to address all of the circumstances that might prevail down the road. With that in mind, Westcoast felt that Board involvement may be necessary where the policy does not provide an appropriate response to a particular request for service.

CPA supported the concept of "first-come, first-served" in considering firm service requests, but expressed the opinion that eligibility for entry into a queue should be based on a prospective shipper's ability to demonstrate that it has either a firm market or a firm supply. This, it felt, would prevent requests for service which were purely speculative. It added that the terms and conditions of access to service should be included in the tariff and that any dispute that arises between a prospective shipper and Westcoast regarding, for example, whether the prospective shipper has satisfactorily completed the RFSF, be brought forth to the Board for adjudication. In this regard, CPA recommended that the onus

should be on the prospective shipper to file such an application with the Board. It added that, until the Board rules on the request for adjudication, the shipper's position in the queue would continue to be based on the date that the RFSF was received by Westcoast.

CPA expressed its opposition to fixing a minimum term of service as a standard condition where new facilities were required and felt that, in the case of the Westcoast system, the appropriate term of service should be dealt with on a case-by-case basis.

CPA recommended that the RFSF should be accompanied by a statutory declaration to the effect that the prospective shipper has either a firm market or a firm supply. With regard to notifying a prospective shipper of a satisfactorily completed RFSF, CPA suggested that failure by Westcoast to notify the prospective shipper within 30 days of receipt of the RFSF should be deemed to be an acceptance of the shipper's request. CPA supported Westcoast's position that a queue should be established for each zone, as well as sub-queues within each zone.

CPA cited the Board's findings in the MH-2-88 NCO Reasons for Decision, at page 13, where the Board stated that:

> "The establishment of a position in the queue for each potential shipper based on the date of its initial request for firm service is generally consistent with the first-come, first-served principle of open-access transportation."

CPA endorsed the concept of queuing, noting that a queue, as opposed to an open season concept, has advantages in that it can be applied to capacity currently under contract, to capacity that may become available owing to non-renewal of existing capacity rights and to capacity that may become available owing to the construction of new facilities.

In argument, the Alberta Petroleum Marketing Commission ("APMC") supported the proposed queuing procedures for the Westcoast system, noting that such procedures would ensure fair and equal treatment to prospective shippers. Because these procedures affect the priority and conditions of access to transportation services, the Board should be called upon to adjudicate in instances of dispute between Westcoast and the prospective shipper. APMC recommended that such a dispute-settling mechanism be incorporated into the tariff so that all parties would be aware of the appeal process should a dispute arise.

APMC endorsed the idea of incorporating the queuing procedure into Westcoast's tariff and concurred with the Board's MH-2-88 NCO Reasons for Decision findings that:

> "...a prospective shipper's position in the queue shall not be affected by the volume, date of commencement, term of service or distance requested."

In commenting on the queuing procedures outlined by the Board in its MH-2-88 NCO Reasons for Decisions, BC Gas found that a number of the concepts and procedures could be applied to Westcoast. Among others, BC Gas supported the idea of a published queue list, that would be made available upon request, as well as the proposal to incorporate into Westcoast's tariff all of the terms and conditions of access to service, including the queuing procedures.

Similarly, BC Gas found that the access criteria should apply equally to all potential shippers and to existing shippers, both sales or service, for increases in their existing contract quantities or for extensions to existing levels of firm service. BC Gas argued that a prospective shipper in the queue who waives an offer of capacity should be removed from the queue except in two instances:

(1) when the capacity, or the term of service offered, is less than that specified in a negotiated precedent agreement; or

(2) when an earlier start date is proposed.

BC Gas argued that when an offer of capacity is made a potential shipper should have up to 60 days to execute a binding agreement with Westcoast.

IPAC supported the idea that the terms and conditions of access to transportation service should be included in the tariff, thus ensuring unbiased access to pipeline service and, therefore, to markets. IPAC likewise supported making the queue list available upon request and having such a list clearly identify the shipper's relative position in the queue.

IPAC concurred with CPA that the determination of a minimum term of service, in the event of new facilities, be made on a case-by-case basis. It expressed the view that the prospective shipper's position in the queue should not be affected if the shipper is unprepared to commit to the minimum term determined by Westcoast. In that case, IPAC recommended that the shipper should be permitted to retain its position in the queue subject to either a negotiated settlement or an adjudication by the Board.

Views of the Board

The Board has reviewed Westcoast's proposed queuing procedures as set out in Exhibit B-16 and is satisfied, for the most part, that these will ensure fair and equitable access to Westcoast system capacity.

However, the Board is of the opinion that the interests of both Westcoast and the prospective shippers would be better served if the following modifications are incorporated.

The Board is not convinced that a dual-purpose form covering both firm and interruptible service is appropriate and, accordingly, is of the opinion that all reference to interruptible service should be removed from the RFSF.

A queuing procedure should clearly identify the shippers to whom that procedure applies. In the case of Westcoast, the procedures should apply to both potential shippers requesting firm service, and existing shippers requesting either to increase their volume or lengthen their term of firm service.

With respect to the appropriate period in which a prospective shipper has to consider, execute, and return a firm service agreement, the Board accepts Westcoast's proposal of 21 days and finds the 60-day alternative advanced by some parties to be too generous to the prospective shippers and too restrictive to Westcoast, especially in the

circumstance where Westcoast must assess the need for new facilities. A 60-day period could result in unnecessarily lengthy delays in assessing the need for facilities, and ultimately, in their approval and construction.

The Board does not accept Westcoast's proposed solutions in the event that the executed service agreement is not returned to Westcoast within 21 days. The Board believes that failure to comply with the 21-day stipulation should result in the removal of that shipper from the queue. Access to the queue would require the filing of a new Request. The Board believes that this approach is consistent with the philosophy that only legitimate requests for service should be encouraged to come forth.

The Board concurs with Westcoast and those interested parties who argued that the use of a Project Status Summary is inappropriate in the case of Westcoast where new facilities are required. The Board accepts the argument that such a summary might be appropriate in the case of a mainline expansion on TransCanada or on Foothills, but that in the case of Westcoast, with its associated raw gas transmission and processing plants, a less structured approach is required. The Board notes and accepts Westcoast's undertaking to consult with all prospective shippers to determine the optimum design of any proposed facility expansion. Westcoast is to advise a prospective shipper, in writing, of any required facility expansion to accommodate that shipper's request for service and to advise it of the additional information and documentation Westcoast may require to support a facility application.

The Board accepts Westcoast's position that in the case of facility expansion of its system, it would be both difficult, and in fact inappropriate, to establish beforehand a minimum term of service to be entered into by a prospective shipper to ensure the ability to finance the required expansion. Westcoast argued that every expansion will be unique and require its own minimum term of service. In the case of Westcoast, with its diverse gathering, processing and transportation facilities, the Board is of the view that Westcoast should be permitted to establish a minimum term of service on a case-by-case basis. However, a prospective shipper's position in the queue shall be retained pending a negotiated settlement, or a regulatory review, in the event that there is a dispute between Westcoast and the shipper as to what that appropriate minimum term should be.

The Board believes that Westcoast's provision applicable to offers of capacity which are less than requested should be expanded to include both level and term of service. Therefore, this provision should provide that in the event the capacity or the term of service offered to a prospective shipper is other than that requested, that prospective shipper may choose either to accept the level or term of service offered and retain its position in the queue for the balance of the requested service, or reject the service offered and maintain its position in the queue.

The Board believes that positions in the queue should not be assignable and that such a restriction should be clearly stipulated in the policy.

The Board is of the opinion, given the nature of the Westcoast system with its varied services and related facilities, that Westcoast should establish a separate queue for each service, zone, and discrete part thereof.

Decision

In its 5 July 1989 Decision with preliminary reasons, the Board directed Westcoast to develop, and to submit for Board approval, by 1 September 1989[1], the tariff provisions for inclusion in Westcoast's General Terms and Conditions - Service, in accordance with the queuing procedures set out in Appendix III of this Decision. Until these provisions are approved, Westcoast shall apply the queuing procedures set out in Appendix III.

2.4 Renewal Rights

Westcoast currently provides firm service capacity to shippers under certain conditions; namely, where existing capacity exists and where no new facilities are required to be added, or where sufficient capacity becomes available as a result of firm shippers or sales customers choosing not to extend their existing agreements. Renewal rights are not currently in Westcoast's tariff, but have been granted to shippers with firm service contracts since 1985 pursuant to the Company's current policy.

Under Westcoast's proposal, all existing shippers would have renewal rights provided they can demonstrate either a firm supply or a firm market. Such shippers must give at least six months notice prior to termination of their contracts, unless a shorter period is specified by Westcoast, and must complete and submit a new RFSF. Renewals would be granted subject to capacity being available.

Once a contract has expired, a former shipper seeking to obtain firm service must submit a new RFSF and enter the queue for capacity as would a new shipper. In circumstances where a former shipper or a new shipper is unable to demonstrate the existence of either a firm gas supply or a firm market, Westcoast proposed giving priority to the former shipper.

CPA, the Council of Forest Industries of British Columbia, Cominco Ltd. and Ocelot Chemicals Inc. ("COFI/Cominco/Ocelot"), and BCPC generally opposed the position of Westcoast that the granting of renewal rights be subject to the availability of capacity. For the most part, these intervenors were concerned that such a limitation on renewal rights could restrict the ability of shippers to renew contracts at existing levels upon expiration of the contracts. CPA and COFI/Cominco/Ocelot considered this a form of "bumping". In CPA's view, any renewal rights subject to such a restriction were of limited value.

APMC maintained that existing shippers should be given renewal rights and that these rights should be clearly specified in the tariff. The tariff should also indicate the proper notice period in which a

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[1] The Board approved a Westcoast request to postpone the filing of the required tariff amendments until the same time as it is required to file all Phase I tariff amendments resulting from the Board's Phase I decisions.

shipper must advise Westcoast of its intention to renew. APMC believed Westcoast's proposal to give priority to existing firm shippers over potential shippers already in the queue, where neither of these parties could demonstrate either a firm market or a firm supply, to be contrary to both the guidelines set forth in the Board's MH-2-88 NCO Reasons for Decision and the first-come, first-served principle.

In response to the concerns about "bumping", Westcoast indicated that it was prepared to accept the notion of a broad right of renewal. However, Westcoast pointed out the potential for problems concerning unqualified renewal rights in the situation where a potential shipper in the queue was requesting a certain level of service in the upcoming contract year, followed by an increase, or step-up, in the level in subsequent years. Granting such a request would leave certain capacity available, on an interim basis, up to the required date of the step-up. Westcoast was of the view that the requested step-up capacity should he reserved for such a shipper; however, in the interim, Westcoast was prepared to offer this same capacity to other shippers on a firm basis, based on their relative positions in the queue. Because this capacity has already been committed for a specific date in the future, the contract for the intervening period would not be subject to an automatic right of renewal. Renewal of that contract would be subject to capacity becoming available.

Views of the Board

The Board believes that, if the procedures setting out pipeline access are to operate effectively in a non-discriminatory fashion, the first-come, first-served principle must be allowed to operate. The Board is also of the view that shippers with firm service contracts should have renewal rights and these rights should be included as part of the Westcoast tariff, and that shippers should have the capacity associated with their contracts reserved for possible renewal until the end of their renewal notice period. By reserving this space for potential renewal, the firm shipper will be protected from the possibility of being "bumped" from the system.

However, the Board recognizes that there may be certain circumstances that prevent the granting of an automatic right of renewal. Westcoast gave as an example the situation where, as a result of the application of its queuing procedures, a potential shipper submits a request for initial service, accompanied by an increase in service, as of a specified time in the future. A comparable situation could arise where a potential shipper requests service with a start date delayed to a future contract year. The Board is of the view that such requests should be granted, to the extent capacity is available, and that the related capacity should be reserved for the particular shipper, consistent with the first-come, first-served principle. The capacity associated with a step-up or a delayed start date can be allocated, in the interim, to other potential shippers on a firm basis, according to the ranking in the queue. The Board agrees with Westcoast that capacity allocated on such an interim basis should not be subject to the automatic right of renewal, but rather be subject to capacity becoming available.

In the situation where a former shipper seeks to obtain firm service, the Board believes, as a matter of principle, that such a shipper shall not have priority over a new shipper where both parties are unable to demonstrate either a firm gas supply or a firm market. The Board notes that, based on its decisions in Sections 2.1 and 2.3, the only situation where this would be at issue would be when such parties are eligible for

entry onto the Westcoast system i.e. as part of the open season for capacity becoming available l November 1989.

Decision

Westcoast is directed to include renewal rights as part of the appropriate General Terms and Conditions, effective 1 November 1989. These shall provide that, except as noted below, all firm shippers are entitled to renewal rights but must demonstrate either a firm gas supply or a firm market in order to exercise them. Shippers seeking renewal must provide six months' prior notice.

In the situation where Westcoast accepts a request for service, and that service involves a delayed start date or a future step-up in the level of service, the Board directs Westcoast to offer any related capacity temporarily available to other potential shippers based on their position in the queue. Westcoast is to inform such other shippers at the time of the offer of service that contracting for this capacity on an interim basis does not convey an automatic right of renewal and that the ability to renew service in these circumstances will be subject to capacity becoming available.

Chapter 3
Self-Displacement

As originally defined in the RH-5-85 and RH-3-86 TransCanada Reasons for Decision, self-displacement occurs when a distributor replaces any portion of its currently contracted firm supply with an alternate supply or makes any other arrangement that accomplishes the same end.

In its RH-2-87 Westcoast Reasons for Decision, the Board stated that it did not believe that Westcoast's distributors should be allowed to self-displace their currently contracted firm supplies. Since that time, however, the Board has removed the regulatory prohibition to self-displacement on the TransCanada system, effective 1 November 1989.

In Hearing Order No. RH-l-89, the Board indicated that it would examine the applicability to the Westcoast system of the Board's decision on self-displacement in the RH-1-88 TransCanada proceeding. In raising this issue, the Board specifically requested the parties to address:

(a) implications of self-displacement on the Westcoast system; and

(b) applicability and timing considerations regarding self-displacement.[1]

In its RH-1-88 Phase I TransCanada Reasons for Decision, the Board decided that:

> "...it would not be in the overall future public interest for the Board to continue its current regulatory policy on self-displacement which has effectively denied distributors equal access to transportation services on the TCPL pipeline system. In the current circumstances, to continue the self-displacement prohibition would impede the achievement of a market-sensitive pricing regime which is fair to all buyers and sellers of natural gas. Moreover, the discriminatory aspect associated with the self-displacement prohibition should not be continued indefinitely under these circumstances. However, it remains in the public interest to achieve a fair and orderly transition, consequently a sufficient notice period is appropriate.
>
> Therefore, the Board's regulatory policy which has prohibited self-displacement is rescinded effective 1 November 1989."

In its evidence in this proceeding, Westcoast submitted that it was indifferent as to whether the LDC's market was served by Westcoast as a system sale or by a third party service customer. Westcoast indicated that the LDCs must purchase a minimum annual volume of gas from Westcoast, which Westcoast, in turn, must buy from BCPC. Pursuant to the terms of the BCPC Agreement, Westcoast would take whatever steps were appropriate against LDCs who failed to purchase the minimum volumes, unless otherwise directed by BCPC.

Westcoast recognized the Board's jurisdiction over its tolls and stated that it would have no objection to the removal of any regulatory impediment to self-displacement. However, Westcoast believed that

[1] On 5 July 1989 the Board issued its decision with preliminary reasons on capacity allocation and self-displacement.

the Board should recognize that it has no jurisdiction over the contractual terms of the purchase and sale of gas and that the ability of LDCs to take advantage of any removal of the regulatory impediment to self-displacement would depend entirely on the LDCs' ability to negotiate contract amendments with BCPC.

CPA and IPAC opposed self-displacement on the Westcoast system because it would result in contract abrogation. CPA was of the view that the 31 October 1985 Natural Gas Agreement emphasized the elimination of regulated prices and was not intended to abrogate existing contracts.

CPA and IPAC described a number of differences between the circumstances on the Westcoast and TransCanada systems which would make it inappropriate to sanction self-displacement on Westcoast.

These included references to:

- the ongoing renegotiation of contracts on the TransCanada system by the LDCs and Western Gas Marketing Limited which resulted in the LDCs agreeing not to self-displace;

- the previous inability of B.C. producers on the Westcoast system to sell gas to purchasers other than BCPC;

- the earlier expiration dates of the BC Gas and Inland contracts with BCPC on the Westcoast system (1991), as compared to those on TransCanada's (mid-1990s); and

- the minimum volume and exclusivity provisions of the B.C. contracts on the Westcoast system that were not present in the TransCanada contracts.

