**National Energy Board**

Reasons for Decision

**TransCanada PipeLines Limited**

Application Dated 5 February 1988 for Tolls

**RH-1-88**
**Phase I**

**November 1 1988**

Minister of Supply and Services Canada 1988

Cat. No. NE 22-1/1988-9E
ISBN 0-662-16633-7

This report is published separately in both official languages.

Ce rapport est publié séparément dans les deux langues officielles.

Copies are available on request from:

Regulatory Support Office
National Energy Board
473 Albert Street
Ottawa, Canada
K1A 0E5
(613) 998-7204

Exemplaires disponibles auprès du:

Bureau du soutien de la réglementation
Office national de l’énergie
473, rue Albert
Ottawa (Canada)
K1A 0E5
(613) 998-7204

Printed in Canada

Imprimé au Canada



## 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 TransCanada PipeLines Limited for certain orders respecting tolls under Sections 50, 51 and 53 of the National Energy Board Act; and

IN THE MATTER OF National Energy Board Directions on Procedure RH-1-88.

HEARD at Ottawa, Ontario on:

16, 17, 18, 19, 20, 24, 25, 26, 27, 30 and 31 May and 1, 2, 3, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29 and 30 June and 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 26, 27, 28 and 29 July and 2, 3, 4 and 5 August and 7, 8, 9, 12 and 13 September 1988.

BEFORE:

| | |
|---|---|
| R. Priddle | Presiding Member |
| A.D. Hunt | Member |
| W.G. Stewart | Member |

APPEARANCES:

| | |
|---|---|
| J.W.S. McOuat, Q.C.<br>R.B. Cohen<br>S.B. Campbell | TransCanada PipeLines Limited |
| C.K. Yates | Canadian Petroleum Association |
| A.S. Hollingworth<br>J.A. Snider | Independent Petroleum Association of Canada |
| P.C.P. Thompson, Q.C.<br>B.A. Carroll | Industrial Gas Users Association |
| T.G. Kane<br>W. Brackett | ANR Pipeline Company |
| L.E. Smith | ATCOR Ltd. |
| J.M. Pelrine | British Columbia Petroleum Corporation |
| L.E. Smith<br>M. Hopkins | Boundary Gas, Inc. |
| L.E. Smith<br>M. Hopkins | North Canadian Marketing Inc. (formerly Brenda Marketing Inc.) |
| M.M. Peterson<br>F. Maxim | C-I-L Inc. |



| | |
|---|---|
| R.J. Hunt | CanStates Energy |
| A.M. Bigué | Champlain Pipeline Company |
| J.H. Farrell<br>D.W. Sooley | The Consumers' Gas Company Ltd. |
| J. Ryan | Cyanamid Canada Inc. and |

| | |
|---|---|
| | Cyanamid Canada Pipeline Inc. |
| A.R. Fraser | Dome Petroleum Limited |
| T. Tippacott | Dow Chemical Canada Inc. |
| W.T. Houston | Eastern Canada Natural Gas Brokers Inc. |
| L.E. Smith | Enron Canada Ltd. |
| R.P.J. Gaetz | Esso Resources Canada Limited |
| J. Hopwood, Q.C. | Foothills Pipe Lines (Yukon) Ltd. |
| L.-C. Lalonde | Gaz Métropolitain, inc. |
| M.M. Peterson<br>W. Fruehauf | General Chemical Canada Ltd. |
| J.D. Brett | Greater Winnipeg Gas Company and ICG Utilities (Manitoba) Ltd. |
| J.H. Smellie<br>D.K. Wilson | ICG Utilities (Ontario) Ltd |
| D. Masuhara | Inland Natural Gas Co. Ltd. |
| S.J. May<br>J.A. Horte | Metro Gaz Marketing, inc. |
| E.B. McDougall | Northern Border Pipeline Company |
| M.L. Himmelspach | Northridge Petroleum Marketing, Inc. |
| J. Hopwood, Q.C.<br>H. Williamson | NOVA Corporation of Alberta |
| K.L. Meyer | Pan-Alberta Gas Ltd. |
| T.M. Hughes | Polysar Limited |
| W. Fruehauf | PPG Canada Inc. |



| | |
|---|---|
| K.J. MacDonald<br>N.W. Boutillier | ProGas Limited |
| D.G. Hart, Q.C. | PSR Gas Ventures Inc. |
| K.D. Wellman | Saskatchewan Power Corporation |

| | |
|---|---|
| N.P. Aurini | Shell Canada Limited |
| L.E. Smith | Simplot Chemical Company Ltd. |
| N.J. Schultz | Tennessee Gas Pipeline Company and Midwestern Gas Transmission Company |
| C.C. Buchanan | Texaco Canada Resources |
| D.A. Brown<br>G. Goldlist | TOPGAS Holdings Limited and TOPGAS Two Inc. |
| W.G. Burke-Robertson, Q.C. | TransContinental Gas Pipe Line Corporation |
| L.-A. Leclerc | Trans Québec & Maritimes Pipeline Inc. |
| P. Gilchrist<br>D. Murphy | Union Gas Limited |
| A.M. Bigué | Vermont Gas Systems, Inc. |
| A R. Androsoff | Westcoast Energy Inc. |
| P. McCunn-Miller<br>G. McNamara<br>S.F. McAllister | Alberta Petroleum Marketing Commission |
| J. Blakeney<br>J. Howe<br>S. Simpson | Consumer and Corporate Affairs, Director of Investigation and Research |
| H.C.R. Clark<br>A. Thompson | Manitoba Minister of Energy and Mines and Manitoba Oil and Gas Corporation |
| P.D. Morris | Minister of Energy for Ontario |
| J. Giroux<br>J. Robitaille | Procureur général du Québec |
| L. keough<br>R. Graw | National Energy Board |



**Table of Contents**

Recital and Appearances (i)

Abbreviations (vi)

Overview (viii)

1. Background and Application 1

2. Displacement and Operating Demand Methodology 3

2.1 Self-Displacement 3

2.1.1 Background 3

2.1.2 Should Self-Displacement be Allowed? 7

2.1.3 Self-Displacement Implications 15

2.1.4 When Should Self-Displacement Begin and Should it be Phased-In? 16

2.1.5 Under What Circumstances Should OD Relief be Granted for Self-Displacement Volumes? 16

2.1.6 For OD Purposes, Should Self-Displacement be Included in the Formula for Prorating Displacement Volumes? 17

2.1.7 Are There any Other Considerations in Allowing Self-Displacement? 17

2.1.8 Is There a Necessity to Maintain the OD Concept? 18

2.2 The Application of OD Methodology to ACQ Service 20

2.3 The Prorating of OD Reductions 22

3.The Disposition of 1987 Deferral Account Balances 25

3.1 Method of Disposition 25

3.2 Jurisdiction to Order a Refund of Deferral Account Balances 27

3.3 Deferral Account Adjustment Procedures 28

3.4 Amortization Period 28

3.5 1988 Revenue Surplus 28

3.6 Carrying Charges on Deferral Accounts 29

3.6.1 1987 Deferred Amounts 30

3.6.2 1988 Interim Revenue Variance 30

4. Tariff Matters 31

4.1 Availability of Services 31

4.2 Provision of Fuel by Shippers 32

4.2.1 Monthly versus Annual Fuel Ratios 33

4.2.2 Reconciliation of Monthly Fuel Ratios to an Approved Annual Ratio 34

4.2.3 Inclusion of Lost and Unaccounted-For Gas in the Fuel Ratios 34

4.2.4Inclusion of the Great Lakes Gas Transmission Company (Great Lakes ) Fuel Requirement in the Fuel Ratios 35

4.2.5 Requirement versus Option to Provide Fuel 36

4.2.6 IGUA's Proposal 36

4.3 Tendering Process for Company-Use Gas Requirements 37

4.4 The Inclusion of Sales and Marketing Matters in the Tariff 38

4.5 The Amalgamation of the Uniform Toll Schedule and the General Terms and Conditions 39



4.6 The Availability of Temporary Winter Service (TWS) 39

4.7 Transportation Services Delivery Obligations 40

4.8 Interruptible Service (IS) Toll Schedule 41

4.8.1 Section 2.4 re Customer Forecast 41

4.8.2 Section 3.2 re IS-1 Nominations 42

4.83 Priority of Domestic versus Export IS Volumes 43

4.9 Availability of Temporary Summer Service (TSS) 44

4.10 Toll Schedules for Storage Transportation Service (STS) 45

4.11 Conflict in Interpretation of Tariffs and Contracts 45

5. Disposition 46

**Appendices**

I Hearing Order No.RH-1-88, as Amended 47

II NEB Decision Issued 17 June 1988 Regarding Disposition of Deferred Amounts 60

III Order No.TG-8-88 64

IV Tariff Provisions Relating to Sales and Marketing Matters Which Can Be Revised Immediately 65

V NEB Decision Issued 6 October 1988 Regarding Prorating of OD Reductions 66

VI NEB Decision Issued 27 October 1988 Regarding Union Gas Limited Application for OD Relief dated 24 March 1988 67



**Abbreviations**

| | |
|---|---|
| ACQ | Annual Contract Quantity |
| APMC | Alberta Petroleum Marketing Commission |
| Board, NEB | National Energy Board |
| CD | Contract Demand |
| C-I-L | C-I-L Inc. |
| Consumers Gas | The Consumers' Gas Company Ltd. |
| CPA | Canadian Petroleum Association |
| Cyanamid | Cyanamid Canada Inc. and Cyanamid Canada Pipeline Inc. |
| ECNGB | Eastern Canada Natural Gas Brokers Inc. |
| FS | Firm Service |
| Gas Agreement | Agreement among the Governments of Canada, Alberta, British Columbia and Saskatchewan on Natural Gas Markets and Prices, dated 31 October 1985 |
| GJ | gigajoule |
| GMi | Gaz Métropolitain, inc. |
| Great Lakes | Great Lakes Gas Transmission Company |
| GWG | Greater Winnipeg Gas Company |
| ICG (Manitoba) | ICG Utilities (Manitoba) Ltd |
| ICG (Ontario) | ICG Utilities (Ontario) Ltd |
| IGUA | Industrial Gas Users Association |
| IPAC | Independent Petroleum Association of Canada |

| | |
|---|---|
| IS | Interruptible Service |
| LDC | Local distribution company |
| Manitoba | Manitoba Minister of Energy and Mines and Manitoba Oil and Gas Corporation |
| NEB Act | National Energy Board Act |



| | |
|---|---|
| North Canadian | North Canadian Marketing Inc. |
| Northridge | Northridge Petroleum Marketing, Inc. |
| NOVA | NOVA Corporation of Alberta |
| OD | Operating Demand |
| Ontario | Minister of Energy for Ontario |
| Polysar | Polysar Limited |
| PPG | PPG Canada Inc. |
| PS | Peaking Service |
| PSR | PSR Gas Ventures Inc. |
| Quebec | le Procureur général du Québec |
| SGR | System Gas Resale |
| SGS | Small General Service |
| STS | Storage Transportation Service |
| T-ACQ | Transportation-Annual Contract Quantity |
| T-Service | Transportation-Service |
| T-TSS | Transportation-Temporary Summer Service |
| TCPL, TransCanada, the Company | TransCanada PipeLines Limited |
| TOPGAS | TOPGAS Holdings Limited and TOPGAS Two Inc. |
| TSS | Temporary Summer Service |
| TWS | Temporary Winter Service |
| Union | Union Gas Limited |

## 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 the readers are referred for the detailed text.)

### The Application

In view of the number of issues to be examined in RH-1-88, the Board decided to split the proceedings into two phases. Phase I would deal with toll design and tariff matters and Phase II would examine cost of service and related issues.

On 5 February 1988 TransCanada PipeLines Limited (TCPL) submitted an application for Phase I identifying only those issues in respect of which it sought to modify its tariff. On 19 February the Board issued Hearing Order RH-1-88 together with a list of issues it wished to examine in addition to those identified by TCPL in its application. On 14 March 1988 this list was replaced by an expanded list of issues.

On 24 March 1988, Union Gas Limited applied to the Board for demand charge relief in respect of a direct purchase of gas by C-I-L Inc. under an interruptible service contract. This application was incorporated into this hearing.

On 28 March 1988 TCPL requested the Board to consider the matter of the disposition of the 1987 deferral account balances as a separate matter at the outset of Phase I, hearing all evidence and argument on this topic before proceeding with the Phase I issues. The Board accepted this proposal and issued its decision, without reasons, on 17 June 1988 disposing of the 1987 deferred balances. As well, the Board adjusted the interim tolls for 1988 to effect disposition of the 1987 balances and to more accurately reflect TCPL’s probable revenue requirement for 1988.

### The Hearing

A public hearing lasting 54 days was held in the Board’s hearing room in Ottawa from 16 May 1988 to 13 September 1988.

### Self-Displacement

The Board decided that a continuation of the current prohibition against self-displacement would not enhance the ability of TCPL/WGML and the distributors to achieve freely negotiated prices and other contractual terms. The self-displacement policy has contributed to a significant portion of the consuming sector being denied the full benefits of gas deregulation. The achievement of a fully market sensitive pricing regime in conjunction with nondiscriminatory access

could be prolonged, in part, because of the presence of the prohibition on self-displacement. Accordingly, the Board policy prohibiting self-displacement will be rescinded effective 1 November 1989. This will allow time for a fair and orderly transition.

**Operating Demand Methodology**

The Board decided to allow T-ACQ contracts to displace ACQ contracts under its operating demand methodology.

The Board decided that the prorating of OD reductions is no longer appropriate and shall be discontinued.



**Disposition of Deferral Accounts**

The Board decided that the 1987 deferred net credit balances totaling $76,403,494 should be credited to the 1988 cost of service. The Board therefore approved a reduction in interim tolls effective 1 July 1988 which reflects an amortization of the balances over the remaining six months of the 1988 test year.

TCPL and many other parties to these proceedings argued that the 1987 deferred balances should be returned to the tollpayers through a refund of tolls paid rather than a credit to the cost of service. While the Board accepted that it does have the jurisdiction to order refunds, it decided that, in this instance, a credit to the 1988 cost of service was the more appropriate course of action.

The Board decided that the rate of return on rate base is the appropriate rate for carrying charges on the unamortized balances of the 1987 operating deferral accounts. With respect to any 1988 revenue variance which may result from the use of interim tolls the Board has approved the use of an appropriate unfunded debt rate, which is to be determined during Phase II of this proceeding.

**Tariff Matters**

**Availability**

The Board directed TCPL to remove, from the availability provisions of its tariff, the requirements for proof of adequate gas supply and provincial removal permits for the full term of the transportation contract.

**Fuel**

The Board confirmed the use of monthly fuel ratios for FS service and extended this methodology to all services. As well, the Board approved the removal from TCPL’s tariff of the requirement for an annual reconciliation of each shipper’s provision of fuel gas to an approved annual average fuel ratio. The Board denied requests by TCPL to include lost and unaccounted-for gas in the fuel ratio and to require all

shippers to provide their own fuel. As well, the Board decided not to require TCPL to adopt a tendering process for its company-use gas requirements at this time and denied a proposal by IPAC to include the Great Lakes fuel requirement in the fuel ratio.

**New Tariff**

The Board directed TCPL to file, 1 November 1989, a new tariff to be called the TransCanada PipeLines Limited Transportation Tariff which will amalgamate the "Uniform Toll Schedule" and the "General Terms and Conditions" and which will exclude matters related to gas sales and marketing.

**Temporary Winter Service**

The Board directed TCPL to amend its TWS Toll Schedule to remove the requirement that users of this service also hold FS, SGS or ACQ contracts.

**Delivery Obligation**

The Board approved tariff amendments which determine delivery obligations under transportation contracts at the delivery point.



**Interruptible Service**

The Board confirmed the tariff requirements that shippers provide a forecast of nominations by the 15th day of the preceding month. TCPL was directed to delete from its IS tariff both the provision for payment of the IS-2 toll if IS-1 service is requested but not required, and the distinction in priority between domestic and export interruptible service.

**New Services**

The Board approved a toll schedule for Storage Transportation Service (STS) and directed TCPL to bring forward a proposed tariff and toll design for Temporary Summer Service (TSS).

# Chapter 1

## Background and Application

On 21 December 1987, TransCanada PipeLines Limited (TCPL, TransCanada, the Company) applied to the National Energy Board (the Board, NEB) under Sections 50, 51 and 53 of the National Energy Board Act (NEB Act) for orders making its existing tolls interim effective 1 January 1988 and for new tolls for the 1988 and 1989 test years. The level of interim tolls applied for by TCPL was substantially less than the then-existing tolls.

The Board, by letter dated 30 December 1987 and by Order No. TGI-55-87, established interim tolls for TCPL, effective 1 January 1988. These tolls were set at the level of the existing tolls established pursuant to Order No. TG-3-87 and not at the level requested by TCPL. The Board wanted to assess all the material TCPL intended to file in support of its application before deciding on the appropriate level for the new interim tolls.

On 29 December 1987 TCPL submitted a supplement to its application containing the information upon which it intended to rely in support of its application.

On 7 January 1988 the Board advised TCPL that its application, which employed a test year of 1 July 1988 to 30 June 1989, was not consistent with previous Board decisions dealing with an appropriate test year for TCPL. The Board advised TCPL that it intended to establish final tolls effective 1 January 1988 based on the calendar 1987 base year and the calendar 1988 test year. TCPL was directed to file an application for tolls to be effective 1 January 1988 by no later than 5 February 1988.

By letter dated 21 January 1988 and by Order No. AO-1-TGI-55-87 the Board revised the level of interim tolls authorized to be charged by TCPL. In addition, by letter dated 29 January 1988 the Board announced that it had decided to divide the forthcoming toll hearing into two phases, with Phase I dealing with certain toll design and tariff matters and Phase II covering cost of service, related issues, and remaining toll design and tariff matters.

TCPL subsequently withdrew its application of 21 December 1987 and on 5 February 1988 submitted a new application to the Board for orders under Sections 50, 51 and 53 of the NEB Act fixing the just and reasonable tolls that it may charge for or in respect of transportation of gas sold and for transportation services rendered by it for the period 1 January 1988 to 31 December 1989. The application referred only to those matters to be disposed of in Phase I and identified only those issues in respect of which TCPL sought to modify its tariffs

On 19 February 1988 the Board issued Hearing Order No. RH-1-88 directing, inter alia, that a public hearing be held in two phases, with Phase I commencing on 16 May 1988, in Ottawa. The Board established an initial list of issues, in addition to those issues raised in TCPL's application, that it proposed to deal with in each phase and sought the views of all parties on proceeding in this manner. In order to expedite the hearing

the Board indicated that a pre-hearing conference, to discuss procedural matters, clarify responses to information requests and provide for an exchange of documents among parties would be held on 21 April 1988 in Toronto.

On 14 March 1988 the Board advised TCPL and Intervenors of its decisions regarding additional issues to be dealt with in the hearing and the assignment of issues to Phases I and II of the hearing. Order No. AO-1-RH-1-88 replaced the initial list of issues with the revised list of issues to be considered during the hearing.

One of the issues on the amended list was the prorating of OD reductions between system and nonsystem gas supplies. Included in this issue was consideration of an application dated 20 November 1987 by PSR Gas Ventures Inc. (PSR). PSR had applied to the Board for a review of Section 11.4 of the RH-3-86 Reasons for Decision which states that the prorating of displacement volumes for OD purposes will be restricted to the delivery area rather than a distributor's franchise area.

On 6 October 1988, the Board issued its decision, without reasons, on the PSR application and the prorating issue in general. The Board's reasons for this decision are provided in Section 2.3.

On 28 March 1988, TCPL requested that the Board consider the matter of the appropriate disposition of the 1987 deferral account balances as a separate matter at the outset of Phase I and hear the evidence and argument of TCPL and all intervenors on this matter before proceeding to hear the balance of the Phase I issues. The Board granted TCPL's request and on 7 April 1988 informed parties that it would announce the Board's decision on this matter as soon as possible after hearing argument on the issue. On 17 June 1988 the Board issued its decisions with respect to this matter with reasons to follow. Those reasons are provided in Chapter 3.

Union Gas Limited (Union) applied to the Board on 24 March 1988 for relief from the payment of demand charges to TCPL in respect of gas purchases by C-I-L Inc. (C-I-L) which were transported on the TCPL system under an Interruptible Service (IS) contract. Union alleged that these gas purchases constituted a displacement and therefore it was entitled to relief under the Operating Demand (OD) methodology. Union did not seek an OD reduction, but rather requested that it be permitted to reduce its nominations to TCPL during the month by volumes equal to those which C-I-L transported under IS during the preceding month. On 31 March 1988, Union amended its application to include a request that a deferral account be established to record the fixed cost component of the tolls collected by TCPL with respect to the C-I-L IS service agreement. Union's application was assigned to the TCPL hearing panel for disposition and was included as part of these proceedings. On 27 October 1988 the Board issued its decision, together with the reasons, on this matter. The Board's decision is included in these Reasons for Decision as Appendix VI.

On 2 May 1988 the Board issued its procedural decisions resulting from matters raised at the pre-hearing conference. In addition to providing

clarification on certain issues and indicating whether they would be dealt with during these proceedings, the Board indicated that the application by Union for relief in respect of displacement by interruptible service would be dealt with during Phase I as a specific case and not on a generic basis. Also, the Board established a procedure for the filing of submissions by interested parties on Union's application.

## Chapter 2

## Displacement and Operating Demand Methodology

The decisions of the Board in respect of the selfdisplacement issue, as set forth in Section 2.1, are based on the Board's consideration of the evidence and argument presented by the parties to the RH1-88 proceeding. After the close of the Phase I proceeding and after the Board had arrived at these decisions, Western Gas Marketing Limited (WGML) issued a press release dated 17 October 1988 indicating that new contractual arrangements had been concluded with most of the distributors. The press release indicates that, for the most part, the Contract Demand (CD) contracts will be unbundled through new contracts between WGML and the distributors for the sale of gas at the Alberta/Saskatchewan border and new contracts between TCPL and the distributors (as shippers) for the transportation of the gas to the distributors' franchises. However, the Board notes that the new contractual arrangements require certain conditions precedent (producer and regulatory approvals) to be satisfied by 1 February 1989. Although the new contractual arrangements may have the effect of rendering moot the decisions which are contained in this report with respect to the self-displacement issues, they do not change the Board's conclusions and decisions that are set out in these Reasons for Decision and which are based on the consideration of the evidence and arguments in these proceedings. The conclusions and decisions of the Board set forth below must therefore be read in that light.

### 2.1 Self-Displacement

#### 2.1.1 Background

In Hearing Order No. RH-1-88, the Board listed several questions on the issue of selfdisplacement for interested parties to address (see Appendix I). In raising the issue of selfdisplacement, the Board, in its letter dated 15 March 1988 to TCPL, provided the following

reasons for including it as an issue in the RH-1-88 proceedings:

"Having regard to the dynamic nature of the industry and the market place, the Board wishes to take the opportunity provided by this hearing to determine the extent to which the orderly transition to a market-oriented pricing regime has progressed. This will assist the Board in determining whether its views on displacement and OD methodology, as stated in RH-5-85, RH-3-86 and MH-1-87, are still appropriate. The Board believes that this hearing will provide an opportunity for all parties to deal with the traffic, toll and tariff aspects of these subjects in a thorough and generic manner as they relate to the TransCanada system."

Phase I of the RH-1-88 proceedings has provided the desired opportunity for the Board and interested parties to examine the extent to which a fair and orderly transition from an administered pricing system to a market-sensitive pricing regime has progressed. This opportunity arises two and one-half years after the policy framework for such a regime was enunciated in the 31 October 1985 Agreement on Natural Gas Markets and Prices (the Gas Agreement). From the Board's perspective, the hearing has

also opened a window on the effects that its regulatory policies and decisions, respecting traffic, tolls and tariffs, have had on the conditions needed to foster the market-sensitive pricing system envisioned in the Gas Agreement. It is in this context of a possibly changed environment that the issue of selfdisplacement must be examined. In doing so, the Board considers a review of the circumstances in which the Board's regulatory decisions have been made is appropriate to place the self-displacement issue in its proper perspective.

The Western Accord of March 1985 among the governments of Canada, Alberta, British Columbia and Saskatchewan concluded that "a more flexible and market-oriented pricing regime was required for the domestic pricing of natural gas". The Gas Agreement among the same four signatories was intended "to create the conditions" for such a regime, "including an orderly transition which is fair to consumers and producers and which will enhance the possibilities for price and other terms to be freely negotiated between buyers and sellers."