CPA and IPAC took the position that the Board should continue its prohibition on self-displacement until the contracts expire or are renegotiated.

CPA argued that because BC Gas intended to live up to its contracts, the problem of self-displacement may have been solved. If this were the case, then there would be no need for the Board to remove the regulatory prohibition, because BC Gas would not be prejudiced by allowing the prohibition to remain.

IPAC submitted that the implementation of self-displacement on Westcoast was not necessary in order to foster a market-sensitive pricing regime. It argued that because the LDC contracts in B.C. expire on 31 October 1991, significant motivation existed for BCPC and the LDCs to renegotiate their contracts before the end of this period.

It was IPAC's view that a negotiated reduction in contract levels was not self-displacement and it suggested that the definition of self-displacement, as set out in RH-1-88, be expanded or clarified so that it did not apply in situations where all parties agreed to reduce contract levels. Further, it submitted that if the definition of self-displacement were clarified, self-displacement would be prevented only under circumstances of contract abrogation.

BCPC had no objection in principle to self-displacement; however, it submitted that BC Gas is contractually obligated to buy certain volumes of gas from Westcoast and that it is beyond the jurisdiction of the Board to authorize or require Westcoast to accept variations to contracts for the sale

of gas to BC Gas. BCPC also submitted that the Board did not have the jurisdiction over gas sales contracts. Accordingly, self-displacement would have to be achieved through negotiation by the affected parties: BCPC and BC Gas. Once the contractual matters were resolved, the parties could come to the Board to have the tariff provision removed.

BC Gas took the position that the Board's decision on self-displacement for TransCanada is applicable on the Westcoast system. BC Gas stated that it was seeking the removal of the regulatory constraint against self-displacement and was also seeking a strong statement from the Board to the parties to proceed with the deregulation process. BC Gas submitted that LDCs in the United States and domestic industrials are able to acquire gas on a direct-purchase basis. However, BC Gas can only promise deliveries two years from now upon expiry of the existing gas purchase contracts.

A BC Gas witness testified that BC Gas was currently attempting to renegotiate the price provisions in their contracts with BCPC. If agreement on prices could not be reached, then the parties would be prepared to go to arbitration to determine the appropriate pricing.

During cross-examination, BC Gas stated that it did not intend to abrogate its contracts. A witness stated that it was necessary for the parties to negotiate and agree to a self-displacement mechanism and if the parties were successful in negotiating some type of self-displacement, there should be no regulatory impediment to that.

Finally, BC Gas commented on the evidence of CPA and IPAC that attempted to draw distinctions between the TransCanada and Westcoast situations, and submitted that any differences were relatively minor and do not go to the principles espoused in RH-1-88 Phase I TransCanada Reasons for Decision.

COFI/Cominco/Ocelot supported removal of the regulatory prohibition to self-displacement and saw no reason why BC Gas should face both regulatory and contractual sanctions for possible breach of contract.

Views of the Board

In its RH-1-88 TransCanada Reasons for Decision, the Board expressed its concern that the continued presence of the prohibition on self-displacement could delay the achievement of a fully market-sensitive pricing regime in conjunction with non-discriminatory access. However, to allow time for an orderly transition to market-sensitive pricing to occur, the Board was mindful of providing a sufficient notice period and, therefore, decided to rescind its policy on self-displacement on the TransCanada system, effective 1 November 1989.

The parties to the Westcoast hearing agreed that there were two aspects to the issue of self-displacement: a contractual aspect and a regulatory aspect. While they agreed that the Board had jurisdiction to amend the toll regime to remove regulatory impediments to self-displacement, they argued the Board should not interfere with contractual arrangements related to gas sales matters.

The testimony and argument heard on this matter indicated a clear preference by most parties to have BC Gas and BCPC negotiate a self-displacement settlement prior to 1 November 1991, rather than have the Board remove the regulatory prohibition.

The Board notes that there was no evidence presented by PNG; however, the circumstances of PNG, whose contract expires in October 2002, have been taken into account.

The Board believes that the principles of fairness in relation to access to transportation services and an orderly transition to a market-sensitive pricing regime, as espoused in its RH-l-88 TransCanada Reasons for Decision, apply equally to the Westcoast system.

In respect of the timing of the removal of the prohibition of self-displacement on the Westcoast system, the Board considered a set of unique circumstances. First, the BC Gas/Inland gas purchase contracts expire in October 1991, and the parties are now attempting to negotiate long-term direct purchase contracts which would extend beyond November 1991. Second, the Board understands that there has been some renegotiation of volumes and prices in the existing sales contracts. Third, the Board heard testimony that BC Gas/Inland did not intend to abrogate their existing contracts and proposed to negotiate any change in sales volumes. It appears, therefore, that a transition to market-sensitive prices for the BC Gas/Inland markets will occur by 1 November 1991, at the latest, and that the transition could occur sooner if the parties are successful in renegotiating their agreements prior to that date.

The Board is encouraged by the possibility that the parties could make significant progress toward achieving fully market-sensitive pricing in conjunction with non-discriminatory access in an orderly manner, prior to 1 November 1991, through renegotiation of the existing contracts.

If parties are able to negotiate alternative contractual arrangements that would permit direct sales to the distributors prior to 1 November 1991, further action by the Board to accommodate any such changes may not be required. However, it will be necessary for the Board to ensure that PNG, whose sales contract expires 31 October 2002, is treated fairly by having a similar opportunity.

Decision

Having assessed the circumstances of BC Gas/Inland and having considered the situation of PNG, the Board has decided to rescind its policy of prohibiting self-displacement on the Westcoast system, effective 1 November 1991.

Should alternative contractual arrangements be negotiated before 1 November 1991, which would require some action by the Board, an application could be made at that time.

Chapter 4
Toll Design

4.1 Throughput

As a consequence of the termination of the Fourth Service Agreement between Northwest and Westcoast, the portion of Westcoast's capacity originally dedicated to serving that export sale has been contracted to new service customers. At the time of filing its application, Westcoast noted that a substantial portion of that capacity had not been contracted beyond 31 October 1989.

Westcoast proposed holding an open season for the capacity that would become available 1 November 1989[1] (see Section 2.1). As a result, Westcoast indicated that it was unable to forecast, with any degree of certainty, what the level of firm service would be on its system commencing 1 November 1989. Nevertheless, as shown in Tables 4-1 and 4-2, Westcoast expects both daily firm demand and annual deliveries to increase from current levels.

Westcoast anticipated interruptible deliveries to be 2.5 to 3.0 percent of the total sales and service deliveries in the domestic market, and 1.0 to 2.0 percent in the export market.

Because of the forecasting uncertainty, Westcoast proposed that it file with the Board by 1 October 1989 its final tolls using the toll design methodology, which will be approved as a result of this proceeding, together with the level of firm sales and service demand contracted as of 1 October 1989, for the 14-month period commencing 1 November 1989.

Table 4-1

Current and Projected Levels of Firms Sales and Service Agreements on the Westcoast System

Daily Demand	Current	1 Nov. 89	1 Nov. 90
- 10^3m^3	40 948	42 581	45 365
- MMcf	1 446	1 503	1 601

1 The open season was held from 31 July to 14 August 1989.

Table 4-2

Historical and Projected Annual Deliveries on the Westcoast System

Annual Deliveries	1988	1989	1990
- 10^6m^3	9 382	10 695	11 335
- Bcf	331	378	400

Views of the Board

Because of the uncertainty in forecasting the level of firm demand beyond 31 October 1989, the Board finds reasonable Westcoast's proposal to file, by 1 October 1989, its forecast of firm sales and service for the 14-month period commencing 1 November 1989.

4.2 Need to Change the Basic Toll Design Methodology

Westcoast sought approval to continue using the approved fixed/variable toll design for the 14-month period 1 November 1989 to 31 December 1990. Under this toll design, all fixed costs allocated to the four toll zones are recovered through demand charges, based on the contract demand in each zone.

Continuation of the basic fixed/variable toll design was supported by all parties to this proceeding with the exception of BC Gas who continued to argue, as it had in previous hearings, that Westcoast's system should be considered as two systems: one to serve the export market, and another to serve the domestic market. BC Gas took the position that the domestic customers should not be exposed to the risk of higher tolls as a result of the potential for significantly lower firm demand in the export market.

Views of the Board

The Board wishes to make clear and reiterates its previous decisions that Westcoast operates an integrated system designed to serve both the domestic and export markets. Consequently, these Reasons for Decision do not address the toll design changes proposed by BC Gas that assumed a non-integrated system.

The Board accepts Westcoast's proposal to continue the existing basic toll design methodology. However, the Board notes that Westcoast and intervenors have proposed a number of adjustments to the toll designs for Zone 2 - Processing, Zone 3 - Transportation North, interruptible tolls and transportation storage service. Westcoast

also applied for a promotional toll for the proposed new service to Vancouver Island. These changes and the Board's views and decisions are set out in the following sections of this chapter.

4.3 Vancouver Island Pipeline Project

4.3.1 Promotional Toll for Service to the Project

Westcoast applied to introduce a new service which would serve the needs of the Vancouver Island Pipeline Project. It was proposed that the toll for that new service would be at a reduced rate for the first three years of the project. The rationale given for this three-year reduction in the toll was that it was necessary to allow time for the market to be served by the Vancouver Island Pipeline Project to be "hooked-up" in sufficient quantities to ensure that the resulting load on the pipeline system would make the project economically viable.

The proposed reduction in the toll was equal to the applicable firm service toll less a credit distributed by toll zone equivalent to $8.825 per thousand cubic metres in the first contract year of service (stated in other terms, the first year discount would be approximately 25¢ per Mcf or one-third of the toll which would otherwise be payable), $7.060 per thousand cubic metres for the second contract year of service (approximately 20¢ per Mcf), and $5.295 per thousand cubic metres for the third contract year of service (approximately 15¢ per Mcf).

The Vancouver Island Pipeline Project is designed to provide a pipeline connection between Vancouver Island and the Westcoast pipeline system and, thereby, allow the Vancouver Island market access to natural gas. The construction and operation of the Vancouver Island pipeline will be undertaken by Pacific Coast Energy Corporation ("PCEC"), a company in which Westcoast has a 50 percent equity interest. The project is receiving various types of financial assistance from both the provincial and federal governments as well as the shareholders of PCEC. The assistance that would be provided by the promotional toll is a small portion of that overall financing package - approximately $9.6 million in total over the three-year period compared to over $250 million in other assistance to be provided by the federal and provincial governments in the form of either grants or loans. The British Columbia Utilities Commission has recommended that an energy project certificate be granted to PCEC to build the project. The latest project in-service date was anticipated to be 1 December 1990.

In the evidence and argument of the various interested parties, the question of the Board's jurisdiction to grant promotional tolls was discussed as were the merits of the promotional toll proposal itself. In particular, the discussion of the Board's power focussed on the interpretation of sections 62 and 67 of the NEB Act. The applicability of those two sections to this proposal was a matter the Board itself raised in an information request to Westcoast at an early stage in the proceeding.

Westcoast maintained that section 62 does allow for promotional tolls and that by virtue of section 63, the Board has broad discretion to determine whether the circumstances and conditions of a particular case warrant the approval of preferential tolls for certain customers. Further, Westcoast argued that when examining the circumstances and conditions of a particular case, the Board can have regard to other matters which relate to more than just the pipeline itself. In support of that proposition, reference was made to the cases of the *Minister of Agriculture of British Columbia v. Canadian National*

Railway Company, [1959] S.C.R. 229 ("*CNR* Case") and *Stewarts and Lloyds of Canada Ltd. v. Page Hersey Tubes Ltd.* (1962), 83 C.R.T.C. 354 (S.C.C.).

By way of comparison, Westcoast also provided examples of promotional toll decisions which were made in the United States. The applicable legislation in the United States is section 4 of the *Natural Gas Act* 15 U.S.C. 717c(b) which, although the provision is somewhat different, contains the "just and reasonable" standard as set out in section 62 of the NEB Act.

Westcoast urged the Board to approve the proposed promotional toll arguing that the project is in the public interest and that this promotional assistance would be part of the total package with contributions being provided by the federal and provincial governments as well as the shareholders of PCEC. Furthermore, they argued that the reduced toll is reasonable in terms of its amount and duration and through the higher load factor on the Westcoast system the other tollpayers should also expect lower tolls. Those lower tolls would, in turn, benefit the producers by providing them with higher netbacks.

Westcoast also maintained that the Board should not be concerned about the precedent set by approving this proposal because each case has its own particular facts to consider. In Westcoast's opinion, the Board need not decide what guidelines should apply to future cases; rather, each case should be considered on its own merits.

PCEC also urged the Board to approve the promotional toll proposal. They agreed with Westcoast's interpretation of the Board's powers under Part IV of the NEB Act. Specifically, with reference to the word "traffic" in section 62, PCEC argued that that word has been conclusively determined by the courts to encompass not just the commodity being shipped but also the circumstances and purposes of that shipment. The authority cited in this regard was the *CNR* case. This wide interpretation of the Board's jurisdiction would permit the Board to approve market-oriented tolls in circumstances where the Board considers it just and reasonable to do so.

When deciding whether it is just and reasonable to approve such a toll, PCEC suggested there should be four tests which have to be met, which are as follows:

- the discount must be required to ensure the customer comes on the system;
- the promotional toll must gather sufficient revenue to meet the incremental costs of serving the load;
- the toll must be based on the specifics of the project as distinct from the corporate character of the customer; and
- the project must be sufficiently distinct and of sufficient scope to justify the administrative inconvenience associated with the Board's satisfying itself with respect to the preceding points.

Regarding the first test, PCEC testified that it could not say with certainty that the denial of the promotional toll would cause the project not to proceed, but it did indicate that might well be the case.

Concerning the second test, although PCEC conceded that they did not know with certainty at this stage where the gas will be coming from to support the project, they argued that any additional costs

of new facilities, if required, would not be significant and the project would recover the incremental costs. They further agreed that the granting of the promotional toll could be made conditional upon an ongoing requirement to demonstrate that the benefits to the existing toll-payers exceed the additional costs.

Turning to the third test, PCEC suggested that the promotional toll should be available to anybody serving the Vancouver Island Pipeline Project, not just PCEC.

Finally, on the fourth test PCEC maintained that the Vancouver Island market was unique and, as a result, the project to serve that market was different in scope and type from any other proposal that would likely come before the Board.

The B.C. Ministry supported the promotional toll proposal. The B.C. Ministry also stressed the unique aspects of the project, pointing out that Vancouver Island was among the last remaining large population areas in Canada that is not yet served by natural gas. They further argued that the project was in the public interest and of national importance as evidenced by the support of both the provincial and federal governments.

Regarding the legislative authority of the Board, the B.C. Ministry supported the views expressed by Westcoast and PCEC. To adopt a narrower view of the Board's jurisdiction would, in its opinion, be an administrative law error as it would unduly fetter the Board's discretion as set out under the legislative provisions. The B.C. Ministry also supported the views of Westcoast and PCEC that this project would benefit the other tollpayers on the system by increasing the load and thereby reducing the tolls.

The B.C. Ministry further indicated in final argument that, because all of the economic analyses of the project that were done at the provincial level were based on the assumption that a promotional toll would be granted, denial of the promotional toll would force the province to reevaluate the situation. For this reason, the B.C. Ministry asked the Board to render an early decision on this matter.[1]

COFI/Cominco/Ocelot indicated that they did not oppose promotional tolls provided that:

- the reduced tolls are, in fact, required;
- there is a limited time period for the tolls;
- there is a net benefit to the other users of the system; and
- promotional tolls are available on a non-discriminatory basis.

BC Gas indicated that it does not oppose promotional tolls, but rather its concern with the proposal put forward by Westcoast was that it appeared to be addressed in the context of the Pacific Coast Energy Project alone. BC Gas would like the Board to set general guidelines to provide direction as to when a promotional toll might be available in other situations.

[1] The Board's Decision on this matter was released on 4 August 1989.

Although they agreed it is a difficult area, BC Gas's preliminary suggestion was that the approach to promotional tolls should be sufficiently flexible on the Westcoast system to permit the system to attract a new market load or to keep a load on the system. The assistance, however, should only be available where the reduction in the toll is necessary and provides a net benefit to the other tollpayers.

Among those intervenors opposed to the promotional toll was CPA. CPA cited four grounds of opposition to the toll, namely:

- it is wrong in principle;
- it would violate the provisions of section 62 of the NEB Act;
- it is unjustly discriminatory; and
- it would set an unmanageable precedent.

It was CPA's position that the service being rendered to PCEC was identical to the service being rendered to others who received gas at the same delivery point, for instance, BC Gas. CPA argued that by its very nature a promotional toll is discriminatory. Moreover, it is unjustly discriminatory to allow one tollpayer to pay a lesser rate for the identical service and section 67 of the NEB Act specifically prohibits it. CPA asserted that a further danger of approving this type of toll is that it creates a precedent for future applications. According to CPA, such future applications may even be more persuasive than the Vancouver Island Pipeline Project in that there is no evidence that the project would not proceed if the toll were not granted.

On the issue of the Board's legislative authority under section 62, CPA quoted from the Board's recent GH-2-87 TransCanada Reasons for Decision wherein section 62 and, in particular, the definition of "traffic" and the interpretation of the phrase "substantially similar circumstances and conditions", were discussed. CPA supported the more narrow interpretation of section 62 set out in that decision. CPA maintained that the Board should consider only matters related to the transportation of gas such as the nature and character of the service provided and should not consider business motives or government policy when applying section 62. They argued that this interpretation is consistent with the wording of section 63 which refers to the traffic being "carried", clearly a reference to transportation in CPA's submission. Their authority for that interpretation was based on the case of *Crows Nest Pass Coal Company v. Canadian Pacific Railway Company* (1908), 8 CRC 33 (Board of Railway Commissioners).

IPAC also opposed the promotional toll and supported CPA's interpretation of the Board's legislative authority in this regard.

Commenting on the merits of the application, IPAC suggested that the Vancouver Island Pipeline Project does not require financing by means of promotional tolls and, in any event, further financing should be provided by other means. IPAC submitted that it is inappropriate, under a market-responsive natural gas pricing regime, for projects such as the Vancouver Island Pipeline Project not to stand on their own.

Views of the Board

At issue on the matter of promotional tolls is the extent of the Board’s jurisdiction to allow such a toll. Section 62 provides that:

> “All tolls shall be just and reasonable, and shall always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons at the same rate.”

Other relevant sections discussed in this content were 63 and 67 which provide as follows:

> “s.63 The Board may determine as questions of fact, whether or not traffic is or has been carried under substantially similar circumstances and conditions referred to in section 62 whether in any case a company has or has not complied with the provisions of that section, and whether there has, in any case, been unjust discrimination within the meaning of section 67.”
>
> “s.67 A company shall not make any unjust discrimination in tolls, service or facilities against any person or locality.”

With regard to the first requirement of section 62, that "all tolls shall be just and reasonable", there was general agreement among the parties that the Board has broad discretion to determine what is just and reasonable. This view has been upheld by the courts. (See for example, *Trans Mountain Pipe Line Company Ltd.* v. *National Energy Board* (1979), 29 N.R. 44 (F.C.A.)). Similarly, concerning the interpretation of section 67, it did not appear to the Board that parties were in disagreement that the prohibition contained therein related to *unjust* discrimination. Nor did parties take issue with the view that, pursuant to section 63 and in particular the last clause, the Board may determine as a question of fact whether or not there has been unjust discrimination.

The point of departure between parties related to the last part of section 62 which requires that the tolls shall always be charged equally to all persons at the same rate under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route. Although parties agreed that pursuant to section 63 the Board may determine as a question of fact whether traffic is or has been carried under substantially similar circumstances as referred to in section 62, they disagreed with what factors the Board may look at in making that determination.

In the Board’s GH-2-87 TransCanada Reasons for Decision, a narrow interpretation was taken of what factors the Board may consider in this regard. In the more recent TransCanada Decision on Phase II of RH-1-88, the Board concluded that this narrow interpretation is no longer appropriate.

The Board, in the case at hand, also agrees that it should follow a broader interpretation of the Board’s power under section 62 with respect to the meaning of

"traffic" and the factors to be taken into consideration when determining whether there are "substantially similar circumstances and conditions". Therefore, the Board does not agree with CPA and IPAC that section 62 would necessarily preclude the approval of a promotional toll.

Notwithstanding this broader interpretation, it is clear that the intent of section 62 is that there must be compelling reasons to lead the Board to conclude that the service is not being provided under substantially similar circumstances and conditions with respect to the criteria set out in section 62. It should be noted that the test in the legislation does not require the circumstances to be "identical" before the tolls charged must be the same, but rather that they need only be "substantially similar". Section 67 reinforces that obligation.

The evidence and argument put forward by parties demonstrate that many of the circumstances and conditions of a shipper on Westcoast's system who will serve the Vancouver Island Pipeline Project (most likely PCEC) are identical to the circumstances and conditions of other shippers on the Westcoast system. For instance, the route over which the gas for PCEC will be carried is identical to the route for other customers in that it will be delivered to the same delivery point. Also, the circumstances and conditions associated with the service which will be provided to PCEC will be identical to that provided to any firm shipper on the Westcoast system. In fact, the only difference in the service, rights or obligations of PCEC under Westcoast's proposal would be that it would pay a reduced toll for the first three years, as previously described. That being the case, the debate on this issue really narrows down to whether there are factors related to matters other than the service provided on the Westcoast system which are of sufficient weight and relevance to persuade the Board to distinguish the activity of transporting gas for PCEC from similar service to other customers. In the Board's view, the distinction must be significant enough to support a finding that either:

- the traffic is of a different description; or
- the circumstances and conditions under which the traffic is carried are not substantially similar.

In deciding whether this promotional toll should be approved, the Board must keep in mind its general mandate under Part IV of the NEB Act regarding traffic, tolls and tariffs as it decides what factors to consider under section 62. The nature of the market to be served is one factor which may be taken into consideration when examining the circumstances and conditions of the traffic. However, the fact that the pipeline project may be considered to be in the public interest and of national significance does not in and of itself warrant the establishment of a promotional toll to assist the project and thus the development of the market to be served by that pipeline. Furthermore, the fact that the project has been supported by the provincial and federal governments through direct financial assistance has little or no relevance in the determination of Westcoast's tolls or the charging of those tolls to Westcoast's customers.

The argument put forward by the proponents of the promotional toll, that the added load on the Westcoast system would reduce the tolls for all tollpayers and for that reason it is in the interest of all, addresses only the first requirement under section 62 that this toll be just and reasonable. There is no evidence that the project would not proceed without the promotional toll. Furthermore, if it were to proceed without the promotional toll, the additional load would reduce the tolls to all other tollpayers to a greater extent. The Board is of the view that this argument provides insufficient justification for distinguishing the shipper serving the Vancouver Island Pipeline Project from other shippers who must pay the normal toll and therefore falls short of the second requirement of section 62 regarding the equal application of the tolls in the circumstances set out in that section.

Similarly, because the U.S. *Natural Gas Act* contains only the just and reasonable standard and not the second requirement of section 62, the precedents from the United States which were cited by the proponents of the promotional toll are not, in the Board's view, persuasive.

The Board is not convinced that the project needs the added assistance of a promotional toll. The amount of the assistance represents a very small portion of the overall financing package. Furthermore, to allow a promotional toll would mean that the Board is agreeing that other parties, including producers not participating in sales of gas to this project,should subsidize it on an involuntary basis under circumstances where the sponsors of the project have not been able to or will not meet the financial requirements. If further assistance is required in the first three years of operation to allow the market to be attached, the Board is of the view that such financial assistance should be provided by other means.

The Board is therefore of the view that the factors discussed above do not have sufficient weight to warrant the Board finding that the proposed promotional toll would be appropriate given the requirements of section 62.

Finally, it is neither necessary nor practical for the Board to establish criteria which it would apply in future cases where a request for a promotional toll is made. Clearly, each case would have its own unique set of circumstances. For that reason the Board will not provide guidelines as requested by some parties.

Decision

Westcoast's proposal for a promotional toll which would apply to service to the Vancouver Island Pipeline Project is denied.

4.3.2 Treatment of Toll Revenues

Westcoast proposed that firm service revenues from PCEC volumes should be credited each month to the other firm shippers in each zone in the same manner as interruptible revenues are credited under a

gross-toll regime. According to Westcoast, this would avoid the difficulty of forecasting the in-service date of the project as well as the actual contracted level of firm service in each zone.

CPA believed that Westcoast should be able to determine the initial gas load with reasonable certainty and that these loads should be used for the purposes of cost allocation and toll design.

Views of the Board

Westcoast currently records the revenue received from any new firm service agreement entered into during a test year in a deferral account. Because there is considerable uncertainty surrounding the actual in-service date and the level of firm contracting related to the Vancouver Island Project, the Board is of the view that Westcoast should record any firm service revenues that it may receive in respect of gas transported for the Vancouver Island Project during the 1990 test year in the firm service revenue deferral account.

Decision

Westcoast's proposed treatment of any firm service revenue in respect of the Vancouver Island Project is denied. The Board directs Westcoast to record any firm service revenues that it may receive in respect of gas transported for this project during the 1990 test year in the firm service revenue deferral account.

4.4 Interruptible Tolls

Westcoast currently provides two tiers of domestic interruptible service. The Tier 1 interruptible toll is established by adjusting the demand component of the firm toll for a 75 percent load factor and adding the appropriate commodity component. The Tier 2 interruptible toll is determined in a similar manner but is based on an 85 percent load factor. There is only one tier of interruptible service for the export market, and the toll is based on a 75 percent load factor. Tier 1 domestic service and export interruptible service have priority over Tier 2 domestic interruptible service.

In its application, Westcoast proposed eliminating Tier 2 domestic interruptible service, introducing summer and winter interruptible tolls, and discontinuing the separate crediting of interruptible revenues between the export and domestic markets. Westcoast also advocated that its interruptible tolls continue to be calculated on a gross basis.

4.4.1 Number of Tiers

Westcoast proposed eliminating Tier 2 domestic interruptible service for three main reasons. First, customers wanted to switch from Tier 2 to Tier l service last winter when the system was under curtailment. Westcoast, which currently does not allow shippers to switch tiers during the year, was of the opinion that to have allowed such tier switching would have been inequitable to Tier l shippers who had been paying higher tolls during the period when the system was not under curtailment. Second, Westcoast considered that the difference in tolls between the two existing tiers was not large. Third, the two-tiered interruptible toll design was difficult to administer in times of curtailment.

Westcoast explained that it is not operationally possible to allocate interruptible capacity between two tiers of interruptible service in Zones 1 and 2. Further, Westcoast was of the view that having two tiers of interruptible service in the downstream transmission zones, Zones 3 and 4, complicates the allocation of capacity when the tiers of interruptible service or the types of service, firm or interruptible, are not matched from one zone to the next on its system. Westcoast acknowledged that this matching problem could be overcome by developing a computer program, but stated that it would not be possible to develop the program this year because of other commitments. Westcoast believed that the elimination of one tier of interruptible service would enable it to simplify and to improve its capacity allocation procedures.

Westcoast explained that its summer/winter interruptible toll proposal (see Section 4.4.2) would have a similar effect to providing two tiers of interruptible service. During the winter months, when the system is most likely to be under curtailment, the higher winter interruptible tolls would, in effect, be similar to that which would result if all Tier 2 shippers switched to the higher priority Tier 1 service. Conversely, the lower summer rate would have the same effect as if all interruptible shippers elected to take Tier 2 service, knowing that there is little likelihood of being curtailed.

Most intervenors understood the operational difficulties experienced by Westcoast and, therefore, did not object to the elimination of Tier 2 interruptible service in Zones 1 and 2. However, COFI/Cominco/Ocelot, BC Gas and IPAC were opposed to the elimination of this tier in Zones 3 and 4.

COFI/Cominco/Ocelot stated that a number of its members contract for Tier 2 service, and together with BC Gas, indicated that they would not object to the addition of more tiers, if the maximum economic benefit for the system could be derived from a variety of interruptible tolls with different levels of priority. However, they were opposed to parties being able to switch from tier to tier on a daily basis. COFI/Cominco/Ocelot stated that they would be prepared to nominate for each tier of interruptible service on a yearly basis; but, they would also support nominating on a monthly basis as proposed by IPAC. COFI/Cominco/Ocelot would also be agreeable to the linking or matching of tiers in Zones 3 and 4 to reduce administrative problems.

BC Gas initially agreed to the elimination of Tier 2 because it was opposed to shippers having the ability to move between tiers on a monthly or similar short term basis. In BC Gas's view, allowing switching between tiers simply reduces revenues to the Westcoast system because those shippers who wish higher priority in the winter months will only contract for Tier 1 in those months; but, everyone would opt for Tier 2 in the summer months.

IPAC argued that having two tiers of interruptible service for Zones 3 and 4 with monthly nominations was both workable and desirable. In its opinion, there is a demonstrated need for two tiers of interruptible service as indicated by the evidence of COFI/Cominco/Ocelot. IPAC submitted that having two tiers for Zones 3 and 4 provides an additional level of flexibility to Westcoast's shippers and allows them to choose the level of risk of interruption that they are prepared to assume. IPAC indicated that monthly nominations of tiers by shippers would be consistent with the present situation on TransCanada.

CPA stated that Westcoast's current practice of refusing to allow parties to shift between the tiers effectively frustrates the purpose of having two interruptible tiers. CPA agreed with Westcoast that there should be a single-tier interruptible service with a seasonal pricing differential because it is simpler to administer and should provide greater accuracy in forecasting interruptible revenues. CPA

was of the view that Westcoast should expend more effort improving the utilization of the system by allowing parties to allocate interruptible service, plant by plant, rather than taking up time in the administration of multiple tiers.

CPA and IPAC noted that, currently, Tier 2 service is only available for natural gas transported to the domestic markets. They were of the view that this difference should be removed and that the same number of tiers of interruptible service should be available for both the domestic and export markets.

Views of the Board

In deciding whether there should be multiple tiers of interruptible service on the Westcoast system, the Board recognizes that multiple tiers with progressively higher tolls from one tier to the next can be used effectively to ration available capacity among competing interests in times of curtailment. The Board also recognizes that multiple tiers may present administrative difficulties, particularly in the processing and residue gas transportation zones, that might mitigate any benefits that they could otherwise provide.

With respect to Zones 1 and 2, the Board accepts that it presently is not operationally possible to have multi-tiered systems in those zones. However, the Board is not convinced that the administrative problems in Zones 3 and 4 warrant the elimination of two tiers of interruptible service in those zones. The Board notes that certain Westcoast shippers expressed a definite desire for the continuation of two tiers of interruptible service. The Board also agrees with parties that the same number of tiers of interruptible service should be available to domestic and export shippers.

The Board has decided to allow Westcoast to introduce a summer/winter interruptible toll design (for the reasons set out in Section 4.4.2). However, the Board believes that the two tiers of interruptible service are necessary only during the winter period from 1 November to 31 March. In the summer period from l April to 31 October interruptible shippers would opt for the lower interruptible tier and firm shippers would use their firm contract demand valley to ship gas to their respective interruptible customers.

The Board believes that parties who use both Zones 3 and 4 and who request the lower tier of interruptible service in the winter period should be required to contract for the same level of interruptible service in Zones 3 and 4 as a condition of receiving such service. This requirement should reduce the mismatching problems encountered by Westcoast in previous years and might lead to higher utilization of the system in times of curtailment

Decision

The Board has decided to eliminate Tier 2 service in Zones 1 and 2, but to maintain two tiers of service in Zones 3 and 4 during the winter period. The lower tier of service will be available to all domestic and export shippers who request such service at the beginning of the winter period and agree to match their contracts for this tier of interruptible service in Zones 3 and 4.

4.4.2 Summer and Winter Tolls

In its application, Westcoast proposed that its tolls for interruptible service during the five winter months, 1 November to 31 March, be increased, from a toll set on the basis of a 75 percent load factor to one that is based on a 50 percent load factor. Westcoast also proposed that the interruptible toll for the summer period, 1 April to 31 October, should continue to be determined on the basis of a 75 percent load factor.

In support of the higher winter interruptible toll, Westcoast argued that interruptible shippers on its system who are currently serving firm end-use markets should be encouraged to become firm shippers. Westcoast claimed that introducing higher winter interruptible tolls would reflect the higher value of the interruptible service in the winter time, ensure that the current level of firm service is maintained for the period beyond 1 November 1989, and provide a strong incentive for the interruptible shippers serving firm markets to "firm up". Westcoast stated that it chose a 50 percent load factor because that level contributed to the firming up of capacity in January 1989.[1]

Westcoast recognized that a considerable degree of judgment must be used in setting the level of the toll. Westcoast stated that, having regard to the present loads on the system, it would not consider the load factors advanced by CPA of 60 percent in the winter and 85 percent in the summer as being unreasonable.