In creating the conditions for the market-oriented pricing regime, the signatories to the Gas Agreement also enunciated certain principles, including the following:

... all natural gas prices in interprovincial trade will be determined by negotiation between buyers and sellers";

- "Access will be immediately enhanced for Canadian buyers to natural gas supplies and for Canadian producers to natural gas markets ...";

- "The twelve-month period commencing November 1, 1985 is the transition to a fully market-sensitive pricing regime";

- "... purchase and sale of natural gas will be freely negotiated."; and

- "... to foster a competitive market for natural gas in Canada, consistent with the regulated character of the transmission and distribution sectors of the gas economy".

The change in government policy in 1985 effectively changed the environment under which the gas industry would operate and conduct itself. The Board's RH-5-85, RH-3-86 and MH-1-87 Reasons for Decisions dealt with these changes in relation to those matters within its jurisdiction and under the circumstances prevailing at the time of those proceedings. In particular, under Part IV of the NEB Act, the Board has jurisdiction on matters pertaining to pipeline transportation services, including just and reasonable tolls and conditions of access relating to those services. Insofar as such services are necessary for the movement of gas from the supply sources to the consuming markets, the cost of transportation and the conditions of access would have an effect on the ability of producers to access gas markets and the ability of consumers to access gas supplies. Consequently, enhanced access to gas markets and supplies would require improved access to transportation to facilitate the market-sensitive pricing system.

The signatories to the Gas Agreement recognized enhanced access as a

necessary condition to achieve a market-sensitive pricing regime. In Paragraph 7 of that Agreement, the signatories requested the Board to review:

whether inappropriate duplication of demand charges (double demand charges) from displacement sales occurred as a result of the then-existing cost allocation and toll design for TCPL; and

the continued appropriateness of the displacement proviso in TCPL's tariff, while taking into account among other things, the fair and equitable sharing of take-or-pay charges.

In RH-5-85, the Board responded to that request pursuant to Subsection 20(3) of the NEB Act and acted on its own motion pursuant to Subsection 17(1) of the NEB Act to review those matters affecting the availability of transportation services in relation to the TCPL tariff and the possibility of double demand charges in relation to the setting of just and reasonable tolls.

In the RH-5-85 Decision, the Board concluded that double demand charges were inconsistent with the establishment of just and reasonable tolls. These charges occurred when a customer who previously purchased gas through a distributor arranged a direct gas purchase. As a result, the customer was required to pay the demand toll twice, once to TCPL for transportation service and once for unabsorbed demand charges incurred by the distributor as a result of the direct purchaser's displacement of the distributor's CD contract volumes. TCPL had argued that the double demand charge problem depended on its willingness to negotiate CD relief. The Board disagreed with that view and decided to exercise its Part IV jurisdiction under the NEB Act to implement the OD methodology for toll design and cost allocation.

The OD methodology substituted OD volumes for the daily contract demand volumes specified in the CD contracts between TCPL and the distributors. The OD volume was determined to be the contract demand volume specified in a distributor's CD contract with TCPL, less the total amount by which the distributor's CD volumes had been displaced by direct purchases on the TCPL system. As a result, the amount of demand charges payable by the distributor to TCPL under the CD contracts was reduced. This effectively eliminated the unabsorbed demand charges incurred by a distributor. Consequently, a direct purchaser was relieved of double demand charges. The tolls the direct purchaser paid TCPL kept TCPL whole with respect to the recovery of fixed costs of the pipeline system that the distributor was no longer obligated to pay. The net result was to make the cost of transportation services for direct purchases just and reasonable.

At the same time, the Board's action required both TCPL and the distributor to perform under the CD contracts only up to the level of the OD volumes set by the Board. However, any effect that the OD methodology had upon the CD contracts was incidental to the Board's exercise of its powers under the NEB Act to establish just and reasonable tolls. The 1986 Federal Court of Appeal decision1, on an appeal by TransCanada, upheld this view of the Board's broad toll-making powers to establish the OD methodology for the computation of tolls. The Court simultaneously

dismissed TCPL’s assertion that the Board exceeded its jurisdiction in applying OD volumes because of their effect on the discharge of TCPL’s contractual obligations to its distributors.

In the RH-5-85 Decision, the Board also decided to eliminate the displacement proviso in TCPL’s tariff, which basically prohibited the displacement or substitution of TCPL’s CD contract gas sales to a distributor. In eliminating that provision, direct sale displacements could occur without infringing upon TCPL’s tariff as approved by the Board. This had the effect of enhancing access to transportation services for direct sellers and purchasers of gas and thereby enabling the market-sensitive pricing system to operate.

The Board recognized its rulings would affect system gas producers because of the take-or-pay charges associated with the gas supply contracts underpinning the CD contracts. The Board concluded that responsibility for the take-or-pay problem should be shared and made recommendations to the governments for the fair and equitable sharing over a three-year period of carrying charges associated with the problem. Those recommendations involved the collection of a portion of the carrying charges associated with the obligations to TOPGAS Holdings Limited and TOPGAS Two Inc. (TOPGAS) through the Alberta cost of service or, alternatively, through a surcharge mechanism applied to non-system gas. The Board also concluded that any future take-or-pay obligations should be settled by TCPL and its producers.

In addition, the Board recognized that it did not have the jurisdiction to implement the surcharge alternative because the TOPGAS carrying charges related more properly to the gas acquisition function than to the gas transportation function. Consequently, an amendment to the NEB Act would have been required to give the Board the power to implement the surcharge solution. However, this was not necessary because the Alberta Legislature subsequently enacted the Take-or-Pay Cost Sharing Act which reflected the surcharge alternative.

During the RH-5-85 proceedings, most of the distributors sought permission to convert their CD contracts into transportation service contracts to enable them to displace their CD contracts with direct-purchase gas. The Board concluded, in its RH-5-85 Decision, that this concept of selfdisplacement was not within the intent of the Gas Agreement and declined to order tariff changes to accommodate it.

While the RH-5-85 proceedings were in progress, it was also necessary for the Board to order TCPL, pursuant to Subsection 59(2) of the NEB Act, to transport gas on behalf of direct purchasers. At that time TCPL was concerned about the effect of direct purchases on its contractual obligations to the distributors under the CD contracts and to its producers and the TOPGAS consortium in respect of its take-or-pay obligations. These matters and subsequent concerns, such as financial assurances and capacity constraints, made TCPL reluctant to voluntarily transport direct purchase gas. In April 1987, as events unfolded to resolve these impediments to transportation access,

1 TransCanada PipeLines Limited and National Energy Board, (1987) 72

TCPL became amenable to contracting with shippers for the transportation of direct-purchase gas. Until that time, the Board had frequently found it necessary to exercise its powers under Subsection 59(2) of the NEB Act to make transportation available to enhance access to domestic gas supplies and markets.

Taken together, the above-referenced rulings had the effect of enhancing access to transportation services and moving TCPL towards becoming an open-access pipeline carrier with segregated transportation and merchant functions. Consistent with the change in environment from an administered to a market-sensitive pricing regime created by the Gas Agreement, the Board believed that the removal of the displacement proviso and other restrictions on access to the TCPL system would enable buyers and sellers to freely negotiate prices.

Although no specific evidence relating to its continued appropriateness was adduced in the RH-3-86 proceedings, the Board maintained and elaborated on its self-displacement policy. It stated in its RH-3-86 Decision that selfdisplacement, in general, occurs when a distributor replaces any portion of its presently contracted firm supply with an alternate supply or makes any other arrangement that accomplishes the same end

It was not until the MH-1-87 proceedings, which related to a specific application by the Manitoba Oil and Gas Corporation, that self-displacement was challenged against the background of the Board's two previous decisions. In its MH-1-87 Decision, the Board denied the request by Manitoba Oil and Gas Corporation for an order under Subsection 69(2) of the NEB Act to obtain access to transportation services on the TCPL system. In denying the application, the Board concluded that the Applicant's proposed transportation arrangements constituted selfdisplacement in substance. The Board also found that denial of the application would not result in unjust discrimination in terms of access to transportation services because granting the application would not be consistent with the orderly transition to a market-sensitive pricing regime, as contemplated by the Gas Agreement, and would be contrary to the public interest.

**Views of the Board**

Given that overview, the Board, in examining the nature and the extent to which an orderly transition to a fully market-sensitive pricing regime has progressed, is cognizant of its past decisions and their impact in effecting a fair and orderly transition to such a regime. It recognizes that, as in most transitions, achievement of the ultimate goals of some parties may have been deferred. In considering what remains to be achieved, the Board continues to be guided by its mandate under the NEB Act in relation to setting just and reasonable tolls and the conditions of access to transportation services.

The Board has a broad long-term objective of segregating the merchant and transportation functions of pipeline companies in such a manner that

non-discriminatory access will be available to any party wishing to utilize the transmission system. In pursuit of this objective, the Board has taken measures to ensure that all parties are treated fairly and equitably with respect to the charging of tolls and the application of the terms and conditions of transportation. The selfdisplacement issue relates to both of these aspects of the Board's regulatory mandate.

In examining the continued appropriateness of the Board's self-displacement policy, the Board views its previous decisions as statements of its own regulatory policy and not of government policy. Although the Board considers its regulatory policies and decisions as being congruent with the expressed policies of the signatories to the Gas Agreement, they are of necessity of the Board's own making. These policies and decisions addressed matters which are within the Board's jurisdiction under the NEB Act, while at the same time they reflected an awareness of the changes in the industry desired by signatory governments and intended to be achieved by the Gas Agreement. However, the signatories to the Gas Agreement cannot give direction to this Board in how to deal with matters under the NEB Act that are under the sole purview of the Board.

As the Board has stressed during these proceedings, it is not reviewing its earlier decisions. The Board believes that its previous decisions were correct in light of the then-prevailing circumstances. Rather, in the RH-1-88 proceedings, the Board is looking prospectively at the continued appropriateness of its regulatory policies on OD methodology, displacement, and selfdisplacement in the light of current circumstances and based on the evidence placed before

The Board also notes that its previous decisions have not been determined solely with reference to the Gas Agreement. In making determinations under its Part IV jurisdiction, the Board has given due weight to the overall public interest, while having regard to the specific requirements placed on it by the NEB Act.

Parties in these proceedings had different views as to what constitutes the public interest and the weight to be given to it in making Part IV determinations. Some parties, like Union, suggested a definition for the Board to adopt. On the other hand, the Alberta Petroleum Marketing Commission (APMC) suggested that the Gas Agreement itself was in the public interest, although it acknowledged that the Gas Agreement was not the sole determinant of the public interest for the Board's consideration. For the most part, parties to these proceedings agreed that the Board must consider the public interest as one factor to be taken into account when determining traffic, toll and tariff matters. The Board concurs with this view. However, it also takes the view that the overall public interest transcends the positions of individual parties as to what that public interest is: the overall public interest must balance the competing political, economic and social interests. In balancing these competing interests, the Board is guided by the principles of fairness and equity which are inherent in the Board's exercise of its mandate to set just and reasonable tolls and to establish non-discriminatory access to transportation.

### 2.1.2 Should Self-Displacement be Allowed?

In reviewing the evidence, the arguments for and against the continued appropriateness of the no self-displacement policy covered a broad spectrum of individual interests. These competing interests focussed on the achievement of a fair and orderly transition to a market-sensitive pricing regime in relation to the public interest. The evidence and arguments presented raised several issues bearing on the progress being made towards such a regime. These included: the continued existence and effects of a gas supply overhang; the continuation of TOPGAS obligations and potential future take-or-pay obligations; the availability of capacity on the NOVA Corporation of Alberta (NOVA) pipeline system; the passthrough of TCPL/WGML/distributor negotiated prices under existing contracts and the effects of rate rebalancing proposals by distributors; consuming provinces' actions affecting access to consuming markets; provincial regulatory bodies' jurisdiction affecting access to distributor systems and the unbundling of distributor services and rates; developing policies on contractual protection for "core-market" consumers; contractual arrangements with respect to the "sanctity of contracts" and arbitration; and implicit price discrimination and market segmentation by type of end-use and size and character of end-user. The Board has sought to take all of these matters into account in assessing the current state of the transition to a market-sensitive pricing regime. However, comments on some particular issues which arose during the hearing are warranted. These include; the sanctity of contracts, arbitration, TOPGAS and future takeor-pay obligations, the gas supply overhang, gas removal permits, price discrimination, market segmentation, and access to distributor systems.