Westcoast stated that it was confronted with the challenge of identifying the level which would achieve the objective of ensuring that firm markets are being served through firm transportation contracts, yet still provide gas to the "true" interruptible market. Westcoast believed that its proposed winter toll would achieve today's objective of encouraging shippers to firm up their loads and that the toll could be reduced as circumstances and objectives change over time.

Westcoast explained that it left its proposed summer interruptible toll at a 75 percent load factor, because as the summer interruptible toll approaches a 100 percent load factor the competitive advantage of the firm shippers is weakened. This might discourage firm shippers from signing up for firm service in the initial instance.

Unocal Canada Limited ("Unocal") supported Westcoast's proposed winter interruptible toll but recommended that the summer interruptible toll be determined using a load factor of 100 percent. Unocal believed that this toll differential would discourage firm service customers from using interruptible service but encourage increased utilization of the Westcoast system in the summer months and, to some degree, compensate legitimate interruptible shippers who would be subject to higher tolls in the winter under Westcoast's proposal.

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[1] In late 1988, as the result of the implementation of regulation policies in the U.S., most of Northwest's customers had elected to buy gas direct from producers. This had the effect of reducing Northwest's gas purchase requirements from Westcoast from 550 MMcf/day to a negligible amount. As a result, Northwest declared force majeure and suspended payment of its demand charge obligations to Westcoast. Much of the direct sales gas serving Northwest's former customers was initially contracted for on an interruptible basis on Westcoast. In an attempt to remedy this situation, the Board increased the level of the interruptible toll from one based on a 75 percent load factor to one based on a 50 percent load factor. By February 1989, all but 3.5 MMcf/day of Northwest's original requirement of 550 MMcf/day had been contracted for on a firm basis on the Westcoast system until 31 October 1989. Subsequently, the load factor was restored to a 75 percent level for the remainder of the year.

CPA recommended that the winter and summer interruptible tolls be set at 60 percent and 85 percent load factors, respectively provided that the tolls are calculated on a net basis. CPA argued that setting the winter toll in this manner would recognize the value of interruptible service in the winter without discouraging legitimate interruptible customers. The 85 percent load factor summer toll was said to recognize the higher quality of summer interruptible service as compared to winter interruptible service, but was low enough to encourage increased pipeline utilization in the summer months.

COFI/Cominco/Ocelot took the position that no changes should be made to the load factors used to determine the Tier 1 and Tier 2 interruptible tolls.

COFI/Cominco/Ocelot noted Westcoast's rationale for increasing the interruptible toll for the winter period and indicated they would have no objection to measures being taken to firm up interruptible loads that are currently serving firm markets. However, they were of the view that firming up true interruptible loads is undesirable.

COFI/Cominco/Ocelot believed that the situation facing shippers for the next heating season is unlike the situation when Northwest declared force majeure last fall. COFI/Cominco/Ocelot suggested that, given the insignificant amount of excess capacity on the Westcoast system, the threat of curtailment would be enough to encourage actual firm customers to sign up for firm service.

While supporting seasonal tolls, IPAC did not agree that the current Tier 1 and Tier 2 interruptible tolls should be increased in the winter months. IPAC advocated that the interruptible tolls for the winter period be set at load factors of 75 percent and 85 percent for the two tiers of service in the transmission zones and 75 percent for the single tier of service in the gathering and processing zones. IPAC indicated there is evidence that interruptible shippers serving firm markets are now firming up and will continue to do so as the capacity becomes more constrained. IPAC recommended that the summer interruptible toll should be lowered to reflect a 100 percent load factor. This would enable non-firm shippers to compete against the large firm shippers, who are able to use their summer valleys.

BC Gas was opposed to the introduction of seasonal tolls because, in its view, no party was able to present evidence that an incremental market could be captured and it was not demonstrated that the tolls to other customers would be lowered.

Views of the Board

When designing interruptible tolls, the Board believes that it is necessary to bear in mind the operating circumstances of the pipeline in question. If a pipeline has a significant amount of excess capacity in a particular zone, an interruptible toll for that zone which is too low would provide an incentive for firm shippers to use interruptible service and avoid paying a reasonable contribution to fixed costs. However, too high an interruptible toll might result in an under utilization of the pipeline system.

Although no party introduced evidence to suggest that a seasonal interruptible toll would significantly stimulate throughputs on the Westcoast system, the Board notes that a number of interested parties supported Westcoast's proposal to implement a toll structure which had some seasonal variation.

The Board believes that properly structured seasonal tolls could achieve a more efficient use of the Westcoast system and, consequently, the lowering of firm tolls to Westcoast's shippers.

With respect to the actual level of the winter interruptible tolls, the Board does not believe that the 50 percent load factor level proposed by Westcoast is appropriate for Tier 1 interruptible service. The Board believes that Tier 1 and Tier 2 interruptible tolls set at 60 percent and 75 percent load factors, respectively, are more appropriate at this time.

The Board finds a summer interruptible toll set at an 80 percent load factor to be appropriate as it recognizes the lower value of interruptible service in the summer.

Decision

The Board has decided that the Tier 1 and Tier 2 winter interruptible tolls are to be on the bases of 60 percent and 75 percent load factors, respectively. For the reasons set out in Section 4.4.1, the Tier 2 interruptible toll will only apply in Zones 3 and 4. The summer interruptible toll is to be set using an 80 percent load factor. The winter period shall be from 1 November to 31 March and the summer period shall be from 1 April to 31 October.

4.4.3 Gross Versus Net Interruptible Tolls

Westcoast stated that because it allocates 100 percent of its fixed costs to the demand component of its tolls, a mechanism had to be developed to flow the demand component of the interruptible revenues (which for convenience will be referred to as interruptible revenues) through to the firm shippers. There are two interdependent aspects of this issue that must be considered; first, whether the firm tolls should be calculated on a gross cost of service ("gross") basis or on a net cost of service ("net") basis, and second, if the decision is made to determine the firm tolls on a net basis, whether the interruptible tolls should be determined on a gross or net basis.

Under the currently-approved method, Westcoast calculates firm and interruptible tolls on a gross cost of service basis. The firm tolls are determined on the basis of the total (gross) cost of service allocated to firm transportation before deducting any revenues received from interruptible service. Shippers receive their share of the interruptible revenues as a credit, or reduction, to their monthly bills.

Under a net toll methodology, interruptible revenues are forecast at the beginning of the year and deducted from the total (gross) cost of service allocated to firm transportation before determining the level of firm tolls. The result is that the level of firm tolls calculated on a net basis will be constant throughout the test year and firm tolls will be lower than those calculated on a gross basis, given the same conditions.

The main attribute of calculating firm tolls on a net basis is that the level of the firm toll is known with certainty. However, the use of a net toll methodology relies on estimates of future interruptible volumes which at times may be difficult to forecast.

Westcoast stated that it preferred the gross toll methodology because it does not require a deferral account, it reduces the potential for intergenerational inequity, and it avoids the need to forecast interruptible revenues at the beginning of the test year.

Westcoast noted that under a net toll regime, the interruptible tolls can be determined using either a gross cost of service or a net cost of service approach. The gross cost of service approach results in the effective interruptible toll being higher than the stated load factor equivalent toll. The difference becomes even more pronounced as the projected interruptible volumes increase. The net approach requires iterative calculations so that the load factor relationship between the interruptible and firm service tolls can be maintained.

While expressing a definite preference for the gross toll methodology, Westcoast stated that it would be willing to determine its firm and interruptible tolls using the net toll design approach provided a deferral account was established to record any differences between the forecast and actual interruptible revenues. Westcoast also stated that if the net toll approach were adopted for firm tolls, it would prefer to use the gross rather than net cost of service approach in determining the interruptible toll revenue, because this would avoid the need for an iterative calculation.

BC Gas and Northwest Natural Gas Company ("Northwest Natural") argued strongly in favour of maintaining gross tolls, expressing many of the same views as Westcoast. They also preferred gross tolls because they provide end-use customers with accurate economic signals regarding the fixed cost component of the toll.

BC Gas stated that it would be at a disadvantage under a net toll regime. It explained that pursuant to the current Orders-in-Council under which it operates, the monthly interruptible credits are used to offset the loss of revenue caused by conversions from sales to service. These revenues would no longer be available if Westcoast switched to a net toll approach.

CPA, IPAC, and COFI/Cominco/Ocelot preferred the net toll methodology with the interruptible tolls determined using the iterative method. CPA noted that the Board approved the gross toll methodology in the RH-2-87 Westcoast toll proceeding because it formed an integral part of Westcoast’s efforts to provide Northwest with timely relief from certain contracting problems. Now that Northwest is no longer a customer of Westcoast, CPA stated that the need for gross tolls no longer exists and suggested that it is now timely to determine Westcoast’s tolls on a net basis. CPA argued that setting tolls for Westcoast on a net basis would provide greater certainty of the actual tolls to be paid and eliminate the administrative burden facing Westcoast in paying out interruptible revenue credits and its shippers in verifying them.

CPA and IPAC argued that the difficulty that BC Gas would like to overcome through the continued use of the gross toll methodology has nothing to do with the Westcoast system or its toll design, but occurs solely as a consequence of the situation which is specific to BC Gas and the privatization of the gas division of B.C. Hydro. IPAC was of the view that if net tolls were approved, BC Gas could simply request that the current legislation be changed by the B.C. Government.

IPAC proposed the establishment of a deferral account to capture any variance between forecast and actual interruptible revenues because it recognized the inherent problem in making any forecast. IPAC noted that one difficulty encountered by Westcoast in forecasting interruptible revenue arises because of Westcoast’s present practice of deeming interruptible volumes under certain situations to be firm

volumes for billing purposes (see Section 5.5). IPAC suggested that the problem of intergenerational inequity could be solved by disposing of any outstanding deferral account balances at the end of the year.

COFI/Cominco/Ocelot stated in final argument that, while they preferred net tolls, they would be willing to accept gross tolls for another year given the level of uncertainty in forecasting interruptible volumes for the export market.

Views of the Board

In its RH-2-87 Westcoast Reasons for Decision, the Board accepted Westcoast's proposal to determine tolls on a gross basis because it was an integral part of the then recently negotiated Westcoast/Northwest Agreement.[1] The Board also indicated at that time that should the Westcoast/Northwest Agreement not come into effect, then Westcoast's firm tolls should continue to be calculated on a net toll basis with the interruptible tolls being calculated using the gross cost of service approach.

It appears to the Board that producers and end-users prefer net tolls to gross tolls because net tolls provide greater certainty when negotiating the sales price of gas. In addition, the Board believes that net tolls would remove some of the administrative billing burden faced by Westcoast and its shippers.

However, the Board believes that the uncertainty facing Westcoast with respect to the level of firm and interruptible contracting on its system for both the 1990 and 1991 test years, the current Westcoast practice of deeming interruptible volumes as firm in certain instances, and the transition period in which Westcoast currently finds itself make it difficult to reintroduce a net toll regime at this time.

Decision

The Board will allow Westcoast to continue to determine its firm and interruptible tolls on a gross basis, with monthly crediting of revenues from interruptible sales and service for the period 1 November to 31 December 1989 and for the 1990 test year. The Board believes that an industry task force should examine whether and, if so, when this methodology should be changed for a future test year.

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[1] One aspect of the agreement required the crediting of revenues from interruptible sales and service directly to the monthly billings. This had the effect of providing for an immediate reduction in the demand charge obligation in the event that Northwest's customers switched from firm sales to interruptible service volumes on the Westcoast system.

4.4.4 Toll Treatment of Interruptible Revenue (Streaming)

In its RH-2-87 Westcoast Reasons for Decision, as part of its acceptance of the Westcoast/Northwest Agreement, the Board agreed to Westcoast's proposal to credit revenues from interruptible sales and service to either the domestic or export market, depending upon the destination of the gas which was being moved on an interruptible basis on the Westcoast system. This came to be known as streaming.

This proposal operates such that all export interruptible revenue generated in a toll zone in any month is credited in that month to the firm export sales and service customers pro rata based upon each export customer's share of the total demand revenue generated by firm export sales and service in each toll zone. The interruptible revenue generated by gas flowing in the domestic market is shared in the same manner by the firm domestic shippers.

In its application, Westcoast proposed that such interruptible revenues no longer be streamed between the domestic and export markets. Westcoast based its proposal on the fact that streaming had been introduced originally as part of the Westcoast/Northwest Agreement. As a result of the termination of that agreement, the need to separately credit interruptible revenues according to the market served no longer exists.

Intervenors were in general agreement that streaming of interruptible revenues between the export and domestic markets should cease.

Views of the Board

Because the previous circumstances that warranted the streaming of revenues from interruptible sales and service on the basis of the market served no longer exist, the Board sees no justification to continue such streaming.

Decision

The Board directs that all monthly interruptible revenues in each zone be credited to all firm shippers pro rata based upon each shipper's share of the total demand revenue generated from all firm sales and service in the zone.

4.5 Zone 2 - Processing Treatment Tolls

In its RH-2-87 Westcoast Reasons for Decision, the Board directed Westcoast "to conduct a joint industry study of its current gathering and processing proposals, and consider alternatives with a view to ensuring that the gathering and processing tolls are appropriately based".

Certain of the issues addressed in the report of the Joint Industry Study[1], namely the appropriate toll treatment of the Sikanni Plant and the method of adjusting the treatment toll curve in future test years, were raised as issues in this proceeding and are discussed in Sections 4.5.1 and 4.5.2, respectively.

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1 The report was filed as Exhibit B-1 in this proceeding.

4.5.1 Treatment of the Sikanni Plant

In its RH-2-87 Westcoast Reasons for Decision, the Board accepted Westcoast's proposal to treat the Sikanni Plant on a "stand-alone" basis and approved a toll of $88.76 per thousand cubic metres per month. This toll, referred to as the Small Plant toll, was based on the estimated cost of operating the plant during the 1987 and 1988 test years and on an assumed plant utilization factor of 80 percent. No commodity toll was charged to the Sikanni Plant users during this period.

Westcoast acknowledged that, in the 1987 toll proceeding, it had proposed tolls on a stand-alone basis as an interim measure because additional time was required to carry out appropriate studies so that the Sikanni Plant could be properly incorporated into the processing tolls. Westcoast had pointed out the uniqueness of the Sikanni Plant which processes gas with an acid content of less than 0.05 percent and, unlike the McMahon, Fort Nelson and Pine River plants, does not have a sulphur recovery facility.

In this proceeding, on the basis of the conclusions and recommendations contained in the Joint Industry Study, Westcoast proposed eliminating the Small Plant Processing Toll. Westcoast proposed that the Sikanni Plant users pay the same demand and commodity treatment tolls as currently apply to users of the other processing plants. To achieve this, Westcoast developed a new treatment curve that was determined using the existing methodology, but modified to include the unit cost of operating the Sikanni Plant.

Westcoast stated that the study participants recognized that the rolling-in of the Sikanni Plant costs would result in an increase in the tolls now being paid by the users of the Sikanni Plant and in a slight downward adjustment in the low acid gas tolls for all shippers. Westcoast emphasized that the new base curve had been unanimously agreed to by the Joint Industry Study participants.

With respect to the appropriate toll treatment of the Sikanni Plant, three issues were addressed in this proceeding:

(i) whether the Small Plant toll should be eliminated;

(ii) if so, how should the basic treatment curve be modified to include the Sikanni Plant costs; and

(iii) whether the Sikanni Plant users should be charged a commodity toll.

(i) Elimination of the Small Plant Toll

Remington Energy Limited ("Remington"), the largest shipper at the Sikanni Plant, was the only party who objected to Westcoast's rolled-in proposal. Remington, who did not participate in the Joint Industry Study and who is not a major shipper at other plants, insisted that the Small Plant toll methodology should remain. Remington argued that Westcoast had not submitted sufficient support for the change in methodology inasmuch as the interests of Remington were not considered in the Joint Industry Study.

In Remington's opinion the proposed treatment tolls infringe the toll design principles of rate stability, cross-subsidization and undue-discrimination. Remington stated that there is evidence of severe rate shock to the users of the Sikanni Plant, of undue discrimination against the low acid gas shippers, and

of substantial cross-subsidization by small industry participants (such as Remington) in favour of larger industry interests. Remington also submitted that the roll-in of the plant would create a greater incentive for producers to build their own processing plants.

Remington stated that under Westcoast's most likely throughput scenario, referred to as Case 3 in this proceeding, its tolls would increase by either 31 percent (from $88.76 to $116.07 per thousand cubic metres) or 50 percent (from $88.76 to $132.76) depending on which method, percentage or unit, is used to adjust the base curve to yield tolls that would recover the processing treatment revenue requirement.

Westcoast indicated that on a stand-alone basis the Small Plant toll of $88.76 per thousand cubic metres was projected to rise to $109.55 per thousand cubic metres in 1990.[1]

Westcoast stated that the proposal to roll-in the Sikanni Plant costs is related to the evolution of the postage stamp toll methodology for the processing portion of the system. Westcoast explained that B.C. producers had determined that postage-stamp tolls for each level of acid gas would be in the best interest of the overall development of the gas industry in the Province by providing for an orderly development of reserves in northern B.C.

Westcoast stated that its basic policy is to roll in the costs of any new processing plants it either builds or acquires. Westcoast recognized that there are bound to be winners and losers when costs of a new facility are rolled-in under a postage-stamp toll design methodology.

(ii) How to Adjust the Basic Treatment Curve

In final argument, Remington stated that if the Board were to approve the elimination of the Small Plant toll and were to permit the roll-in of the Sikanni Plant cost of service, the base treatment curve endorsed by the study team should be further segmented. In support of this position, Remington noted that the basic treatment cost curve is separated into two acid gas ranges. The first range is from 0.0 percent acid gas content to 26.0 percent and is a cubic regression best-fit curve. The second range is for acid gas contents greater than 26 percent and is a straight-line relationship. Remington suggested a further segmentation of the curve at the lower acid gas range, 0.0 percent to 1.0 percent. Remington proposed that the Small Plant toll calculated at 100 percent of plant capacity should anchor this segment of the curve at 0.0 percent

In Remington's view this lower segment of the curve would recognize the cost relationship at the Sikanni Plant and only affect those shippers at the McMahon Plant with very sweet gas. This refinement would address the main reason why the study team rejected the suggestion of using the Sikanni Plant toll as the anchor point, the main reason being that it would have lowered the tolls not only for low acid gas processed at the Sikanni Plant, but also for the significant volumes of low acid gas moving through the McMahon Plant.

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[1] Westcoast also provided information that suggests that the Small Plant toll on a stand-alone basis would have been at least $97.00 per thousand cubic metres in 1989.

(iii) Commodity Tolls for Sikanni Plant Users

Regarding the issue of whether a commodity toll should apply, Remington took the position that because there are no variable costs allocated to the Sikanni Plant there should be no commodity toll for treatment processing at the 0.0 percent acid gas content level.

Westcoast explained that there were no variable costs included in the current tolls for the Sikanni Plant because a plant turnaround was not forecast for the 1987 and 1988 test years.

Views of the Board

The Board believes that the costs of all of Westcoast's processing plants, regardless of their size or type of facility, should be rolled-in for tolling purposes. To do otherwise would result in Westcoast's shippers paying different tolls to have the same quality of gas processed depending upon plant location. The Board is of the view that the Small Plant toll should be eliminated and the Sikanni Plant costs should be rolled-in to the basic treatment curve.

The Board is aware that elimination of the Small Plant toll will mean an increase in the tolls to the users of the Sikanni Plant. However, the evidence showed that the Small Plant toll would have risen to $109.55 per thousand cubic metres on a stand-alone basis in 1990, an increase of over 23 percent from the current toll of $88.76 per thousand cubic metres. The Board believes that to assess the true effect of rolling-in the Sikanni Plant costs, the postage-stamp tolls with the Sikanni Plant costs rolled-in of $116.07 (percentage basis) and $132.76 (unit basis) per thousand cubic metres should be compared with the 1990 Small Plant toll on a stand-alone basis. The difference between the 1990 stand-alone toll and the rolled-in postage-stamp toll would be either six percent or 21 percent depending on whether the postage-stamp toll is adjusted on a percentage or unit basis.

Turning to how the Sikanni Plant costs should be rolled-in to the basic processing treatment curve, the Board notes that because the modification put forth by Remington was presented only in final argument, the Board and interested parties were unable to test and respond to the proposal. Consequently, the Board is reluctant to give it any weight. Moreover, in this instance, Remington was advised during the hearing that the practice before the Board for parties wishing to present alternative proposals to those of an applicant is to file their positions in the form of written direct evidence.

Consistent with the postage-stamp methodology, the Board believes that the Sikanni Plant users should be charged a commodity toll. The Board notes that the variable costs at the individual processing plants are subject to wide fluctuations from year to year depending on whether a plant turnaround is scheduled.

Decision

The Board directs that the Small Plant toll be eliminated and that the Sikanni Plant costs be rolled-in to the treatment curve using the approach proposed by

Westcoast. The Board also directs that the Sikanni Plant users be charged the commodity toll as approved by the Board.

4.5.2 Method of Adjusting the Treatment Curve

While there was unanimous agreement by the Joint Industry Study participants that the base curve fairly allocates processing costs between different qualities of gas streams, the participants could not reach agreement on the method to be used to adjust the base curve in future test periods to yield the approved revenue requirement.

During the hearing, three methods of adjusting the base curve were examined: the percentage method, the unit method, and a compromise 50/50 split solution. A percentage change to the curve adjusts all points on the curve by an equal percentage upwards or downwards. A unit adjustment increases or decreases all points on the curve by the same unit amount (expressed in dollars per thousand cubic metres). Under the 50/50 split, half of the required adjustment to the curve would be made using the percentage method and the other half would be made using the unit method.

As explained in the Joint Industry Study report, the advantage of the unit adjustment is that the shape of the curve is fixed and would not vary with cost of service or contract demand changes. The unit method would result in greater percentage toll adjustments for the lower acid gas producers relative to those faced by the high acid gas producers. In contrast, the percentage method would result in greater unit toll changes for high acid gas producers than for low acid gas producers.

Because a slight majority of the study participants favoured the unit method, Westcoast adopted their position in its application. Westcoast explained that it supported the unit method because the method would foster the maximum utilization of the system. Westcoast was concerned that adoption of the percentage basis could exacerbate the problem of underutilization at its plants which primarily process higher acid gas because the toll adjustment to yield the revenue requirement would be higher for high acid gas. BC Gas supported Westcoast.

IPAC, COFI/Cominco/Ocelot and Remington preferred adjusting the basic treatment curve using the percentage basis. IPAC explained that it is not the shape of the processing toll curve that is important but the underlying cost-recovery relationship among the various levels of acid gas that underpins the development of the curve. In IPAC’s view, adjusting the treatment curve using the percentage basis is consistent with the underlying assumptions used to develop the cost-recovery relationship. Remington and COFI/Cominco/Ocelot were of the view that the unit cost method imposes an undue burden on the low acid gas shippers.

CPA stated that if it had to choose between the unit or percentage method it would prefer the unit adjustment. However, in final argument CPA still recommended its 50/50 split proposal as a workable compromise.

Views of the Board

The Board agrees that the underlying relationship between the acid content of the gas and the cost of removing the acid at the various quality levels of acid gas is more important than maintaining the shape of the curve from one year to the next. Consequently, the Board is of the view that future adjustments to the basic treatment curve should be made using the percentage method.

Decision

The Board directs Westcoast to make adjustments to the basic treatment curve in future test year using the percentage method.

4.6 Toll Design for Zone 3 - Transportation North

4.6.1 Postage Stamp Versus Two Subzone Approach

In its RH-2-87 Westcoast Reasons for Decision, the Board decided that there should be three separate postage-stamp tolls for Zone 3: a short-haul toll for distances not exceeding 75 kilometres, and two separate long-haul tolls. The long-haul Zone was split into two subzones for tolling purposes. Subzone A consists of the section from Fort Nelson to Compressor Station No. 2, including all interconnecting residue gas transmission lines. Subzone B consists of all other residue gas transmission sections within Zone 3 and includes the transmission lines from Alberta to the McMahon Processing Plant near Fort St. John, and the line from the McMahon Plant to Compressor Station No. 2.

Westcoast proposed consolidating the two long-haul tolls into a single postage-stamp toll while maintaining the short-haul toll. Westcoast believed that a single long-haul toll would foster the most efficient use of its existing facilities and would recognize the integration of Zone 3 resulting from the introduction of storage service, the PacGas project[1], and the construction of the Laprise Offload Project.

Parties were not opposed to Westcoast's proposal. IPAC stated that, although it had supported volume/distance tolls on Zone 3 in past hearings, it recognized the need for a practical solution to the operational and design problems Westcoast was experiencing and, therefore, was prepared to accept the Company's proposal.

Views of the Board

The Board recognizes that, with the introduction of storage service and the development of the Laprise Offload and PacGas projects, Zone 3 will have evolved from a system designed to transport gas from the outlets of the gas processing plants

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[1] PacGas is a group of six producers who agreed to explore and develop lands in northeast B.C. In 1986 PacGas entered into contracts with Alberta and Southern, who agreed to accept up to 1 440 $10^3m^3/d$ (50 Mmcfd) of PacGas volumes beginning 1 November 1989 with a further increase of 1 440 $10^3m^3/d$ (50 Mmcfd) beginning 1 November 1990.

to Station 2 for ultimate delivery to the lower mainland to an integrated gas transmission system capable of delivering gas to and from storage and to Alberta at Gordondale. The Board is of the view that the flexibility provided by the introduction of storage service and the construction of the Laprise Offload facility provides significant benefits to all shippers on Zone 3 and that the elimination of the difference in tolls between the subzones would allow the most economical and efficient use of the existing facilities north of Station 2. As well, the Board expects the two subzones to become even more integrated as Westcoast continues to devise methods of maximizing the use of the existing facilities.

Decision

The Board approves Westcoast's proposal to combine the two long-haul subzones for tolling purposes and to charge a single postage stamp toll for long-haul movements of gas within Zone 3. The Board also approves the retention of the short-haul toll for movements of gas not exceeding 75 kilometres.

4.6.2 Movement of Gas in Zone 3

In its direct evidence, Unocal recommended that a shipper contracting for firm service on the Taylor Mainline (Subzone B) be permitted to ship gas from Compressor Station No. 2 or the Alberta border in either direction for the payment of a single postage-stamp toll.

Westcoast contended that to provide this type of flexibility, or, similarly, to allow a shipper to move gas from the outlet of the McMahon Plant southwest to Compressor Station No. 2 or east to Alberta, requires the reservation of firm capacity for each movement. In addition, Westcoast explained that, although gas movements from the McMahon Plant to Alberta currently occur by displacement, the required "capacity" must be reserved thus effectively preventing another shipper from contracting for it. Consequently, whenever a shipper requests the reservation of firm capacity to have gas delivered to two separate redelivery points, Westcoast currently requires the shipper to enter into two separate firm contracts and charges separate postage-stamp tolls under each contract.

During argument Unocal stated that, while it did not fully appreciate the logic of Westcoast's position, it was not pursuing the issue further in the hearing and would attempt to resolve it through direct discussions with Westcoast's operating personnel.

No other party advanced a position on this matter.

Views of the Board

The Board notes Unocal's decision to pursue this issue informally.

However, the Board believes that if Westcoast is required to reserve capacity for each movement, either eastbound or westbound, to ensure delivery and redelivery under a firm contract, then it logically follows that a separate firm toll should be payable for each service.

4.7 Transportation Storage Tolls

Transportation Storage Service ("TSS") was introduced by Westcoast during 1988 to provide transportation to and from an underground storage reservoir operated by Unocal in the Aitken Creek area of northeastern B.C.

The tolls approved by the Board for this new service were based on the Transportation Service Northern Long Haul ("TSNLH") - Subzone A toll. The demand charge for firm TSS was equivalent to the monthly TSNLH - Subzone A demand charge. As well, a full TSNLH commodity toll is charged when the gas is injected into storage and again when it is withdrawn and transported to Compressor Station No. 2.

The toll for interruptible service was set at one-half of the demand component of the interruptible toll for Subzone A, plus the commodity toll. The interruptible toll is charged for both injection and withdrawal; thus, gas delivered to storage and later redelivered to its ultimate destination paid the equivalent of a full interruptible TSNLH-Subzone A demand toll, plus two commodity tolls.

With the addition of this new service on the Westcoast system, shippers have the flexibility to inject gas into storage during the summer months when the raw gas transmission system and the processing plants tend to be under-utilized. The gas is subsequently withdrawn during the peak winter season with a resulting increase in the overall efficiency of the system while at the same time providing individual shippers with the advantages that accrue because of higher load factors.

4.7.1 Firm Tolls for Storage

Westcoast did not propose any change to the method of determining or applying the firm TSS tolls.

Shippers who contract for firm transportation storage service pay the firm TSS toll because when they withdraw their gas from storage in the winter months they tie up firm capacity on Subzone A - the Fort Nelson mainline. Shippers transporting gas to storage from either Subzone B or Subzone A generally have already contracted for firm TSNLH service and, therefore, can take advantage of the available storage capability by shipping their gas in their valleys during the summer season. Consequently, the use of storage enables them to improve their load factors in Zones 1 and 2, while maintaining the ability to meet their peak load requirements downstream of Compressor Station No. 2.

No party raised the issue of firm transportation storage service tolls. However, IPAC suggested that, if Westcoast’s proposal to have a single postage-stamp toll on Zone 3 is approved, there would no longer be a need to have separate transportation storage tolls.

Views of the Board

The Board believes that the Aitken Creek gas storage capability offers users of Westcoast’s raw gas transmission system and gas processing plants the ability to lower their unit cost of gas through increased load factors on Zones 1 and 2. This capability offers the further advantages of improving the overall efficiency of the system and deferring the construction of additional facilities to a future period. The Board also believes it is important to identify separately those volumes that use storage; therefore, separate and distinct transportation storage tolls should be retained.

Decision

The Board approves the continuation of the existing firm Transportation Storage Service toll methodology.

4.7.2 Interruptible Tolls for Storage

Westcoast provided an example to illustrate the current toll design methodology for interruptible storage tolls. The example assumed, for illustrative purposes, that the full interruptible TSNLH tolls for Subzones A and B are both set at 15¢ per Mcf. Westcoast explained that gas transported from a processing plant located in Subzone A for injection into storage on an interruptible basis would pay one-half the full interruptible postage-stamp toll, or 7.5¢ per Mcf. When the gas is subsequently withdrawn from storage, it is also charged a toll equivalent to one-half the full interruptible toll or an additional 7.5¢ per Mcf. Thus, a shipper whose gas is processed at either the Fort Nelson or Sikanni plants, which are directly connected to Subzone A, would pay the equivalent of one full interruptible toll to have its gas placed in storage and subsequently withdrawn from storage and shipped to Compressor Station No. 2.

Westcoast also explained that if the gas using storage originates from the McMahon Plant, which is located in Subzone B, the shipper would pay 30¢ per Mcf, the equivalent of two times the full interruptible toll. The shipper would pay the equivalent of a full interruptible long-haul toll (15¢ per Mcf) on Subzone B to transport the gas from the McMahon processing plant to Compressor Station No. 2, and the following storage tolls: 7.5¢ per Mcf to backhaul the gas into storage on Subzone A, and a further 7.5¢ per Mcf to withdraw it from storage and transport it to Compressor Station No. 2.

Westcoast acknowledged that the current methodology that evolved under a two long-haul subzone approach produces an inconsistency and that the inconsistency may be in the derivation of the interruptible storage tolls for gas originating from plants directly connected to Subzone A. To harmonize the tolls, Westcoast suggested during cross-examination that the shippers on Subzone A who use storage should pay the equivalent of two times the full interruptible toll, namely a full interruptible toll to transport the gas to storage and a full toll to withdraw it from storage and transport it to Compressor Station No. 2. The rationale for charging two full tolls was that there are two separate and distinct movements of gas taking place, both of which tie up capacity on the system. One movement occurs when the gas is transported into storage and another occurs when it is subsequently removed from storage.

In its written evidence, Unocal recommended that the interruptible tolls should be modified to permit gas to be transported from the McMahon Plant into storage for the equivalent of one full interruptible toll (15¢ per Mcf). When the gas is subsequently withdrawn from storage for redelivery outside of Zone 3, Unocal proposed that the interruptible TSS withdrawal toll (7.5¢ per Mcf) be charged. Under its proposal, the total transportation storage service charge for gas originating at the McMahon Plant would be 22.5¢ per Mcf compared with the current 30¢ per Mcf. If Unocal's proposal was accepted, the interruptible TSS injection toll charged for backhauling the gas from Station 2 to Aitken Creek would be eliminated. In Unocal's view, this would make it consistent with the current practice of not charging a toll for back-haul movements within the zone.