**Sanctity of Contracts**

All parties agreed with the principle of the sanctity of contracts, but opinions differed on what it meant and how it should apply.

TCPL, the Canadian Petroleum Association (CPA), the Independent Petroleum Association of Canada (IPAC) and the APMC argued that the Gas Agreement intended that the existing contracts be honoured and pointed specifically to Paragraphs 13 and 14 of that Agreement for support of this view. These paragraphs provided for the negotiation of prices under the pre-November 1985 gas sales contracts and required parties to the contracts to seek arbitration in the absence of an agreement on price. These parties therefore held the view that the Gas Agreement provided for the continuation of the existing contracts. It was argued that to allow self-displacement would be tantamount to abrogation of the pre-November 1985 CD gas sales contracts between TCPL/ WGML and the distributors. By allowing selfdisplacement, the chain of upstream contracts for gas supply and transportation would be affected similarly and this too would be contrary to the principle of sanctity of contracts.

The CPA and TCPL argued that there was more to the contracts than the written words in them. In entering into the contracts the distributors undertook to do more than simply pay demand charges. It was argued that there was a moral or implicit obligation or intention by the distributors

to take gas as well. On the other hand, the distributors indicated that that might have been the case only because TCPL had virtually the only source of gas supply available to them at the time.

The CPA witnesses also pointed out that prior to the RH-3-76 Reasons for Decision, the toll schedules of the CD contracts contained a take-or-pay/ minimum bill obligation which recovered pipeline fixed costs and gas costs. However, as a result of that Decision in 1976, the take-or-pay provisions were removed from TCPL's tariff in conjunction with the change in toll design to include all pipeline fixed costs in the demand charge. It was argued that the new demand charge provided a financial incentive for the distributors to take gas. Although The Consumers' Gas Company Ltd. (Consumers Gas) and Union agreed that the demand charge was an economic incentive for them to take gas under those contracts, they disagreed that there was any obligation to take gas.

Those arguing for the removal of the selfdisplacement prohibition, including the distributors, namely Consumers Gas, Union, ICG Utilities (Ontario) Ltd (ICG (Ontario)), ICG Utilities (Manitoba) Ltd. (ICG (Manitoba)), Greater Winnipeg Gas Company (GWG) and Gaz Métropolitain, inc. (GMi), stated that the existing restriction on self-displacement created an obligation to take gas under the CD contracts where no such obligations exist. They argued that the CD contracts provided the distributors with an entitlement to take gas and that they were obligated to pay only the demand charges under the contracts. At the same time, it was their view that TCPL was obligated, on request, to deliver gas under those contracts. The distributors' evidence was that the prohibition on self-displacement has effectively limited their access to transportation services on the TCPL system. This in turn has restricted the distributors' ability to arrange for displacement gas supplies. Therefore, they argued that they are, in effect, required to take gas under the CD contracts first before they can access alternate gas supplies. Insofar as the selfdisplacement prohibition in effect "obliged" the distributors to take gas under the CD contracts, the distributors argued that their contractual arrangements with TCPL were not "freely" renegotiated.

During these proceedings, the question arose as to whether the TCPL and distributor CD contracts expire on 31 October 1988 in the absence of a price. This "no price, no contract" view was taken by most distributors and later in the proceedings, TCPL agreed with this scenario. It was subsequently argued that in such circumstances, selfdisplacement would be a non-issue because there would no longer be any CD contracts to selfdisplace on 1 November 1988. On the other hand, the CPA in argument raised the possibility that the contracts could continue under other contract laws, such as the Ontario Sale of Goods Act, and the contracts would simply be suspended. The main view taken by TCPL, the CPA, IPAC, and the APMC was that the Gas Agreement intended that the existing CD contracts continue after deregulation, that Paragraphs 13 and 14 of the Gas Agreement provided for the renegotiation of prices and volumes under the CD contracts, and that, in the absence of agreement, the parties were to seek arbitration

**Views of the Board**

The Gas Agreement did express a desire that the existing CD contracts continue and that failing any agreement on price, the parties to those contracts were to seek arbitration. However, as the evidence indicates, the parties viewed the Gas Agreement as a political document which contained no specific sanctions to ensure that these intentions would be fulfilled.

The evidence in these proceedings also indicated that the no self-displacement policy has had an effect on the continuation of those CD contracts to the extent that it has prevented distributors from accessing alternate supplies of gas by prohibiting transportation for displacement volumes. Arguably, this could be equally seen as a violation of the principle of sanctity of contracts because this prohibition involves imposing terms and conditions which are not in the contracts themselves.

The Board notes as well that the implementation of the OD methodology to avoid double demand charges in respect of direct sales prevented parties from discharging their full obligations under the CD contracts. However, this effect was considered incidental to the Board's exercise of its tollmaking powers under Part IV of the NEB Act. This methodology was supported by parties and was not seen as violating the sanctity of the contracts.

It is also up to the parties to those contracts to mutually agree to continue those contracts in their present form, to renegotiate them, or to negotiate new contracts to meet their needs in a marketsensitive pricing regime. If there is doubt as to whether the CD contracts remain valid or enforceable, there are forums available to the parties where such determinations can be made. In these contractual matters, the Board is not the proper authority to make such judgements.

The CD contracts have never contained an obligation to take gas, although it appears that specific take obligations were negotiated with some distributors for the 1987/88 contract year. The takeor-pay provision which existed until 1976 assured payment for volumes not taken, it did not assure that volumes would be taken. However, the selfdisplacement prohibition appears to have had the effect of creating an obligation to take gas where none was contained, prior to 1987/88, in the CD contracts. This occurs, as the distributors' evidence indicates, because the self-displacement prohibition has restricted their access to transportation services to obtain alternate gas supplies and thus has left the distributors with little choice but to take gas under the CD contracts to supply customers requiring sales service. The Board also notes the distributors' evidence that these circumstances have, in turn, affected the degree to which those CD contracts may be freely renegotiated.

The Board, however, does not agree with the argument that to allow self-displacement would be tantamount to allowing contract abrogation. Permitting self-displacement would grant access to transportation and at the same time the granting of OD relief would avoid double demand charges from occurring. This, in effect, would allow distributors to obtain alternate gas supplies if they wished to do so.

The Gas Agreement encourages the parties to the pre-November 1985 contracts to fulfill their contractual obligations. However, contrary to the suggestion of some parties, the Board does not view the Gas Agreement or any other government policy statement as fettering its discretion or preventing it from exercising its mandate under the NEB Act to set just and reasonable tolls and to establish conditions of access to transportation services that are not unjustly discriminatory. If a decision the Board takes in the exercise of its mandate has an impact on gas sales and existing contractual relationships, that impact is incidental to the exercise of the Board's mandate. The possibility of such effects is not sufficient reason for the Board to fail to act. If this were not so, then the Board's decisions would be constrained by commercial contractual negotiations which are beyond the scope of its jurisdiction.

**Arbitration**

Argument put forward by proponents of the status quo was that the parties to the pre-November 1985 CD contracts were expected to seek arbitration in the absence of agreement on price. The CPA, TCPL and IPAC argued that arbitration would provide market-sensitive prices. The witnesses for the CPA and IPAC held the view that the parties to the CD contracts were to negotiate prices and, failing that, to seek commercial arbitration. In the absence of the latter, the two producer associations believed that government-imposed arbitration could sustain the contracts. As an alternative, the Associations suggested that the parties could avail themselves of the Alberta Arbitration Act, as amended by Alberta in accordance with the Gas Agreement. These parties held the view that the ultimate step could be the reintroduction of government-imposed prices. The witnesses for IPAC also believed that, in the absence of agreement on price or arbitration in the downstream contracts, there could be a fallback reliance on the upstream contracts wherein arbitrated or negotiated producer contract prices plus transportation tolls on the TCPL system would define the downstream contract prices. This "trickle-down" effect or "add-on" approach, however, faces the difficulty of crossing provincial jurisdictions.

All parties to the proceedings, including witnesses for the APMC and the Minister of Energy for Ontario (Ontario), generally agreed that commercial negotiation and arbitration was the most desirable solution in a market-sensitive environment. However, Northridge Petroleum Marketing, Inc. (Northridge) believed that the Gas Agreement provided for only a one-year opportunity for the parties to agree on price and arbitration for the long term.

Evidence and cross-examination of the witnesses for TCPL and the distributors indicated that, although both sides agreed that arbitration was envisaged in the Gas Agreement, the parties had so far been unable to agree on the procedures or the terms of reference for arbitration. TCPL, Consumers Gas, Union, and ICG (Ontario) stated that the numerous regulatory proceedings and the market situation since deregulation have required them to focus their attention on other matters. Both TCPL/WGML and the distributors indicated that they are currently in the process of

negotiating the mechanisms of an arbitration provision in the contracts, together with other matters, such as contract terms, market assurances, price and volumes. However, these parties asserted that, because of the Board's current proceeding on self-displacement, it was possible that only interim agreements would be arrived at until such time as the decision in this proceeding
was released.

GMi, in its testimony, indicated that it had pursued the inclusion of an arbitration provision during its negotiations with TCPL/WGML over the past year and had arrived at a tentative agreement with TCPL/WGML. However, the agreement had yet to obtain the support of the TCPL/ WGML producers. Consumers Gas stated that it was not prepared to negotiate only an arbitration provision for its CD contracts but wanted to renegotiate the entire contracts. Union, ICG (Manitoba), and GWG did not believe that they could obtain fair treatment if they accepted arbitration under the amended Alberta Arbitration Act. The TCPL witness had concluded that the distributors would not accept upstream arbitration in their negotiations. Consumers Gas argued that certain provisions of the Alberta Arbitration Act could be incorporated by the parties in negotiating a commercial arbitration.

Cross-examination of the Union witnesses led to a dispute as to whether it was TCPL/WGML or Union who would not agree to arbitration in the first place. There were arguments as to TCPL/ WGML's position of agreeing to arbitration only in a long-term contract as opposed to Union's position of wanting arbitration only under a short-term contract. However, the TCPL/WGML and Union witnesses stated that arbitration put the parties in the hands of a third party which was not necessarily desirable because they would then lose control of the process. Union also stated that one of its major concerns with arbitration under the Alberta Arbitration Act was that Section 5(c) of that Act looks at the differences and similarities between other gas contracts and the contract under arbitration. With the prohibition on selfdisplacement, Union believed that the only supplier it could go to was TCPL/WGML. This conclusion was reinforced by Alberta removal permit conditions, which prohibit the removal of displacement volumes for distributors. In such a situation, Union surmised that it could be seen as being locked into its CD contracts and, as a result, an arbitration proceeding in Alberta might conclude that a premium price would be fair.

**Views of the Board**

It is clear from the evidence that the parties to the CD contracts believe that, failing a negotiated price, arbitration is the court of last resort and that commercial arbitration is preferable to any mandated arbitration. The evidence of the provincial government witnesses also supports this view. However, it appears that the procedures and terms of reference of arbitration are difficult matters on which to reach agreement for the long term, because of their binding nature. The Board also notes that agreement on a negotiated arbitration clause in the CD contracts cannot be dealt with in isolation, as it is only one of the contractual provisions to be negotiated for the long term.

In the absence of a freely negotiated agreement on price, arbitration acts as a suitable proxy to reflect market prices. However, the Board recognizes the difficulties of the parties to the CD contracts in arriving at a mutually acceptable arbitration provision. Nevertheless, the parties have had some two and one-half years to develop and agree upon an arbitration mechanism as envisaged by the Gas Agreement. The evidence indicates that during this period, the self-displacement prohibition has also influenced the continuation of the CD contracts and the performance of parties under those contracts. By doing so, it has given the parties time to seek resolution of their differences. To the extent that the self-displacement prohibition has provided such an opportunity, it was in the public interest to maintain that regulatory policy.

The evidence before the Board in these proceedings indicated that the parties had not been able to resolve their differences regarding the scope, terms of reference, principles, procedures, location and arbitrators of an arbitration mechanism. These differences, if unresolved, could lead to an impasse in negotiations. If this occurs and continues indefinitely, movement towards the market-sensitive pricing regime could stagnate. The continuation of the self-displacement prohibition in this situation would further defer the attainment of the pricing regime contemplated in the Gas Agreement. Under these circumstances, the retention of the existing regulatory policy on self-displacement would not be conducive to the achievement of a marketsensitive pricing regime and would not be in the public interest.