While Unocal originally advocated the elimination of the interruptible TSS injection toll for the back-haul of gas from Station 2 to Aitken Creek, it explained during the hearing that its preference would be to pay the same interruptible TSS tolls as those applicable to gas originating in Subzone A, which are 7.5¢ per Mcf for transportation to storage and 7.5¢ per Mcf to withdraw it from storage, regardless of the subzone in which the processing plant is located. However, Unocal was concerned that, if the Board rejected Westcoast's proposal to replace the two long-haul subzone tolls in Zone 3 with a single postage-stamp toll, it might view unfavourably other Unocal concerns relating to the toll structure in the zone.

IPAC recommended discontinuing the separate TSS toll if the Board approves a single postage-stamp toll for Zone 3 and charging, instead, a full interruptible TSNLH toll each time that there is a movement of gas within the zone. Under this proposal, all storage gas would pay the same toll regardless of its point of origin.

During argument Westcoast amended its application respecting the interruptible TSS toll and proposed that, with the exception of sweet gas and gas sourced in Alberta and notwithstanding that the user of interruptible storage service uses capacity on the line on two separate occasions, any movement of gas in Zone 3 into and out of storage would be at one-half of the full interruptible TSNLH toll. Westcoast believed that this favourable toll treatment would recognize and extend the economic advantages of storage equally to all of Westcoast's raw gas transmission and processing plant facilities.

Both BC Gas and Unocal supported the amendment to Westcoast's application; but, IPAC continued to favour the elimination of the TSS toll, viewing Westcoast's amended proposal as discriminatory.

Views of the Board

In the Board's opinion the ability to store gas during periods when Westcoast's facilities are being underutilized offers the advantages of increasing the overall efficiency of the pipeline on a year-round basis and of deferring to a future period the time when facilities will have to be added to increase the system capacity. It follows, therefore, that the use of the storage capability should be encouraged. In this respect the Board views Westcoast's amended proposal to charge only one-half of the full interruptible TSNLH toll for gas transported for injection into storage and withdrawal from storage, except for sweet gas and out-of-province gas, as a positive action.

However, the Board is not satisfied that the distinction suggested by Westcoast, whereby only gas from its processing plants should pay the reduced toll, is warranted. Consequently, the Board believes that all gas injected into storage and withdrawn from storage in Zone 3 should pay the same interruptible tolls.

Decision

The Board approves the proposal put forth by Westcoast to charge the equivalent of one-half of the full interruptible transportation storage toll for movements of gas into and out of storage, but denies Westcoast's request to restrict its proposal to gas processed at plants owned by Westcoast.

4.8 Upstream and Downstream Diversions

The issues of upstream and downstream diversions were addressed by the Industry Task Force ("the task force"). The task force was able to agree on the appropriate demand and commodity charges that would be payable in respect of upstream diversions; however, it was unable to resolve the issues associated with downstream diversions and consequently the matter was referred to the Board for consideration.

In final argument, Westcoast believed that as a result of cross-examination and further discussions between Westcoast and interested parties, a consensus had been reached on all the downstream diversion issues. Westcoast indicated that it had agreed to the following:

(1) Downstream diversions would be available on an interruptible basis.

(2) The toll applicable for service will be the interruptible toll applicable for service from the redelivery point under the firm service agreement to the redelivery point requested.

(3) Nominations for downstream diversions will receive the same priority as any other nomination for interruptible service in the event that such nominations exceed the capacity which is available for interruptible service.

(4) Westcoast is prepared, subject to the agreement of BCPC, which it understands will be forthcoming, to amend its sales contracts so as to permit its sales customers to divert sales gas on an interruptible basis to a downstream redelivery point.

Westcoast stated that it would prepare and file appropriate amendments to its general terms and conditions to reflect the agreed upon diversion policy following receipt of the Board's decision.

In final argument, CPA, IPAC, COFI/Cominco/Ocelot and BC Gas agreed with Westcoast's proposed treatment of downstream diversions.

Views of the Board

The Board agrees with Westcoast's proposal for downstream diversions.

Decision

Westcoast is directed to make the necessary amendments to its general terms and conditions to reflect the agreed upon upstream and downstream diversion policy.

Chapter 5
Tariff Matters

5.1 Introduction

In its application, Westcoast filed new toll schedules for each of its distinct raw gas transmission, processing and transportation services. The toll schedules outline the billing process and set out the approved demand and commodity tolls for each service. A number of changes to the general terms and conditions proposed by Westcoast and intervenors were referred to the task force for resolution outside the public hearing process. Many of these proposed changes related to operational and billing matters.

5.1.1 Industry Task Force Results

The task force was established after the last Westcoast toll hearing to resolve operating and toll and tariff matters outside of the public hearing process. It consisted of members from the following organizations: BC Gas, BCPC, COFI, CPA, IPAC, PNG, Northwest Natural and Westcoast. Westcoast filed a report which indicated that, of the 34 items considered by the task force, 18 were either resolved or, alternatively, will be implemented according to an action plan, five were referred to the Board, and 11 were still under review.

The participants on the task force understood that in the event that the action plans are not carried out to their satisfaction, or if the Committee is unable to resolve any of the ongoing items, these matters will be brought to the Board for resolution.

A number of parties voiced strong support for the use of this forum as an effective way of resolving operating and other matters outside of the hearing process, and recommended that the task force should continue to meet on an ongoing basis.

CPA and IPAC acknowledged that there can be no question regarding the Board's overriding jurisdiction regarding tolls and tariff matters. However, CPA expressed the opinion that if the task force reached agreement on any matter within its mandate, then the results should be accepted by the Board. CPA stated that it would be unfortunate if the task force resolutions were set aside by the Board.

IPAC was concerned that the task force not be seen to be circumventing the Board's jurisdiction and recommended that a member of the Board's technical staff be included on any future task force committees. In this regard, Westcoast stated that before the next toll hearing it would be desirable to discuss with the Board the appropriateness of Board staff participating on these task forces.

Views of the Board

The Board is encouraged by the results of the meetings. Of the original 34 issues dealt with by the task force only five had to be brought before the Board for resolution in this proceeding. The Board strongly encourages the continuation of the task force to resolve operating and other toll and tariff matters before bringing the recommendations to the Board for its consideration and approval. The Board wishes to make it clear that

while the Board itself has ultimate authority regarding toll and tariff matters and cannot delegate that power to the task force, it can, in exercising that power, give considerable weight to the recommendations of the task force.

The Board found that, due to the tight deadline for submission, the task force report contained much less information than had been anticipated. The Board expects future reports to contain, as a minimum: a concise description of the issue, a background section describing the nature of each relevant problem, a section summarizing the views of each party, and a clear and concise statement of resolution. This additional information will enable the Board to more fully appreciate the conclusions and recommendations put forth by the task force.

With respect to whether representatives of the Board should participate on future operating or task force committees, the Board is of the view that significant benefits would be realized and much hearing time could be saved by having a representative of the Board participate in the capacity of an observer at certain meetings.

5.1.2 Changes to General Terms and Conditions and Toll Schedules

In its application, Westcoast proposed a number of changes to its general terms and conditions for Sales, Service and Offline customers and filed new toll schedules. As well, during the proceeding, Westcoast agreed to make certain additional changes to the general terms and conditions for service and to the toll schedules based on the recommendations of the task force.

Westcoast's proposed changes relating to the quality specifications for gas, the start of Westcoast's gas day and billing-related matters were not opposed by intervenors during the proceeding. Westcoast also acknowledged that an amendment is required to Section 6.01 of the General Terms and Conditions for Sales to clarify that the 2.5 percent tolerance level applies to all gas delivered by Westcoast into an LDC's distribution system and not just sales gas.

However, Westcoast's proposed changes to the demand charge credit provision in respect of force majeure events, the priority of service provision and the letter of credit provision were the subject of considerable discussion.

Views of the Board

With respect to the changes that were not opposed by intervenors, the Board finds them reasonable and acceptable. The Board notes Westcoast's statement that the proposed change to the start of its gas day will not affect the start of the gas day of the domestic distributors. This clarification addressed a concern of BC Gas. The Board also notes Westcoast's undertaking to amend Section 6.01 of the General Terms and Conditions for Sales.

The Board's views and decisions on the other proposed changes to the general terms and conditions are set out in the following sections.

5.2 Force Majeure and Contract Demand Credits

Westcoast proposed a change to the tariff provision that deals with the right to receive contract demand credits. Under the current provision, Westcoast provides demand charge credits to its customers when an event of force majeure occurs on Westcoast's system or when it occurs on any downstream pipeline facilities connected directly to the Westcoast system. Sales customers also receive demand charge credits if a force majeure event occurs upstream of the Westcoast system. The requested change to the tariff provision would eliminate Westcoast's obligation to provide demand charge credits when the event of force majeure occurs downstream of Westcoast's system. Westcoast further indicated that it was not proposing any changes to the force majeure provision of the tariff.

Westcoast argued that transporting gas is a capital-intensive business and, as a result, pipeline companies have a high degree of leverage that does not exist with companies in other industries. In addition, gas is not like other commodities that are sold in that, typically, it is not stored and is expensive to deliver. Westcoast maintained that, for these reasons, pipeline companies in North America generally do not provide downstream relief for events of force majeure. Westcoast made specific reference to the examples in Canada of the pipeline systems of TransCanada and Foothills, neither of which provide relief from demand charge obligations for events of force majeure occurring downstream of their systems. Westcoast argued that it should be treated by the Board in a consistent manner.

In support of its proposal, Westcoast also pointed to the difference in the obligations assumed by a customer on the Westcoast system. Westcoast characterized the relationship as a one-sided transaction wherein the customer is only obliged to pay the demand charges and Westcoast is obliged to perform the service of delivering gas. Westcoast explained that when there is a force majeure events on the customer's system, the only continuing obligation of the customer under the Westcoast contract is to pay the demand charge. The customer incurs no further consequential liability towards Westcoast as a result of the customer's inability to receive gas. Westcoast asserted that the contrary is true, however, when an event of force majeure occurs on the Westcoast system. Without the protection of the force majeure clause, Westcoast would be liable for the consequential damages suffered by the customer as a result of Westcoast's inability to supply gas in accordance with the contract. Whereas the customer knows what its fixed costs would be and is better able to insure for that business risk, Westcoast does not know in advance the extent of its liability with respect to the consequential damage that it may face. Westcoast explained that insurance for business interruption is difficult under these circumstances. For that reason, Westcoast believed that it was fair to provide the demand charge credit relief only for those events which occurred on the Westcoast system.

Concerning upstream relief, Westcoast thought it appropriate to make a distinction between sales and service customers. On the one hand, with a sales customer, Westcoast has the responsibility to provide both the gas supply and the transportation. In performing these functions, Westcoast can take advantage of its diverse supply arrangements to change the source of a sales customer's gas from one plant to another if the need arises. Given this, it is reasonable for Westcoast to assume the upstream risk. On the other hand, with a service customer, Westcoast has no control over the source of supply or any ability to affect the arrangements in that regard. Accordingly, Westcoast does not believe that it is fair to be exposed to that risk upstream.

BCPC supported Westcoast's proposal and expressed the view that it is unfair to require Westcoast to bear the risk of economic loss for events occurring off its system. It was BCPC's opinion that exposing Westcoast to that downstream risk does nothing more than expose either the tollpayers or the Westcoast shareholders to the additional costs associated with that risk, which the users of the Westcoast system would ultimately bear. In its view, it is more equitable that downstream customers should bear the cost on their own systems. BCPC argued that, even though an event of force majeure on the downstream system may be the cause of the inability to receive gas, the downstream customer should remain liable for Westcoast's demand charge.

Similarly, BCPC saw a difference upstream between the obligation assumed by Westcoast for sales customers and the obligation assumed for service customers. BCPC therefore suggested that it was logical to maintain the difference as proposed by Westcoast

CPA supported the Westcoast change with respect to the downstream relief and recognized that this was a change in its position from the previous Westcoast hearing. CPA stated that it had reconsidered its position because the risks associated with downstream relief had become more apparent in the course of a recent TransCanada hearing. Regarding upstream relief, CPA's position was that there should be equality of treatment between sales and service customers, and both should be provided with similar relief.

COFI/Cominco/Ocelot argued that the downstream customers should continue to get relief from the obligation to pay demand charges when an event of force majeure occurs on their systems. They maintained that even the current limitation downstream is too restrictive and, therefore, opposed the total elimination of any downstream relief. COFI/Cominco/Ocelot suggested that it is unfair that a shipper should bear the consequences when a force majeure event occurs on Westcoast's system and that Westcoast should not bear the consequences when the reverse occurs. They argued that it is not normal business practice for a supplier to continue to get paid in full for services no longer required when the customer's business is no longer capable of functioning through no fault of the customer. They submitted that the availability of natural gas should be on a similar basis to that upon which all other commodities are available to industrial users and other customers.

While BC Gas agreed with Westcoast's proposal respecting upstream relief, it disagreed with the elimination of downstream relief. BC Gas viewed the elimination of downstream relief as a sales contract matter which should be left to Westcoast and the contracting parties to negotiate.

APMC also agreed that this matter is one that should be left to customers and Westcoast to negotiate rather than be included in Westcoast's transportation tariff. However, it did agree with CPA that there should be no distinction between service and sales customers upstream.

Views of the Board

Whether an event of force majeure occurs on Westcoast's system or on a customer's system, the event, by its very nature, is beyond the control of the party whose system is affected. The issue is to determine the circumstances under which it is fair in light of a force majeure event for the customer to be relieved of its obligation to pay for the service. In considering this issue, the Board compared the risks assumed by the customers on the Westcoast system to the risks assumed by Westcoast.

As the transporter of gas, Westcoast's primary obligation under a typical contract is to deliver gas. If a force majeure event on its system causes Westcoast to be unable to provide that service, the customer may suffer consequential damages from the failure of the gas supply. In this situation, the Board considers it appropriate, because of the uncontrollable nature of the event, that the customer be relieved of its obligation to pay and that Westcoast not be liable for the consequential damages. The customer should take the measures necessary, such as obtaining insurance, to protect itself from the business interruption.

In the reverse situation, where a force majeure event on the customer's system causes the customer to be unable to receive the gas, the failure of the gas supply may also result in consequential damages for the customer. However, without demand charge relief from Westcoast, the customer's only continuing obligation to Westcoast under the contract is to pay the demand charge. This is a fixed amount that is known in advance of the disruption caused by the failure of the gas supply. The risk represented by that obligation is something against which the customer should insure or otherwise protect itself. To provide relief from the demand charge in these circumstances would shift the cost of insuring for that risk to Westcoast and its tollpayers. In the Board's view, that would not be equitable.

Regarding the availability of upstream relief, the Board is not persuaded that such demand charge credit relief should be extended to service customers. In the sales situation, Westcoast has assumed the obligation of ensuring that the supply is available and it also has control over the supply arrangements. Such responsibility and control does not exist in the situation where Westcoast is receiving the gas from a service customer. Therefore, continuing the distinction between the two classes of customers is appropriate.

Decision

The Board approves Westcoast's proposed modification to the tariff provision that would eliminate the Company's obligation to provide demand charge credit when a force majeure event occurs downstream of Westcoast's system.

5.3 Letter of Credit

At the request of the task force, Westcoast agreed to amend the period between receipt and payment of the monthly bills from five calendar days to five working days.

As a result, Westcoast requested approval to make a consequential amendment to the letter of credit provision in its General Terms and Conditions for Service. The proposed amendment would extend the required number of days service provision in a letter of credit from 62 to 64 days.

IPAC was the only intervenor who opposed the amendment. IPAC stated that it was not prepared to accept Westcoast's position because parties did not have sufficient time to evaluate the financial impact on shippers that are required to provide additional financial assurances.

Views of the Board

Given that the extension between receipt and payment of the monthly bills was agreed to by Westcoast to assist its shippers, the Board believes that Westcoast's proposed amendment to the letter of credit provision is not unreasonable as Westcoast does face a corresponding increase in financial risk.

Decision

The Board approves Westcoast's request to extend the required number of days service provision in a letter of credit from 62 to 64 days.

5.4 Allocation of Interruptible Capacity

Westcoast currently allocates interruptible capacity on a pro rata basis, based on the customer's actual daily nominations.