The Board is also persuaded by the evidence presented during these proceedings that, in arriving at a negotiated arbitration provision for the CD contracts, the existing self-displacement prohibition, if continued, could have a bearing on the manner in which an arbitration proceeding might perceive similarities and differences between the CD contracts and other contracts. If the self-displacement policy is continued, the prohibition could be seen as an external factor which limits the distributors' ability to freely renegotiate and contract for alternative supplies of gas. Therefore, arbitrators may apply different pricing criteria to such contracts, as opposed to those contracts which are not affected by a regulatory restriction and are, therefore, freely negotiated. Under these circumstances, the regulatory policy on the prohibition of self-displacement could influence a fair determination of an arbitrated price. This would frustrate the purpose of arbitration, which the Board sees as a means to properly identify and embody the effects of the working of free markets.

**TOPGAS and Take-or-Pay Obligations**

Another issue which arose during these proceedings was the effect the discontinuation of the selfdisplacement prohibition could have on TOPGAS and future take-or-pay obligations. TCPL, TOPGAS, the CPA, and IPAC held the view that the elimination of the self-displacement prohibition would impair the ability of system gas producers to fulfill their existing TOPGAS payment obligations and result in further take-or-pay problems. These parties argued that they had already borne the brunt of the cost of deregulation in losing market share and in experiencing reduced cash

flow. The CPA witnesses stated that if more cash flow goes towards paying TOPGAS then there would be less discretionary money to invest in exploration and development. It was the view of these parties that the Board must consider TOPGAS and future take-or-pay obligations in considering the public interest. However, the APMC witnesses recognized that the TOPGAS problem was largely a government and industry problem rather than a regulatory one.

The distributors generally agreed that TOPGAS and future take-or-pay obligations should be considered when determining the public interest but did not believe it should be given much weight. The distributors argued that, if self-displacement were allowed, system producers would not necessarily lose market share or incur TOPGAS or future take-or-pay obligations if those producers were willing to compete at market prices. They also argued that they had no intention of abandoning the entire TCPL/WGML gas supply, because it was secure and because they recognized that they could not replace their entire supply from alternative gas sources.

The witnesses for Northridge and North Canadian Marketing Inc. (North Canadian) did not believe that TOPGAS or future take-or-pay exposure should be considered with regard to the public interest because these are commercial matters which should be determined by TCPL/ WGML and its producers.

The parties favouring the elimination of the selfdisplacement prohibition also argued that the evidence was not conclusive that allowing selfdisplacement would necessarily cause severe problems for system gas producers and TOPGAS. It was Ontario’s view that any TOPGAS problems which may arise for system producers should not impede progress towards a deregulated market. To the extent that such problems do arise and acceptable alternative solutions are available, Ontario stated that it was prepared to assist.

**Views of the Board**

The Board is not persuaded by the evidence that removal of the self-displacement prohibition would cause substantial economic harm to system gas producers, TCPL/WGML, or the TOPGAS consortium. The Board continues to regard TOPGAS and any take-or-pay problems which may arise as private contractual matters relating to gas supply obligations between the TOPGAS consortium, TCPL/WGML, and its producers. The Board is not convinced that, in moving to a market responsive environment, system gas could not compete effectively with other gas supplies for the distributors’ markets. Moreover, the willingness of TCPL/WGML and its system gas producers to compete for such markets is purely a business decision which occurs in the face of market opportunities and alternatives, domestic or export.

The evidence also indicates that the Board’s policy on self-displacement may have reduced the need for system gas to compete with other sources of gas. This possibility arises to the extent that the prohibition on self-displacement restricts access to transportation service which distributors would require to contract for other gas supplies in

competition with system gas.

**Gas Supply Overhang**

It was argued by TCPL, the CPA, and IPAC that there is currently a gas supply surplus which stems from the Board's previous gas surplus determination procedure, commonly known as the "25A1 Formula", and that its removal in favour of a market-based procedure has created a gas supply overhang which has had the effect of depressing gas prices. By contrast, during the proceedings, TCPL's witnesses admitted that the Board's no self-displacement policy has had a price-maintenance effect on gas sold under the existing CD contracts. The witnesses for IPAC indicated that retaining such contractual arrangements could have the effect of maintaining prices to some extent.

**Views of the Board**

The Board recognizes that the gas supply overhang has the effect of depressing gas prices.

However, it is to be expected in a competitive market environment that prices will rise or fall to bring supply and demand into balance. The price-maintenance effect of the Board's selfdisplacement prohibition would give false signals to the marketplace and, therefore, tend to prolong the supply overhang.

The Board does not agree that elimination of the "25A1 Formula" has contributed to the gas supply overhang. The supply overhang is the result of a number of factors, particularly the high regulated prices and assured take-or-pay revenues which existed between the mid-1970s and the early 1980s. The high regulated prices stimulated exploration which led to a rapid increase in proven gas reserves and deliverability. However, by the early 1980s, the overall demand for natural gas started to fall. The high price of Canadian gas halted the growth in domestic demand and led to a large decrease in exports to the U.S. At the same time, consumers continued to invest in fuel efficiency and fuel-switching equipment with a view to minimizing costs. The fall in demand was further aggravated by the 1981-82 economic recession. The combined effects of the increasing supply and the falling overall demand over this period are the main factors leading to the gas supply overhang.

**Gas Removal Permits**

The distributors and Northridge also indicated that the Alberta gas removal permit restrictions may have a price-maintenance effect similar to that of the Board's self-displacement prohibition. However, the APMC argued that Alberta was acting within its jurisdiction to give effect to the intent of the Gas Agreement. The APMC and producer associations also believed that the Board, as a body associated with the federal signatory to the Gas Agreement, should maintain the selfdisplacement prohibition to similarly enforce the provisions of the Gas Agreement.

The distributors argued that the Board's current policy on self-displacement is not necessary as the evidence indicates that each of

the gas producing provinces, as signatories to the Gas Agreement, has the power to effectively enforce a no self-displacement rule if it deemed that to be desirable.

**Views of the Board**

The Board's policy on self-displacement is a regulatory policy derived directly from the Board's mandate over traffic, toll and tariff matters. The Board does not accept the view that the retention of the self-displacement policy is necessary to give effect to the position of the federal signatory to the Gas Agreement nor to reinforce provincial policies with respect to the conditions of gas removal permits. The latter are clearly not under the Board's jurisdiction.

**Gas Price Discrimination and Market Segmentation**

The distributors' evidence indicated that the Board's no self-displacement ruling has helped create the conditions for price discrimination and market segmentation between, on the one hand, the industrial sector and, on the other, the residential and commercial sectors or "core markets". TCPL/WGML's witnesses acknowledged under cross-examination that the Board's selfdisplacement prohibition has had this effect and that it has also had the effect of preventing gas-togas competition in the core market. However, it was TCPL/WGML's view that gas prices in these markets were competitive against alternate fuels. TCPL/WGML also argued that the somewhat lower gas prices negotiated with the distributors under the CD contracts were substantially negated by the rate rebalancing of the distributors' cost of service as approved by the provincial regulators and by the failure of the distributors to pass on discretionary market discount funds to the core markets. Thus the residential and commercial sectors have not received the full benefits of the lower prices negotiated.

The distributors stated that the commodity costs of gas were passed through to the retail sector, although they admitted that the rate rebalancing of their costs of service diminished price reductions available to the residential and commercial sectors. Nevertheless, the distributors argued that there was a substantial difference in the prices TCPL/WGML makes available to the distributors for the residential and commercial sectors and for the industrial sector.

It was argued by those favouring the removal of the self-displacement prohibition that the Gas Agreement did not contemplate market segmentation but that all buyers should have enhanced access to gas supplies. However, TCPL, the CPA and IPAC argued that the residential and commercial sectors required a greater degree of security of supply than the industrial sector because they do not have alternatives readily available. They are, therefore, dependent on gas and security was provided by the CD contracts. The industrial market has alternative fuel supplies immediately available.

**Views of the Board**

The Board is persuaded by the evidence presented in these proceedings that the self-displacement prohibition has contributed to the restriction of gas-to-gas competition for a large consuming sector, essentially the residential and commercial sectors. As a result, the prohibition supports a degree of market segmentation which might not otherwise occur. To the extent that the selfdisplacement prohibition, in effect, causes discrimination in access to transportation and consequently affects access to gas supplies and markets, the resulting prices to the residential and commercial market do not necessarily reflect levels that would result from free negotiation in the marketplace.

The rate rebalancing approved by provincial regulators for some distributors is a matter entirely within provincial jurisdiction and as such, the Board does not consider it a determining factor in its decision.

However, the Board notes the following effects. Although it may appear convenient that the rate rebalancing is occurring concurrently with the reduction in gas prices negotiated by TCPL with the distributors, the net effect is a positive one from the free-market standpoint. The rate rebalancing reduces the cross-subsidization of distributor cost of service rates among the residential, commercial and industrial sectors. Distributor rates will then more accurately reflect the cost of providing service to each sector.

**Access to Distributor Systems**

IPAC argued that the transition to a fully marketsensitive pricing regime was not complete. One of the main factors was that distributor pipeline systems were not fully open-access. It pointed to the delays in the provision of T-Service on distributor systems which was just being approved in Manitoba and to the exclusion of brokers and producers from T-Service in Ontario, other than as agents for end-users. It also noted that, currently, only buy/sell arrangements occur in Quebec. Therefore, IPAC took the view that until these and other constraints to transportation access were removed, self-displacement should continue to be prohibited.

The distributors argued that they are open-access carriers. The Ontario witnesses indicated that their province acted quickly to provide for T-Service on the distributor systems. However, they admitted that there were still constraints to pipeline access in the province which they expected to be resolved in early 1989 through omnibus legislation affecting direct purchases and access in the province.

GMi and le Procureur général du Québec (Quebec) admitted that buy/sells on the GMi system are the only direct sale transactions occurring in Quebec. These parties pointed out, however, that new legislation introduced under Bill 12, An Act respecting the Régie du gaz naturel, did not prohibit access to T-Service in that province.

**Views of the Board**

The Board recognizes that there may have been delays in obtaining

unbundled services on distributor pipeline systems and that open access is not yet complete on these systems. The Board supports actions which facilitate access to gas supplies and markets through the enhancement of transportation access in all provinces.

Conditions of access to distributor pipeline systems are matters entirely within provincial jurisdiction. Nevertheless, the Board's decisions on Part IV matters are not dependent upon decisions of other regulatory jurisdictions.

**Conclusions**

For the first time, the Board has had before it a comprehensive body of evidence as to the effects of the no self-displacement policy on the implementation of the Gas Agreement and the related development of the Canadian gas market. While the evidence in these proceedings related to all sectors of the gas industry, it focussed particularly on the impact of the Board's policy on shipperdistributor relations. The evidence and argument of the distributors are persuasive in showing that the existance of the no self-displacement policy has the effect of restricting the free renegotiation of contractual arrangements between TCPL/WGML and distributors east of Saskatchewan.

The evidence presented during these proceedings has led the Board to conclude that, while its previous decisions prevented distributors wishing to purchase displacement gas supplies from obtaining access to related transportation services, as compared to the access available to direct sale shippers, any discrimination which may have resulted was clearly not unjust. In using its statutory mandate and assessing whether any existing discrimination is unjust, the Board also considers the overall public interest. In the circumstances of its previous decisions, the Board concluded that to allow self-displacement would not be consistent with the concepts of fairness and an orderly transition as contemplated by the Gas Agreement and would not have been in the public interest. For the Board to have done otherwise would have resulted in immediate and dramatic changes to the existing environment and caused hardship to key sectors of the gas industry.

In reviewing the evidence in the present proceedings, the Board is not looking back at what has occurred. Rather, the Board is looking prospectively in assessing the currently evolving situation to determine whether its regulatory policy on self-displacement continues to be appropriate. As indicated previously, the overall public interest is a factor which the Board considers in the exercise of its powers under Part IV of the NEB Act. However, it is the Board's view that the public interest is not static but continues to evolve over time with changes in the environment. These proceedings have provided an opportunity to assess that environment and how the Board's regulatory policy on self-displacement affects it.

In determining the overall public interest and its importance in the Board's regulatory mandate and in considering the progress that has been made towards achieving a market-sensitive pricing regime, the Board has been guided by the principles of fairness and an orderly transition.

Based on the evidence presented in these proceedings, the Board has arrived at the following conclusions:

· The Board's existing policy on selfdisplacement has the effect of shifting the balance in the renegotiation of CD contracts between TCPL/WGML and the distributors in favour of TCPL/WGML. It does so by denying distributors access to transportation for self-displacement gas. Prolonging this prohibition would not enhance the ability of both parties

to negotiate freely either negotiated prices or other contractual terms.

· Although the prohibition on selfdisplacement has contributed to the continuation of the CD contracts, it has not assisted the parties in reaching a commercial arbitration arrangement in the two and one-half years which have elapsed since the Gas Agreement. Continuation of the selfdisplacement prohibition would not assist parties in achieving this end. Moreover, an arbitrated price could be influenced by the existence of the self-displacement policy which effectively limits access by distributors to alternative gas supplies.

· The self-displacement policy has prevented a significant portion of the consuming sector from enjoying the full benefits of gas deregulation.

· Continuation of the regulatory prohibition on self-displacement would prolong its pricemaintenance effect on the CD contracts, thereby giving incorrect price signals to producers and consumers which adversely affect the balancing of gas supply and demand. Continuing such an effect of the regulatory policy would not be conducive to a market-sensitive pricing environment.

· In light of the above, the achievement of a fully market-sensitive pricing regime in conjunction with non-discriminatory access, including pipeline access, could be delayed, in part because of the presence of the prohibition on self-displacement.

**Decision**

**In view of the foregoing assessment, 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 selfdisplacement 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. The self-displacement allowed will only be for like services, that is, T-Service for CD service (Firm Service (FS)-Transportation for FSSales) and Transportation-Annual Contract Quantity (T-ACQ) for Annual Contract Quantity (ACQ).**

**The Board notes that this decision is congruent with the overall intent**

**of the Gas Agreement and with its previous decisions. It is consistent with the overall objective of fostering the conditions needed to achieve the market-sensitive pricing regime envisaged by the Gas Agreement. The public interest is best served by actions which facilitate the movement to such a regime in a fair and orderly manner. This decision, like the Board's previous decisions and rulings on selfdisplacement, continues to uphold these fundamental principles while striving to overcome obstacles to the attainment of the goal of a market-sensitive pricing regime.**

### 2.1.3 Self-Displacement Implications

In raising the question as to whether selfdisplacement should be allowed, the Board requested parties to address the following additional questions if the response was in the affirmative:

(i) When should self-displacement begin and should it be phased-in?

(ii) Under what circumstances should OD relief be granted for self-displacement volumes?

(iii) For OD purposes should self-displacement volumes be included in the formula for prorating displacement volumes?

(iv) Are there any other considerations in allowing self-displacement?

The remaining sections of this chapter address these questions.

### 2.1.4 When Should Self-Displacement Begin and Should it be Phased-In?

As indicated in Section 2.1.1, the Board has decided that, commencing on 1 November 1989, self-displacement will be permitted. In selecting that date the Board had regard to fairness to all parties and to maintaining an orderly transition by providing sufficient notice to affected parties.

Most of the parties who favoured allowing selfdisplacement wanted it to be effective immediately while those who did not favour it had no response or indicated that it should be delayed as long as possible. Several parties also presented proposals for the phasing-in of self-displacement that, in their view, would provide for an orderly transition .

ICG (Ontario) proposed that self-displacement be phased in over the remaining life of the CD contracts, which in their case was 14 percent per year over seven years. North Canadian and Manitoba Minister of Energy and Mines and Manitoba Oil and Gas Corporation (Manitoba) proposed that self-displacement be phased-in at 20 percent per year over a five-year period, while Northridge proposed a 25 percent per year phase-in over a four-year period. Manitoba also recommended that self-displacement not be allowed on new contracts entered into during the phase-in period. Northridge, during cross-examination, admitted its 25 percent ratio was

arbitrary but believed that amount would be the maximum other suppliers could handle.

In addition, North Canadian and Northridge suggested that TCPL/WGML should be precluded from bidding for the self-displacement volumes, as a means of modifying TCPL/WGML's monopoly power in the marketplace. It was their view that because of TCPL/WGML's netback pricing arrangement with system gas producers, TCPL/ WGML could cross-subsidize its prices in the marketplace and effectively shut out other gas sellers.

Upon cross-examination by TCPL and the CPA, the North Canadian and Northridge witnesses admitted that their proposals to preclude TCPL/ WGML from bidding for self-displacement in the first two years could, in effect, preclude TCPL/ WGML from bidding for those markets for longer periods depending upon the length of the contracts for self-displacement gas. Northridge agreed that, in such circumstances, TCPL/ WGML would be disadvantaged and that the Board has no power to preclude TCPL/WGML from submitting bids for self-displacement volumes.

**Views of the Board**

Although the mechanics of phasing in selfdisplacement did not appear to be fully developed, there were generally no objections to the concept. The Board agrees that precluding TCPL/WGML from bidding for self-displacement volumes would not be appropriate.

The proposals presented were somewhat arbitrary in seeking to reflect what supplies of gas might be available or what the requirements of the distributors might be. In such circumstances, the phasing in of self displacement would not necessarily be responsive to a market-sensitive environment. In arriving at this conclusion, the Board also notes that the net effect of phasing in selfdisplacement would be to prolong over several years the denial of completely free access to transportation services.

**Decision**

**In view of the foregoing conclusions, selfdisplacement is to be permitted effective 1 November 1989 without any phase-in.**

### 2.1.5 Under What Circumstances Should OD Relief be Granted for Self-Displacement Volumes?

Most of those opposing self-displacement did not present evidence on this issue. However, TCPL in its submission stated that if self-displacement is allowed, OD relief should be mandated in full for all self-displacement volumes because to do otherwise would cause capacity constraint problems.

Parties favouring self-displacement supported the granting of OD relief.

The distributors argued that OD relief should be granted for all self-displacement volumes. It was their view that the denial of OD relief

for selfdisplacement would in effect subject the distributors to double demand charges and consequently affect the economics of self-displacement.

During cross-examination, the distributors testified that the granting of OD relief for selfdisplacement would not breach existing CD contracts. It was the view of Consumers Gas and Union that they would still be paying demand tolls to TCPL in respect of transportation for selfdisplacement gas. Therefore, TCPL would be kept whole, although Union agreed it would not be paying demand charges for the same service.

**Views of the Board**

The denial of OD relief for self-displacement would cause double demand charges to be incurred by the distributor. The Board has already determined that such double demand charges would not result in just and reasonable tolls. Moreover, the denial of OD relief would be inconsistent with the OD methodology which has been established. The Board is not convinced that there are differences between displacement and self-displacement for the purposes of granting OD relief.

**Decision**

**In exercising its toll-making powers, the Board has decided that, commencing 1 November 1989, OD relief will be granted for the self-displacement of any bundled sales contract with TCPL that was in effect as of the date of the release of this decision. The Board expects that parties to other contracts will deal with the issues-of any displacements as part of their commercial arrangements.**

**2.1.6 For OD Purposes, Should Self-Displacement be Included in the Formula for Pro-Rating Displacement Volumes?**

TCPL stated that all FS contracts in a delivery area in which a direct purchase displacement occurs should share pro-rata in any OD reduction. It was the Company's view that there was no rational or equitable basis for according different treatment to a distributor's firm gas supply obtained by self-displacement from that accorded to incremental firm supplies. TCPL stated that the Board should not allow distributors to decide which FS contracts should be subject to the OD reduction because it would result in the OD methodology being used for purposes beyond its original intent.

Most of the distributors believed that the prorating of OD reductions for direct sale displacements should not apply to any self-displacement contracts. Generally, this position was based on their views as to the overall concept of pro-rating OD reductions, that is, pro-rating should apply only to pre-Gas Agreement contracts. ICG (Ontario) held the view that it would be circular to pro-rate OD reductions on self-displacement volumes because it would result in the partial negation of self-displacement actions of a distributor. It was also argued that high prices in the pre-Gas Agreement contracts are a major reason for the occurrence of direct purchase displacements.

**Decision**

**In view of the Board's decision in Section 2.3 to eliminate the pro-rata OD reduction for direct sale displacements, it would be inconsistent and inappropriate to apply the prorata reduction to self-displacement volumes only. Therefore, self-displacement volumes will not be subject to any pro-rata OD reductions for direct sale displacements.**

## 2.1.7 Are There any Other Considerations in Allowing Self-Displacement?

### 2.1.7.1 Monthly Reporting Requirements

A relevant consideration which was raised in the proceedings was the reporting requirement of Section XXI of TCPL's General Terms and Conditions. This section of TCPL's tariff requires domestic firm shippers, for which the delivery of gas for a direct purchase end-user gives rise to an OD reduction, to report monthly volumes of gas transported for an end-user, the amount of gas delivered to an end-user's plant(s) and delivered to an affected distributor. This reporting requirement was included in TCPL's tariff to enable TCPL to monitor possible selfdisplacement by distributors.

Consumers Gas and Union advocated the removal of the Section XXI reporting requirement if self-displacement is allowed. In the event the policy prohibiting self-displacement was maintained, both companies argued that the monthly reporting requirement should be limited to the initial year of such end-user services as that period of time would be sufficient for TCPL to determine whether self-displacement was occurring. Witnesses for Consumers Gas also stated in cross-examination that the reporting was an administrative burden.

TCPL argued that, if the prohibition on selfdisplacement were to be continued, the monthly reporting requirement is needed to enable detection of self-displacement and should continue beyond the initial period of service.

**Decision**

**In view of the Board's decision in Section 2.1.1 to eliminate the prohibition on selfdisplacement effective 1 November 1989, the reporting requirement should be continued up to that date. Therefore, TCPL is directed to remove Section XXI from its General Terms and Conditions effective 1 November 1989.**

### 2.1.7.2 OD Methodology and the Import of Gas

Another relevant issue which arose related to the import of gas and the application of the OD methodology to such gas.

Northridge stated that the OD concept has relevance to the importation of

U.S. gas to serve Canadian markets. In the absence of OD relief, the customer contracting for U.S. gas would be subject to unabsorbed demand charges on TCPL.

TCPL, in argument, pointed to a similar reference by PPG Canada Inc. (PPG) to extending the OD methodology to cover displacements occasioned by U.S. imports whether or not the gas is transported on TCPL's pipeline system, and by extension this could also apply to selfdisplacements if those were allowed for OD relief. TCPL referred to its witness' testimony that there should be no OD reduction for imported gas if it does not move on the TCPL system because the purpose of the OD methodology was to keep TransCanada whole in its recovery of demand charge revenues for the transportation of gas from the Alberta border. TCPL concluded that any extension of the OD methodology must be in accord with the 1986 Federal Court of Appeal decision.

**Views of the Board**

The Board notes that there was no evidence to support the extension of the OD methodology to displacements or self-displacements which may result from the import of U.S. sourced gas. Moreover, OD relief should not be granted if such gas does not use the TCPL system for transportation. Unless imported gas is transported on the TCPL system, double demand charges on that system cannot arise. This would be the case irrespective of the source of the gas.

**Decision**

**The OD methodology will not apply to displacement or self-displacement gas which is not transported on the TCPL system.**

### 2.1.8 Is There a Necessity to Maintain the OD Concept?

TCPL acknowledged that the OD methodology has provided an effective and practical method of solving the double demand charge problem and stated that the OD methodology should continue as long as there are direct sale displacements. However, in argument TCPL referred to its current negotiations with distributors which could lead to unbundling and the elimination of all sales service. If such occurs, TCPL stated that the need for the OD mechanism would be eliminated.

ICG (Manitoba) and GWG believed that the OD methodology was still required to avoid double demand charges. GMi, Consumers Gas and Union were of the view that "new era" contracts would not require the OD methodology and thus OD relief. These distributors believe that they would end up with FS-transportation contracts which could incorporate commercial arrangements to accommodate pipeline utilization and displacements by such mechanisms as volume adjustments and partial assignments of pipeline space or some other commercial OD mechanisms. PPG supported such mechanisms.