Under this method, Westcoast stated that, during periods of curtailment, customers who have signed large interruptible contracts can increase their pro rata allocation of gas by making large nominations which do not necessarily reflect the customer's actual requirements. These large nominations resulted in Westcoast allocating capacity which went unused last winter.

While intervenors agreed that a solution was needed to resolve the current problem of shippers nominating in excess of their actual daily requirements in order to obtain a higher percentage of the available capacity during times of curtailment, they could not agree on the solution.

(i) Westcoast's Proposal

Westcoast claimed that the current allocation methodology works to the disadvantage of customers with relatively small interruptible contracts who nominate only their actual requirements. To overcome this perceived inequity, Westcoast proposed an amendment to its general terms and conditions which would deem a shipper's nomination for allocation purposes to be the lesser of (a) the volume of interruptible capacity actually requested by the shipper and (b) the total volume of interruptible capacity available on the system on that day, regardless of a shipper's actual daily nomination.

Westcoast recognized that its proposal was not perfect. However, it was looking for a solution to the problem which would avoid the necessity of introducing new penalties.

CPA supported the Westcoast proposal and COFI/ Cominco/Ocelot stated that they were prepared to work with it. However, they acknowledged that the method could be inequitable for shippers who nominate large interruptible volumes such as BC Gas. They supported Westcoast's proposal only because they were opposed to the imposition of penalties or reservation fees to add discipline to the nomination process. In their view, a reservation fee effectively sets up a demand charge for interruptible service.

BC Gas opposed Westcoast's solution because it would not prevent shippers from overnominating, but it would discriminate against shippers that have large, legitimate interruptible requirements. BC Gas believed that a shipper with a large interruptible contract could just break down its requirement into a number of small contracts to avoid the sanctions that would be imposed under the Westcoast proposal.

In addition to the solution put forth by Westcoast, interested parties suggested moral suasion, "use it or pay" fees, reservation fees, bidding with or without multi-tiers of interruptible service and allocation by subzone as means to resolve the problem of over-nomination and the resultant under-utilization of available capacity.

(ii) The Moral Suasion Approach

If the Board were to set out clear directions to all shippers and sales customers that their nominations must reflect their needs on that particular day, BC Gas and COFI/Cominco/Ocelot believed that the existing interruptible allocation procedure could be made to work. If moral suasion failed, COFI/Cominco/Ocelot suggested the Board could move to a less equitable but more effective method, having tried all other options first. BC Gas was of the view that if this approach failed, the issue should be sent back to the task force for resolution.

IPAC considered the moral suasion suggestion a little naive. Although a supporter of the existing method of allocating available capacity, IPAC stated that discipline should be brought into this procedure.

(iii) "Use it or Pay" Concept

IPAC proposed a "use it or pay" solution because the abuse of the existing nomination procedure by certain parties has displaced service shippers and has reduced the overall potential revenue collection from interruptible volumes.

Under IPAC's proposal every shipper would pay for the lesser of its nominated or allocated quantity regardless of its actual takes, which, at times, could be significantly less than the allocated quantity. IPAC recommended that a tolerance level of 7.5 percent be permitted: 5.0 percent in recognition of forecasting errors, plus 2.5 percent to account for measuring errors.

IPAC was of the view that its proposal would treat all sales and service customers equally, rather than favour sales customers with large interruptible contracts, as is the case now. IPAC perceived its solution as an incentive for all shippers to nominate in a prudent manner and as a solution which takes into account the potential revenue loss to the system as a result of imprudent nominations.

Provided there is a reasonable margin of error to allow for operating variations, COFI/Cominco/Ocelot saw merit in the proposal suggested by IPAC as it would tend to minimize interruptible revenues. They suggested a tolerance level of between 7.5 and 12.5 percent as being reasonable.

CPA and BC Gas were opposed to a "use it or pay" solution. They did not favour such a solution because they believed there are legitimate reasons why shippers may not use all of the volumes allocated to them. CPA stated that, for example, on the supply side the quantity of gas taken out of wells can be less than expected. BC Gas noted that, on the market side, warmer than predicted temperatures and Westcoast's actual authorizations at 11:00 Pacific Standard Time on the gas day

being different from that assumed by the shipper can contribute to actual volumes taken being different than the volume authorized.

While initially supporting a "use it or pay" concept, BC Gas argued that it would not work. BC Gas explained that because the service volumes are shotgunned[1], all of the variances between allocated and actual takes of interruptible volumes show up as variances to the sales customers only. Therefore, only the sales customers could incur penalties under this concept. BC Gas believed that the problem could be addressed in the domestic market through tariff revisions by the distributors; however, there does not appear to be any solution in the export market.

In the export market, there are no sales customers; consequently, all service volumes are shotgunned to the export point and any imbalance between allocated and actual takes shows up simply as an imbalance between Westcoast and Northwest. Therefore, IPAC's proposal would not impose any discipline on the export service customers.

Westcoast stated that if the Board were to decide to introduce a "use it or pay" penalty, the penalty rate for unused capacity should be at least the sum of the average interruptible tolls for each zone on the Westcoast system.

(iv) Reservation Fees

BC Gas suggested a reservation fee to impose discipline at the nomination stage to prevent parties from contracting for interruptible service with unrealistic maximum volume limits. However, it acknowledged that this suggestion had not been thoroughly canvassed in the hearing.

(v) Bidding or Multi-Tier Approach

BC Gas believed that it could support the multi-tier proposal which was suggested by BCPC, but again was of the view that it is a proposal that requires further examination. Under this concept, the higher the tier of interruptible service, the higher the price, with highest priority for available capacity being given to those shippers contracting for the highest tier of service. If this procedure were found to be reasonable, BC Gas would prefer to have the tiers and the rates for the different tiers set ahead of time, as opposed to a bidding process. In its view, a view that was shared by COFI/Cominco/Ocelot, a bidding process would be too complicated and therefore difficult to administer.

(vi) Subzone Approach

CPA suggested that the pro rata allocation be made on a subzone basis. Under this approach, the allocation of capacity would occur only at those plants or portions of the system where it was necessary, leaving other parts of the system free to be used to the limits of their capacities.

It was recognized that under the current allocation procedure, which is driven by the nominations of the downstream shippers, capacity at some plants could go unutilized while the system was under curtailment.

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[1] Shotgunning refers to the assumption that the first volumes through the distributor's meter are the volumes authorized by Westcoast for redelivery to the direct purchaser. These volumes are deemed to be delivered regardless of whether the direct shipper's actual takes are more or less than the authorized volumes.

Westcoast said that it is currently striving to design a computer model which would allow movements of gas to Alberta or storage when Zone 4 is under curtailment. Westcoast expected to have the model in place for the start of the coming gas year.

Views of the Board

The Board is encouraged that Westcoast is taking steps to maximize the utilization of its upstream facilities when Zone 4 is under curtailment by developing a subzone approach to capacity allocation.

However, it is clear from the evidence that the existing procedure has not resulted in the maximum utilization of the system in times of curtailment because shippers are not making reasonable estimates of their actual interruptible requirements. It is also clear that the interested parties were not able to present or to agree on a suitable solution.

While the Board recognizes that large interruptible nominations will continue to be made under any allocation method, the Board believes that a deterrent is necessary to prevent the abuse of the nomination process. Of the two proposals that were examined at length in this proceeding, the Board is of the view that a "use it or pay" solution to excessive nomination is preferable to Westcoast's "cap" on the level of large interruptible nominations, because it would not discriminate against shippers on the basis of the size of their interruptible contracts.

The Board believes that a tolerance level of 20 percent of authorized volumes is appropriate at this time. In setting a tolerance level that is above the levels suggested by interested parties, the Board has given considerable weight to the concerns raised by CPA and BC Gas, and the evidence submitted by Westcoast regarding authorized and utilized volumes for the month of February 1989.

The Board is of the view that a shipper should pay for at least 80 percent of the monthly authorized volumes regardless of its actual monthly takes. The penalty charge shall be equal to the weighted average interruptible transportation charge for the actual takes of the shipper during the month. The charge will apply to the difference between the actual monthly volumes taken and 80 percent of the monthly authorized volumes in those months where the actual volumes taken are less than the authorized volumes.

Decision

The Board directs Westcoast to introduce a "use it or pay" method in the manner described above. Consequently, Westcoast's proposal is denied.

5.5 Unutilized Service Credits

Westcoast has included toll schedules in the current application that describe the various services offered and the billing procedures applicable to those services. With regard to the latter, the toll

schedules detail the procedures used to determine a shipper's bill for firm and interruptible service and any unutilized service credits to which the shipper may be entitled.

Unutilized service credits are available with respect to raw gas transmission service, treatment service, liquids recovery service and transportation service northern (long-haul and short-haul) and, according to Westcoast, perform the same function as make-up provisions in the firm transportation tariffs of other pipelines. These credits (referred to as revenue credits in this proceeding) are available to any shipper who has a firm contract at one location and an interruptible contract for service at another location within the same zone. In the event that the shipper has not fully utilized its monthly volume entitlement under the firm service agreement for that zone during the billing month, and has also incurred interruptible service at an alternate location within the zone, the service credit available because of the underutilization of firm service would be applied against the interruptible service charges incurred. Westcoast claimed that the unutilized service credit provides shippers with security of supply and results in better utilization of the Westcoast system. The Company also claimed that the increased level of flexibility encouraged shippers to contract for higher levels of firm service and provided benefits to all tollpayers.

Westcoast explained that the procedure used to determine interruptible service volumes for Transportation Service - Southern and Transportation Storage Service differed from the procedure used for the upstream zones in that it involved the use of a volume credit rather than a revenue credit. Under the procedure used for Zone 4, the difference between the total residue gas volumes delivered during the month and 100 percent of the shipper's monthly contract demand entitlement is deemed to be interruptible and the volume is then billed at the interruptible toll. Consequently, under a volume credit mechanism, gas could be ordered and transported on an interruptible basis, but for billing purposes be deemed to have been transported under the firm service agreement.

During the proceeding, the Company explained that where a shipper had both a firm and an interruptible transportation contract in Zone 3 for service originating in the same subzone, Westcoast provides that shipper with a monthly volume credit calculated in the same manner as for Zone 4. Therefore, in that respect, Zones 3 and 4 are being treated consistently.

When questioned why the billing of interruptible volumes could not be done on the basis of volumes taken each day instead of on a monthly basis, Westcoast said it was not possible to calculate bills on the basis of daily firm and interruptible volumes for the raw gas transmission and processing zones for operational reasons. In addition, billing for Zones 3 and 4 on the basis of daily interruptible volumes would be very complex and require a large and sophisticated computer program. Westcoast expressed the opinion that, in the case of the latter two zones, billing interruptible volumes on the basis of daily takes could be implemented at some future time. Even though Westcoast would prefer to bill on a daily basis in the transmission zones, it stated that it is currently not possible to bill in that manner.

Westcoast acknowledged that a volume-crediting mechanism produces lower average unit transportation costs than a revenue-crediting approach. Westcoast agreed that there is merit in the suggestion of a revenue credit rather than volume credit being applicable for movements of gas to each redelivery area in Zone 4; however, it was not something that Westcoast had examined in any detail.

In argument, CPA and BC Gas agreed to the monthly billing procedures and the use of unutilized service credits. BC Gas also stated that these procedures had been agreed to by the Committee.

IPAC opposed the use of revenue and volume credits in Zones 3 and 4, arguing that the monthly billing of interruptible volumes should be done on the basis of daily takes. However, IPAC agreed with Westcoast that revenue credits remain appropriate where Westcoast requests a shipper to switch production to an alternate supply source to alleviate operating problems that occur on the system from time to time.

Views of the Board

The Board accepts that there are operational reasons that prevent billing of interruptible service on a daily basis in Zones 1 and 2, and that it is currently not possible to bill in this manner in Zones 3 and 4. However, the Board believes that Westcoast should take the necessary steps to eliminate volume and revenue credits in Zones 3 and 4, except in those situations where Westcoast has requested the shipper to switch production to an alternate supply source.

The Board is of the opinion that shippers should be billed each month for the total volume of interruptible gas that they have received each day during the billing period. It appears to the Board that to do otherwise would confer a benefit on those shippers contracting for both firm and interruptible services that would not be available to shippers only contracting for interruptible service.

Regarding the billing procedures that should be used to determine credits in Zones 3 and 4, the Board believes that they should be applied consistently in both zones until such time as the credits can be eliminated. The Board is of the view that Westcoast should use the revenue-credit mechanism in both Zones 3 and 4 as this method results in higher interruptible revenues than the volume-credit approach and therefore is more consistent with the Board's view that these credits should be eliminated.

Decision

Westcoast is directed to use the revenue credit method to determine the unutilized service credit when calculating the shipper's monthly billings in Zones 3 and 4 for the 1990 and 1991 test years. During this period, the Board expects Westcoast to develop the necessary procedures and computer software to enable it to eliminate the use of unutilized service credits in Zones 3 and 4. Therefore, effective 1 January 1992, the Board expects Westcoast to be able to bill shippers for the actual volumes of interruptible gas taken each day during the month.

With respect to raw gas transmission and gas processing, the Board is persuaded by the evidence before it that the operational and billing difficulties relating to those zones make elimination of the unutilized service credits unfeasible. Therefore, the continued use of unutilized service credits is approved for Zone l and Zone 2.

5.6 Charges for Unauthorized Overrun Sales and Service

5.6.1 Treatment of Unauthorized Overrun Revenue

In its RH-6-85 Westcoast Reasons for Decision, the Board stated that it believed that Westcoast's unauthorized overrun penalty provisions were sufficiently harsh to provide the necessary incentive to shippers to avoid incurring such penalties. The Board decided to allow Westcoast to keep any revenue that it might receive from penalties and required the Company to record any penalty revenue separately.

Westcoast's charges for unauthorized volumes range from the daily demand toll for volumes that fall within the 2.5 percent tolerance level (100.0 percent to 102.5 percent above the authorized amount) to 30 times the daily demand toll for volumes above 110 percent of the authorized volume. Westcoast stated that, over the last three years, all penalty revenue has been associated with volumes within the 2.5 percent tolerance level.

While acknowledging that penalty revenues have been minimal or non-existent in the past, COFI/Cominco/Ocelot and BC Gas were of the view that Westcoast's shareholders should no longer be the beneficiaries of such revenue. In support of their position, COFI/Cominco/Ocelot and BC Gas stated that it is the other users of the system who could potentially suffer when a customer takes volumes in excess of its authorized quantity.

A Westcoast witness agreed that if one customer were to take unauthorized overrun gas, it would be the other parties who could suffer to the extent capacity or gas were not available to serve their legitimate requirements.

COFI/Cominco/Ocelot and BC Gas argued that all unauthorized overrun revenue, less any Westcoast costs, should be credited back to the firm customers on the system, other than the party incurring the penalty. BC Gas noted that the task force had already agreed that any revenue for unauthorized volumes within the 2.5 percent tolerance level should no longer accrue to Westcoast.

With respect to the toll treatment of such revenue, Westcoast indicated that such revenue would be treated in the same manner as interruptible revenue and, therefore, would be credited to all firm customers. However, in final argument, BC Gas believed that the task force had agreed that this penalty revenue should be credited to all firm customers on the system, other than the party required to pay the unauthorized service charge. The task force report is not clear on the appropriate treatment of this revenue as it merely states that unauthorized overrun volumes from 100 to 102.5 percent of the authorized volumes should be credited along with interruptible revenues.

In arguing that it should be allowed to retain the revenues associated with unauthorized volumes above the 2.5 percent tolerance level, Westcoast stated that the circumstances have not changed since the release of RH-6-85 Westcoast Reasons for Decision.

Views of the Board

The Board is of the view that Westcoast should no longer be entitled to retain any penalty revenues for unauthorized volumes because it is the users of the system that potentially suffer when unauthorized volumes are taken. In this regard, the Board notes

that Westcoast has agreed that it should no longer be entitled to retain penalty revenues for unauthorized volumes within the 2.5 percent tolerance level.

As to the appropriate treatment of the revenues, the Board believes that all unauthorized overrun revenue, less any related Westcoast costs such as demand charge credits, should be credited to all firm customers on the system, with the exception of the party incurring the unauthorized charge. The Board believes that it would be unfair to return a portion of this revenue to the penalized party.

Decision

The Board directs Westcoast to amend its general terms and conditions so that all unauthorized overrun revenue, less any related Westcoast costs, be credited to all firm customers on the system, other than the party incurring the unauthorized charge.