The Industrial Gas Users Association (IGUA) stated that it will be necessary to maintain the OD concept so long as the distributors are providing gas sales service to customers who have the alternative of

direct purchases. Northridge took a similar view in argument and stated that a distributor should only be allowed to act as an agent for end-users in regard to contracts for transportation.

The CPA, IPAC, North Canadian, and Northridge also believed the OD concept should be maintained in respect of the CD contracts. These parties held the view that it was necessary to maintain the OD concept until there were no further sales contracts by TCPL/WGML and all gas is moving on the TCPL system under transportation contracts.

IPAC also stated that it could not see the need to permit an OD mechanism for transportation service to distributors as it is their responsibility to assess their market demands and contract prudently for volumes and terms. North Canadian suggested that the Board extend the OD concept to all firm shippers so that a supplier who has displaced another supplier would be entitled to that displaced shipper's firm TCPL capacity. It was that company's view that, absent such a methodology, capacity on the TCPL system becomes a critical marketing asset which will determine who can or cannot sell gas into a market.

Cyanamid Canada Inc. and Cyanamid Canada Pipeline Inc. (Cyanamid) and Polysar Limited (Polysar) acknowledged that the continuation of the OD concept may not be needed if TCPL and the distributors are able to agree on a methodology to accommodate direct purchases. Cyanamid also stated that the Board should stay involved until it is satisfied that such a commercial methodology works fairly and equitably. Polysar stated in argument that what TCPL and the local distribution companies (LDCs) may consider to be a good commercial arrangement to gain access to the TCPL system may not be a good arrangement for end-users. It was Polysar's view that the issue of who gets access to the TCPL system was too important to be left up to contractual arrangements between TCPL and the distributors, especially when capacity is at a premium. Polysar supported Northridge's comment, made during crossexamination, that such contractual arrangements could usurp the Board's jurisdiction. Polysar also argued that such arrangements, as indicated in GMi's evidence of its draft agreement with TCPL/WGML, could lead to automatic reversion of capacity for the distributor, which is contrary to the Board's existing policy. Therefore, Polysar suggested that the Board should continue to monitor the access question and regulate it, if necessary, by maintaining the OD methodology.

**Views of the Board**

The Board acknowledges that the negotiations between TCPL and the distributors may result in the OD methodology becoming redundant to the extent that commercial arrangements between the parties may accommodate, among other things, direct sale displacements. In arriving at its decision on self-displacement and OD relief for such volumes, the Board has provided a grace period for the parties to work towards that end. The Board is persuaded by the evidence that it is the desire of all parties that commercial arrangements should be successful in that regard. It is the expectation of the Board that the CD/ACQ contracts and future transportation contracts can be freely negotiated by the parties during the grace period to achieve a commercial operating demand mechanism.

In implementing the OD methodology, the Board dealt with two aspects of its mandate under Part IV of the NEB Act, the establishment of just and reasonable tolls and the provision of fair and equitable access. Through the granting of OD relief, the Board eliminated double demand charges, and as a result, provided enhanced access to transportation. As stated previously, the Board's jurisdiction in these matters cannot be fettered by any contractual arrangements by private parties.

These decisions were taken in an environment where parties to pre-Gas Agreement contracts were faced with significant changes resulting from government actions. If parties knowingly enter into contracts in the new environment, the Board would expect such contracts to anticipate and address any problems resulting from direct sales.

Decision

The Board will maintain the OD methodology until such time as it is satisfied that commercial arrangements are concluded to accommodate direct sale displacements and which will effectively eliminate the occurrence of double demand charges and ensure fair and equitable access to transportation. The Bosrd will continue to monitor the contractual arrangements which have an impact on its Part IV jurisdiction.

In arriving at this decision, the Board has no intention of abdicating its responsibilities to ensure that tolls are just and reasonable and that access to transportation is not unjustly discriminatory.

### 2.2 The Application of OD Methodology to ACQ Service

In Section 11.3.2 of its RH-3-86 Reasons for Decision, the Board directed TCPL, Union and Consumers Gas to prepare and submit a formula to be applied in the event that ACQ toll relief was requested by a distributor in order to accommodate the growth in displacement volumes within its franchise area.

The three parties filed a joint submission dated 2 September 1987 which stated that they were unable to develop a specific formula. Instead, they argued it would be appropriate to review cases individually, taking into account the prevailing circumstances and applying certain principles which the parties were able to agree upon.

Subsequently, the Board decided to examine the issue further in this proceeding in order to determine whether a generally applicable formula for granting ACQ OD relief could be developed or whether a case-by-case approach should be adopted.

TCPL stated that its basic position has not changed from that expressed in the three-party submission. It is not opposed to the displacement of ACQ service by direct purchases, provided that TCPL can maintain or find a substitute for the operating flexibility associated with the displaced ACQ and can recover any costs associated with any such substitution. TCPL submitted that it is critically important for it to retain this operating flexibility if it is to meet its contractual obligations using existing

facilities.

During the hearing TCPL modified one aspect of the three-party submission. After studying the issue further, TCPL concluded that, if ACQ were allowed to be displaced by firm service, downstream storage must be combined with either access to upstream storage or additional pipeline facilities designed to maintain peak-day capacity. Unless this were done, operating flexibility would be lost.

TCPL also identified six operating alternatives available for the displacement of ACQ, five of which were potential long-term alternatives. However, TCPL had not as yet fully reviewed them and they were not available in the shortterm in any event. These long-term alternatives involved; (1) relying on excess system capacity, which is not currently available, (2) obtaining additional transportation service on other pipelines, (3) accessing gas storage facilities in the United States, (4) accessing existing storage released by the affected distributor, and (5) construction of additional facilities.

The sixth alternative was to institute a T-ACQ service. TCPL concluded that T-ACQ is the only available substitute for ACQ in the short term.

TCPL proposed that if it was to implement a TACQ service, it would be an identical service to ACQ except that there would be no need to indicate the source of the gas supply. The shipper would be responsible for making the gas supply available at the receipt point to the TCPL system. Furthermore, the toll for T-ACQ would be equal to the toll for ACQ since the character of service and related terms and conditions would be the same.

TCPL stated that T-ACQ is practical both at the downstream and the upstream ends. Union testified that with T-ACQ available, a direct purchaser on the Union system would be able to receive firm service of the same quality as it did as a sales customer by entering into a buy/sell arrangement with Union. It would be able to have Union balance the variances inherent in T-ACQ through the use of storage and would, therefore, not need to be concerned with the downstream storage aspect of T-ACQ. On the upstream side, IPAC and the CPA confirmed that producers are capable of meeting the supply swings inherent in an ACQ-type service.

Most intervenors supported the introduction of TACQ service as one way of applying the OD methodology to ACQ. Some parties, however, disagreed about when that application should take place.

The CPA and Consumers Gas argued that the OD methodology should not be applied to ACQ until all of a distributor’s FS sales or CD volumes have been fully displaced. They expressed concern that displacing ACQ while some of the distributor’s CD is available would result in reduced system flexibility and the incurrence of higher costs for all users. Cyanamid, on the other hand, did not believe that there was a need for this restriction.

Union stressed the importance of resolving this issue prior to the displacement of all of Union’s CD volumes. Union stated that if the OD

methodology is not in place when the CD is displaced to zero, the next new direct purchase transaction will be unnecessarily delayed. Union stated that the application of the methodology could be conditioned not to take effect until all CD has been displaced.

Union felt it is important that an ACQ OD methodology leave direct purchasers displacing ACQ no worse off than their competitors who went to direct purchases early enough to displace CD. Union was also of the view that splitting the ACQ contracts into their transportation and gas supply components would simplify virtually all of the proposed methodologies. Union added that, while it would be ideal if all parties were kept whole under the methodology, if additional costs must be borne, they should be borne by the whole TCPL system as part of the cost of having a flexible, ACQ-style transportation system with its inherent economies

IGUA argued that a TCPL buy/sell arrangement should also be offered as an option to T-ACQ. In IGUA's view, this delivery services arrangement should be made available for non-system gas, because TCPL is already making it available for system gas through System Gas Resale (SGR) arrangements.

TCPL argued that IGUA's buy/sell proposal is not a viable substitute for ACQ service and is not needed because, among other reasons, it would force TransCanada back into a merchant function, and it would put TCPL in conflict with its TOPGAS covenants and it would improperly shift the administrative aspects of the end-user's transportation and gas supply arrangements to TCPL.

C-I-L suggested that firm service could displace the 50 percent firm portion of the ACQ average winter day demand volume. C-I-L conceded that the conversion somewhat reduces flexibility to TCPL during the summer period but it does not operate to reduce flexibility or to change the characteristics of the service during the winter period. TCPL strongly opposed this proposal and stated that it would reduce the flexibility available to TCPL for the maintenance of its system during the summer and the character of ACQ service would be altered with every new direct purchase.

Cyanamid and Polysar supported the introduction of T-ACQ but expressed concerns respecting its usefulness and practicality to users, given the load fluctuations for supplies and the need for storage. Polysar suggested that the existing levels of flexibility should be reviewed in order to determine if they are still required.

**Views of the Board**

The application of the OD methodology to ACQ service should be implemented in a manner that is fair to all shippers and consistent with the principles of an open-access pipeline under which equitable access is available to all. In this way, a direct shipper who is, in effect, displacing ACQ will be assured of receiving non-discriminatory treatment which is consistent over time.

While the development of a specific conversion formula to be applied in

all cases would have been preferable, the Board recognizes that the complexities involved in displacing a firm annual service with a firm daily service makes this option unsuitable under current circumstances.

A case-by-case approach is not appropriate since a potential shipper would not be able to determine from the tariff the conditions to be met for access to the pipeline. Potential shippers would have to await the outcome of each particular case and would be faced with the possibility of not receiving access to the system should it be determined that granting OD relief for ACQ would be inappropriate.

IGUA’s proposal for a TCPL buy/sell arrangement is not appropriate because it would unnecessarily force TCPL back into the merchant function and would improperly require TCPL to administer the end-user’s transportation and gas supply arrangements.

Therefore, the Board concurs with TransCanada’s assessment that T-ACQ is the only viable substitute at this time for the flexibility lost through ACQ displacements. Being like services, the displacement of one by the other should not operate to either reduce the system’s operating flexibility or increase costs to system users. Also, since they are like services, all of a distributor’s CD volumes need not be totally displaced before T-ACQ can be implemented.

**Decision**

**The Board approves the use of T-ACQ service as the only short-term means available to apply the OD methodology to ACQ service. All the terms and conditions of T-ACQ, with the exception of gas supply, will be identical to the present ACQ service and the tolls for the two services will be equal. The toll design for both ACQ and T-ACQ will be examined in Phase II of these proceedings.**

**The Board will examine in Phase II whether SGR arrangements confer a transportation benefit to the parties involved that is not available to other shippers.**

## 2.3 The Prorating of OD Reductions

In Section 11.3.1 of the RH-3-86 Reasons for Decision, the Board stated the following:

"The Board is of the view that a pro rata sharing of displacement volumes on the basis of all long-term firm sales and long-term transportation services being purchased **by a distributor** from TransCanada at the time the displacement occurs is the fairest and most practical method of allocating displacement volumes for OD purposes between system and non-system gas supplies." (emphasis added)

The Board reviewed this decision and based on submissions made by parties expanded it to include:

"all long-term firm sales and long-term transportation services being purchased by a distributor **or any other shipper** from TransCanada **to**

**supply a distributor**"
(emphasis added)

As a result of this decision, the volumes supplied to Union by PSR were included in the prorating formula.

On 20 November 1987, PSR applied to the Board pursuant to Section 17 of the NEB Act for a review of Section 11.4 of the RH-3-86 Reasons for Decision. This section states that the prorating of displacement volumes for OD purposes will be restricted to the delivery area rather than to a distributor's franchise area.

After considering the views of interested parties, the Board included the application for review in this proceeding and expanded the scope of the review to include an examination of the appropriateness of prorating in general.

TCPL argued that the pro rata sharing of OD reductions is still appropriate and should be applied regardless of when the distributor's supply contracts were entered into. TCPL disagreed with the position taken by Consumers Gas, Union and others that post-October 1985 contracts should be excluded from pro rata sharing.

In TCPL's view, the OD methodology is a mechanism to deal with the double demand charge problem, a matter relating to tolls or tariffs. It is not a mechanism to favour one gas supplier over others.