5.6.2 Changes to Unauthorized Overrun Charge Provisions

In final argument, BC Gas proposed that the sales and service general terms and conditions provisions relating to unauthorized overrun charges be modified to remove the compulsory requirement for Westcoast to charge unauthorized overrun penalties. This change would allow Westcoast some discretion to waive the penalties in certain circumstances.

In reply argument, Westcoast noted that currently it allows one day's grace before charging for unauthorized overrun. Westcoast stated that if it had the discretion to decide whether to charge penalties, parties would argue about whether Westcoast should or should not impose them.

Views of the Board and Decision

The Board is of the opinion that it would be inappropriate to give Westcoast the discretion to waive penalties for unauthorized overrun gas. Therefore, BC Gas's request is denied.

5.7 Other Tariff Matters

5.7.1 Expiration Date for Service and Storage Contracts

Westcoast proposed that all service contracts, with the exception of those for transportation storage, be required to have a 31 October expiry date. Westcoast also proposed that storage contracts should expire on 30 April, because that date appears to be preferred by customers using storage.

Westcoast chose 31 October as the expiry date for service contracts because almost all shippers on its system contract gas under their sales agreements for a gas year commencing 1 November. Westcoast was concerned that if it were to allow contracts to expire throughout the year and if, for example, a

major firm contract were to expire in April and the contract demand not be recontracted, the system as a whole could be exposed to unused capacity.

IPAC opposed Westcoast's position, arguing that Westcoast's proposal is arbitrary and inconsistent with the gas marketing realities that have resulted from the 31 October 1985 Natural Gas Agreement. IPAC claimed that Westcoast should be flexible in its firm service contracting practices since all gas sales contracts do not necessarily start and end on the dates established by Westcoast for its gas year.

Views of the Board

The Board believes that Westcoast's proposal is too rigid and that some flexibility should be maintained to allow parties the opportunity to enter into service contracts with differing expiry dates. The Board recognizes the concerns of Westcoast, but believes that too rigid a policy might not enable the Company to maximize the utilization of its system to the benefit of all users. The Board does not expect this added flexibility to affect the contracting practices of the vast majority of Westcoast's customers whose preference will continue to be that of contracting for service for a gas year commencing 1 November.

Decision

The Board denies Westcoast's proposals that all service contracts and all transportation storage service contracts expire on 31 October and 30 April, respectively.

5.7.2 Other Changes Proposed to the General Terms and Conditions

CPA requested that the ethane content of a producer's gas stream be reported when Westcoast samples its gas pursuant to Article 13.02 of the General Terms and Conditions for Service. CPA also requested that the requirement to report the amount of ethane in the samples be embodied in the language of Article 13.02.

Westcoast confirmed that its gas analysis does provide a percent analysis of ethane.

Decision

The Board directs Westcoast to amend Article 13.02 to include a requirement that the amount of ethane in the sample must be reported.

Chapter 6
Disposition

The foregoing chapters, together with Order No. TG-8-89, constitute our Reasons for Decision and our Decision on this matter.

W.G. Stewart
Presiding Member

J.R. Jenkins
Member

D.B. Smith
Member

Ottawa Canada
September 1989

Appendix I
Order No. TG-8-89

IN THE MATTER OF the *National Energy Board Act* ("the Act") and the Regulations made thereunder; and

IN THE MATTER OF an application by Westcoast Energy Inc. ("Westcoast") dated 14 April 1989 for an order respecting its tolls and tariffs pursuant to Part IV of the Act, filed with the National Energy Board ("the Board") under File No. 1562-W5-14.

BEFORE:

W.G. Stewart
Presiding Member

J. R. Jenkins — on Tuesday, the 5th day
Member — of September 1989

D. B. Smith
Member

WHEREAS, by the above-referenced application, Westcoast applied to the Board to make certain changes to its toll design and its tariff provisions;

AND WHEREAS Westcoast requested that the Board approve, for accounting and toll-making purposes, certain related procedures and deferral accounts;

AND WHEREAS the Board heard evidence and submissions of Westcoast and all intervenors on the matters raised in the Phase I application at a public hearing, held pursuant to Board Order No. RH-1-89, that commenced in Vancouver on 12 June 1989 and ended in Ottawa on 18 July 1989;

AND WHEREAS the Board's decisions on the application are set out in its Reasons for Decision dated September 1989 and in this Order;

IT IS ORDERED THAT:

1. Westcoast shall:

   a) effective 1 November 1989, make the toll design and tariff changes necessary to implement the decisions in the Board's RH-1-89 Reasons for Decision dated September 1989;

   b) for accounting, toll-making, and tariff purposes, implement procedures conforming with the Board's decision outlined in the RH-1-89 Reasons for Decision dated September 1989; and

   c) by 15 November 1989, file with the Board and serve on all parties to the hearing of this application, new tolls and tariffs, including general terms and conditions and toll

schedules, conforming with the decisions outlined in the RH-1-89 Reasons for Decision dated September 1989.

2. Those provisions of Westcoast's tariffs and tolls or any portion thereof that are contrary to the RH-1-89 Reasons for Decision or this Order are disallowed effective 1 November 1989.

NATIONAL ENERGY BOARD

Louise Meagher
Secretary

Appendix II
Hearing Order RH-1-89
Directions on Procedure

Westcoast Energy Inc. - Application For Tolls Effective 1 November 1989

On 23 March 1989, the Board decided to conduct an examination of Westcoast's tolls in two phases and directed Westcoast to file its Phase I and Phase II applications and evidence on 17 April and 30 June 1989, respectively.

The examination will be held in two phases. The Phase I Hearing will deal with toll design and tariff matters. The Phase II Hearing will consider all other issues, including rate base, cost of service and rate of return.

Phase I will commence on 12 June 1989 in Vancouver, British Columbia. These Directions on Procedure deal solely with the Phase I Hearing. The Phase II Application will be considered at a second public hearing and another Hearing Order and Directions on Procedure will be issued at a later date for that hearing.

The Board directs that the procedure for the Phase I Hearing be as follows:

PUBLIC VIEWING

1. The Applicant shall deposit and keep on file, for public inspection during normal business hours, a copy of the application in its offices at 1333 West Georgia Street, Vancouver, British Columbia, V6E 3K9. A copy of the application will be available for viewing in the Board's Library, Room 962, 473 Albert Street, Ottawa, Ontario, K1A 0E5 and at the National Energy Board, 4500 - 16th Avenue, N.W., Calgary, Alberta, T3B 0M6.

METHOD OF HEARING

2. The Phase I Hearing will be held in two parts: the first will deal with the issues of capacity allocation and self-displacement; the second will deal with all other toll design and tariff matters.

INTERVENTIONS

3. Interventions were required to be filed with the Secretary and served on the Applicant by 13 April 1989.

4. The Secretary will issue a list of intervenors shortly thereafter.

5. Westcoast will serve a copy of its application and evidence on all intervenors once the list of intervenors has been issued by the Board.

INFORMATION REQUESTS TO THE APPLICANT

6. Information requests addressed to the Applicant shall be filed with the Secretary and served on all parties to the proceeding by 1 May 1989.

7. Responses to the information requests made pursuant to paragraph 6 shall be filed with the Secretary and served on all parties to the proceeding by 8 May 1989.

INTERVENOR WRITTEN EVIDENCE

8. Intervenor Written Evidence shall be filed with the Secretary and served on all parties to the proceeding by 17 May 1989.

LETTERS OF COMMENT

9. Letters of comment shall be filed with the Secretary and served on Westcoast by 17 May 1989.

INFORMATION REQUESTS TO INTERVENORS

10. Information requests with respect to the material filed pursuant to paragraph 8 shall be filed with the Secretary and served on all parties to the proceeding by 26 May 1989.

11. Responses to the information requests made pursuant to paragraph 10 shall be filed with the Secretary and served on all parties to the proceeding by 6 June 1989.

HEARING

12. The Phase I Hearing will commence in the Stage 33 room of the New World Harbourside Hotel, 1133 West Hastings St. Vancouver, British Columbia, on Monday, 12 June 1989 at 9:00 a.m.

LIST OF ISSUES

13. The Board intends to examine in Phase I, the issues specified in Appendix I. If a party wishes to address any additional issues, they are requested to apply in writing to the Secretary by 1 May 1989, setting out the additional issues which they seek to have included, and provide justification for their inclusion.

    Shortly after the receipt of those issues the Secretary will, if necessary, issue an amended Appendix I.

SERVICE TO PARTIES

14. Westcoast shall serve one copy of these Directions on Procedure forthwith on all parties to the RH-2-87 Westcoast toll proceeding, on other shippers on the Westcoast system, the Attorney General of British Columbia and the parties listed in the list of intervenors identified in paragraph 4. Westcoast is requested to file with the Board one copy of the list of all parties served.

PROCEDURE FOR HEARING OF EVIDENCE AND FINAL ARGUMENT

15. The evidence and final argument related to the issues of capacity allocation and self-displacement will be heard first, followed by the evidence and final argument on all other toll design and tariff matters.

In both cases, the following procedures shall apply:

(a) Westcoast shall present its evidence;

(b) intervenors and Board Counsel shall have the right to cross-examine Westcoast's witnesses;

(c) intervenors shall present their evidence in an order to be specified at the commencement of the proceedings;

(d) after each intervenor has presented its evidence, other intervenors, Westcoast and Board Counsel shall have the right of cross-examination;

(e) Westcoast shall present its reply evidence; and

(f) final argument shall be given.

FILING AND SERVICE REQUIREMENTS

16. Where parties are directed by these Directions on Procedure or by the draft NEB Rules of Practice and Procedure to file with the Board or serve documents on other parties, the following number of copies shall be served or filed, subject to paragraphs 18 and 19:

    (a) 35 copies of the document are to be filed with the Board.

    (b) 3 copies of the document are to be served on the Applicant; and

    (c) 1 copy of the document is to be served on Intervenors.

17. Persons filing letters of comment should serve one copy of the documents on Westcoast and file one copy with the Board, which in turn will provide copies for all other parties.

18. Parties filing or serving documents fewer than five days before the commencement of the hearing shall, in addition to the requirements set out in Paragraph 16, bring to the hearing sufficient copies for use by the Board and other parties present at the hearing.

19. Parties filing or serving documents at the hearing shall file or serve sufficient copies for use by the Board and other parties present at the hearing.

SIMULTANEOUS INTERPRETATION

20. If it appears that both official languages will be used at the hearing, simultaneous interpretation will be provided.

GENERAL

21. Unless otherwise directed by the Board, the hours of sitting shall be from 8:30 a.m. to 1:00 p.m.

22. All parties are asked to quote Order No. RH-1-89 and file no. 1562-W5-14 when corresponding with the Board in this matter.

23. Subject to the foregoing, the procedures to be followed in this proceeding shall be governed by the National Energy Board Draft Rules of Practice and Procedure dated 21 April 1987.

24. For information on this hearing, or the procedures governing the hearing, contact Ms. Lynne Alsford, Regulatory Support Officer, at (613) 998-7198.

NATIONAL ENERGY BOARD

Louise Meagher
Secretary

Appendix I

PRELIMINARY LIST OF ISSUES

A. CAPACITY ALLOCATION AND SELF-DISPLACEMENT

1. Capacity allocation policy:

   (a) Whether any party(ies) have priority rights to the capacity used to meet Westcoast's firm sales obligations, and if so, which party(ies).

   (b) Queuing procedures.

   (c) Renewal rights.

   (d) Other aspects of the policy.

2. The applicability to Westcoast of the Board's decision on self-displacement in the recent TransCanada RH-1-88 proceeding:

   (a) Implications of self-displacement on the Westcoast system.

   (b) Applicability and timing considerations regarding self-displacement.

B. TOLL DESIGN

1. Any required changes to the existing toll design after 31 October 1989 under each of the following assumptions:

   (a) the operating demand for the export market remains at or close to 727 MMcfd, and

   (b) the operating demand for the export market is substantially less than 727 MMcfd.

   (Use the 1989 approved revenue requirement to demonstrate the effect on tolls of any proposed changes to the toll design.)

2. Any required changes to the levels of the domestic and export IT tolls under 1(a) or 1(b) above.

3. The appropriate toll treatment of IT revenues.

4. The appropriate firm and interruptible tolls for transportation storage service.

5. The disposition of all deferral account balances as at 31 December 1988 and for 1989.

6. The appropriate method (percentage or unit basis) for making future adjustments to the processing-treatment curve.

C. TARIFF MATTERS

1. Tariff conditions for access to transportation service on the Westcoast system, including:

   (a) Financial assurances; and

   (b) disposal of unused contracted capacity by assignment, brokering or any other means.

Appendix III
Westcoast Energy Inc.
Queuing Procedures and Access Criteria

(a) A potential shipper requesting firm service, and an existing shipper requesting to increase its level of firm service (hereinafter referred to as a "prospective shipper"), shall make its request in writing to the pipeline company by completing a Request For Service Form (refer to Exhibit B-11) providing, among other things:

   (i) the name and the address of the prospective shipper;

   (ii) the type of firm service requested;

   (iii) the maximum daily quantity of gas to be transported;

   (iv) the term of the firm service, including the commencement and termination dates;

   (v) the receipt and delivery points;

   (vi) an indication of whether the shipper represents a firm gas supply or a firm market; and

   (vii) the source of the gas and the location of the tie-in to the pipeline company's system.

(b) The pipeline company shall sign, and shall date stamp, the Request For Service Form and shall return a copy thereof to the prospective shipper.

(c) The pipeline company shall advise the prospective shipper in writing, within ten (10) days of receipt of the Request For Service Form, of any deficiencies.

(d) The prospective shipper shall be entered into the queue in the order of the date and the time that a Request For Service Form, completed to the pipeline company's satisfaction, is received by the pipeline company. The pipeline company shall forthwith notify the prospective shipper, in writing, of its acceptance into the queue.

(e) The pipeline company shall make available to any party, upon request, a copy of the firm service queue, which shall contain the following details:

   (i) the names of the prospective shippers in the queue;

   (ii) the position in the queue of each prospective shipper;

   (iii) the date on which the pipeline company received a satisfactorily completed Request For Service Form;

   (iv) the maximum daily level of service requested by each shipper in the queue; and

   (v) the requested commencement and termination dates of service (term of service).

(f) Where the pipeline company determines that capacity is available, or will become available, the pipeline company shall offer it sequentially to prospective shippers in the queue until the capacity is fully committed. The pipeline company shall prepare, and forward to the prospective shipper a firm service agreement for execution, which shall contain a representation and a warranty that the prospective shipper will have as of the date of commencement of service all necessary authorizations, permits, licences, certificates and agreements, necessary for the delivery and redelivery of the gas under the service agreement. The prospective shipper shall execute and return the firm service agreement to the pipeline company within twenty-one (21) days of receipt. Upon receipt of the executed firm service agreement, the pipeline company shall execute its copy and return an executed copy to the prospective shipper. A prospective shipper who fails to execute and return to the pipeline company the firm service agreement within twenty-one (21) days of receipt thereof, shall be removed from the queue.

(g) Where the pipeline company determines that capacity is unavailable or is unlikely to become available, and that thus, additional facilities are required, the pipeline company shall notify the prospective shipper in writing as soon as possible after receipt of the Request For Service Form, and advise it of the additional information and documentation the pipeline company may require to support a facilities application, including:

(i) evidence that the intended market is secure and long term;

(ii) evidence that the prospective shipper has a secure and long-term source of supply;

(iii) evidence that the prospective shipper will obtain all associated regulatory approvals in a timely manner; and

(iv) other financial assurances satisfactory to the pipeline company.

The pipeline company shall prepare, and forward to the prospective shipper, a firm service agreement for execution for a term sufficient to ensure the financing of the facilities expansion and for protecting the financial integrity of the pipeline company's facilities. The prospective shipper shall execute and return the firm service agreement to the pipeline company within twenty-one (21) days of receipt. Upon receipt of the executed firm service agreement, the pipeline company shall execute its copy and return an executed copy to the prospective shipper. A prospective shipper who fails to execute and return to the pipeline company the firm service agreement within twenty-one (21) days of receipt thereof, shall be removed from the queue.

(h) Except as is otherwise provided for in paragraph (g), a prospective shipper's position in the queue shall not be affected by the volume, date of commencement, term of service, or distance requested.

(i) Where the capacity or the term of service offered a prospective shipper is other than that requested, the prospective shipper may choose to either accept the service offered and retain its position in the queue for the balance of the requested service, or reject the service offered and maintain its position in the queue.

(j) Positions in the queue are not assignable to any other party.

(k) The pipeline company shall maintain one queue for each service, zone, and discrete part thereof.