TCPL stated that when an end-user elects to purchase its gas directly, the distributor cannot establish, from a physical point of view, which specific supplier had served that end-user. Therefore, TCPL argued that giving the distributor the exclusive rights to decide which supply has been displaced would result in discrimination among suppliers.

With respect to the issue raised by PSR's application, TCPL argued that prorating displacement volumes on the basis of delivery areas is the most reasonable and practical method. Moreover, the delivery area method does not give rise to capacity or cost allocation concerns because it reflects the contractual commitments TCPL made initially with the distributors and takes into account the fact that the system was designed to provide pipeline capacity to meet the commitments in those delivery areas.

TCPL also submitted that short-term contracts should be included in the pro rata sharing formula because of the move towards the elimination of any differentiation between short and longterm service in TCPL's tariff.

IPAC agreed with TCPL that short-term transportation contracts should be included in the prorating calculation and stated that it was prepared to accept the concept of OD relief being granted on a franchise-area basis, provided that deliveries are within the same TCPL toll zone.

GMi was of the view that, under current circumstances, the prorating of OD reductions remains appropriate. If, after 1 November 1988, the circumstances change, then there may be no need for the OD methodology

and prorating.

A number of other parties argued that prorating should apply only to those contracts which an affected distributor had signed prior to the Gas Agreement.

Consumers Gas, ICG (Ontario), and Union argued that displacements are occurring because the price and other provisions of the pre-Gas Agreement contracts do not reflect what could be achieved in an unfettered competitive environment. Therefore, it would be appropriate for those pre-Gas Agreement contracts to bear the total displacement.

Union also argued that prorating a distributor’s post-Gas Agreement market-priced contract is hardly a step toward market-sensitive pricing for all users. When TCPL’s pre-Gas Agreement CD contracts become market-sensitive, displacement direct purchases will diminish and a number of existing direct purchasers may seek to return to system gas.

PSR stated that its first position is that its post-Gas Agreement contract with Union should not be subject to pro rata OD reductions at all. Its alternative, or secondary position, is that if it is to be included, OD reductions should be established on a franchise-wide basis, which includes all longterm firm contracts such as ACQ contracts.’

In PSR’s submission, a proper interpretation of the Gas Agreement is that OD reductions are not to be applied to a distributor’s new generation incremental supply, but rather are to be confined to the historical system gas contracts emanating from the commodity price regulation era that existed prior to the Gas Agreement.

With respect to its secondary or alternative position, PSR stated that the current methodology for the sharing of OD reductions does not meet the objective of fairness between system and nonsystem gas supplies. Rather, because of the delivery-area restriction, it discriminates against PSR and its long-term firm sale to Union and confers a corresponding unfair advantage on TCPL and its marketing subsidiary, WGML, because ACQ is completely shielded from displacement.

In PSR’s view, the methodology should be changed to one that takes account of all long-term firm sales to a distributor on a franchise-wide basis and one that does not shield or exempt any service from displacement. Union and Consumers Gas also supported prorating on a franchise-area basis if it was decided that postGas Agreement contracts must be prorated.

Consumers Gas’ proposed methodology in this regard involved a two-step process. The first step is an allocation process which would determine the relative shares that firm system and nonsystem supplies, including ACQ, contribute to the distributor’s overall system gas supply. The second step is a reduction process which applies the allocated shares to decrease the affected distributor’s OD volume in the delivery area in which the displacement occurred. Consumers Gas conceded that this methodology may cause capacity problems over time but argued that it ought to be used while it does work because it is fairer than the current

method.

**Views of the Board**

The Board considers the issue of prorating of OD reductions to be primarily a gas supply matter since prorating affects the manner in which a distributor purchases its remaining gas supply after suffering a displacement.

While a number of parties argued that a distinction could be made between pre-Gas Agreement and post-Gas Agreement contracts, the Board considers that, in examining this issue, it is important to look at what the OD methodology was intended to accomplish.

The Board implemented the OD methodology in order to avoid the duplication of demand charges that occurred when a distributor experienced the loss of a system gas customer to a direct sale. If the volume of a new direct purchase shipper is a displacement volume and the affected distributor agrees to a corresponding OD reduction, the OD methodology has fulfilled its intended purpose. While it is acknowledged that the application of the OD methodology has an incidental effect on the gas supply entitlements of a distributor, the prorating of OD reductions goes beyond this by influencing the amount of gas that the distributor can take from each of its contracted supply sources. The Board considers this is a gas purchase decision which should be made by the distributor, whether that decision is based on price alone or on other considerations. Therefore, the prorating of OD reductions is no longer appropriate. This decision was released in a letter dated 6 October 1988 and a copy is attached as Appendix V.

Having reached this conclusion the Board does not consider it necessary to render a decision on the question of prorating on a delivery-area basis or a franchise-area basis.

**Decision**

**The Board has decided that the prorating of OD reductions is no longer appropriate and shall be discontinued.**

# Chapter 3

## The Disposition of 1987 Deferral Account Balances

At 31 December 1987 the balances in operating deferral accounts amounted to a net credit of $76,403,494 (see Table 3-1). The Board decided that evidence and argument concerning the disposition of these deferred balances should be heard at the beginning of Phase I of these proceedings so that an early decision on the disposition of the deferred balances could be made. The Board issued its decision on 17 June 1988 with the reasons to be included in the Phase I Reasons for Decision. The Board's decision is included in these Reasons for Decision as Appendix II.

### 3.1 Method of Disposition

TCPL proposed that the deferred balances be disposed of through a direct refund to tollpayers. Initially, TCPL proposed that refunds be paid to shippers of record during the first quarter of 1988. It subsequently changed its proposal and advocated making the refunds to shippers of record during 1987. Specifically, TCPL proposed that in the case of system gas, a refund would be made to WGML for distribution to its producers based on their contractual arrangements. For non-system gas, TCPL proposed to pay refunds directly to the shippers of record, leaving it up to them to determine the appropriate disposition of the refunded amounts. In interpreting its contracts to determine who should benefit from a refund, TCPL looked to the party which bore the risk of a toll increase.

The revised refund proposal received wide general support from the producer associations, direct purchasers and gas brokers. The primary argument in support of the refund method was that it would direct the refunds to those who had paid the tolls which in turn had created the credit balances. This would avoid intergenerational inequity problems.

Other arguments advanced in support of the refund method were that the monies could be returned quickly and that the wide fluctuations in tolls (referred to as the "yo-yo effect"), which would result-from such a large credit to the cost of service, would be avoided.

It was argued that this yo-yo effect would send incorrect signals to market participants. Others discounted this concern arguing that market participants are well-informed and capable of making allowance for temporary toll variations, and that the toll variation would be no greater than the variations in commodity prices which have recently occurred.

TCPL argued that, because of changes in the "mix" of pipeline customers, the crediting of deferred balances to future tolls could result in some intergenerational inequities. In the past the Board's practice of amortizing deferred balances in future tolls did not result in significant intergenerational inequity because the mix of shippers on the system did not change materially from year to year. Now, however, because of the deregulation of the natural gas industry, the pipeline's customer mix has been changing.

Parties opposed to the refund method expressed serious concerns that the refunds might not reach the intended recipients. The possibility for legal disputes was perceived to be very high because the current contracts between producers, shippers and end-users are generally silent on the issue of how a refund of tolls should be handled. TCPL acknowledged the possibility of legal disputes over entitlement to refund amounts and urged the Board to order the refunds to be paid directly to what TCPL described as the effective tollpayers (i.e. those who bore the risk of a toll change) rather than the nominal tollpayers (i.e. the named shipper in the transportation contract).

The evidence showed that, in certain cases, the relevant contracts do not provide clear-cut guidance as to who should receive any toll refund. Concern over the lack of clear direction in the contracts led the parties who supported the refund methodology to argue that the Board should order refunds directly to the effective tollpayers.

In the case of a refund to the nominal tollpayer, GMi and Consumers Gas indicated that they would seek approval from their provincial regulators before passing the refunds on to specific end-users under buy/sell arrangements. TCPL argued that, under the netback pricing agreements, its producers are the effective tollpayers. Boundary Gas, Inc. argued that under its contracts it pays the tolls. TCPL suggested that if the Board ordered refunds to specific effective tollpayers, then it would only be necessary for it to wait the 30-day period allowed for the launching of any appeal of the Board's decision before the refund could be paid out.

TCPL asserted that both the large amount of the 1987 deferred balances and the probable, lengthy time delay before disposition were justifications for the refund methodology. Union disputed TCPL's assertion that the amount of the deferred balance is unique, pointing to net credit balances in 1984 of approximately $60.5 million and net debit balances in 1985 of some $70 million. As to the time lag before disposition, Ontario argued that there had been no undue delay and referred to the eight-month delay in RH-4-81. More recently, the delay in RH-4-85 was four months and in RH-3-86, six months. TCPL acknowledged that a six-month delay would not be abnormal in light of recent history.

**Views of the Board**

The fact that many of the shippers' contracts with producers and ultimate customers do not provide for the disposition of a refund of tolls is an obstacle to the refund proposal. The Board accepts the argument advanced by TCPL and others that a refund to the nominal tollpayers could result in many legal disputes over who should be the beneficiary of the refund. These disputes could result in lengthy delays in the return of the deferred amounts for some parties. Similarly, the alternative of directing refunds to the effective tollpayers could require the Board to interpret and rule on the intent of those contracts. The Board does not consider itself to be the appropriate forum for the interpretation of gas purchase contracts for the purpose of determining entitlement to refunds.

In view of the evidence, the Board questions the assertion that the

refund methodology would result in a more equitable or faster return of the deferred amounts. As the current contracts did not specifically provide for the disposition of refunds, the probability that the refunds will, in certain cases, not flow to the effective tollpayers are as great as or greater than any intergenerational inequities which may be avoided. As well delays which may occur because of legal disputes and the need for approvals from provincial regulators might delay the proposed refunds beyond the time required to return the balances through future tolls.

Past practice has been to amortize deferral account balances through tolls in the following year. The Board was not convinced by the evidence or argument that there was anything exceptional or unique about the 1987 deferred balances which would justify a change in Board practice, which in the past has been considered fair and reasonable.

**Decision**

**The balance of deferral accounts at 31 December 1987, as detailed in Table 3-1, will be credited to the cost of service and amortized in tolls. The appropriate amortization period is discussed in Section 3.3 of these Reasons for Decision.**

### 3.2 Jurisdiction to Order a Refund of Deferral Account Balances

In final argument most parties addressed the issue of whether the Board had the jurisdiction to order a refund of the deferral account balances to the 1987 tollpayers. TCPL argued that the Board’s authority for ordering a refund is found in Section 50 of the NEB Act which provides that the Board may make orders with respect to all matters relating to traffic, tolls or tariffs. Except for the requirement that all tolls shall be just and reasonable as provided in Section 52 of the NEB Act, TCPL submitted that the Board’s authority is not otherwise fettered by its governing statute as to the content of orders that would yield just and reasonable tolls. TCPL concluded that the Board was, therefore, not precluded from ordering a refund of the deferral account balances to the tollpayers on the system during 1987.

IPAC did not disagree with TCPL’s submission concerning the Board’s authority under Section 50 of the NEB Act but added that an order establishing a deferral account, by its nature, is an interim order in that the disposition of the funds requires a further order of the Board. IPAC concluded that deferral accounts were, therefore, interim tolls established pursuant to Subsection 16.1(2) of the NEB Act and that the Board’s authority to order refunds of interim tolls is expressly provided for under Subsection 52.2(a) of the NEB Act.

The CPA argued that it did not matter that the deferral accounts were established as part of a final toll order because they are interim "in effect" whether or not they are called interim. Accordingly, the Board’s jurisdiction to order a refund of the deferral account balances is provided for in Subsection 52.2 of the NEB Act.

Consumers Gas concurred with those parties who argued that the Board could order a refund under the Board’s broad powers contained in Sections

50 and 52 of the NEB Act. Moreover, Consumers Gas submitted that Section 52.2 of the NEB Act should be viewed, not as providing the authority to refund the deferral account balances but as providing guidance in effecting a refund because a deferral account is akin to the nature of an interim toll.

Polysar and Northridge both agreed that the Board’s jurisdiction to order a refund from a deferral account arises primarily from Section 50 of the NEB Act and that it was, therefore, not necessary to consider the application of Section 52.2 of the NEB Act.

C-I-L, on the other hand, argued that once the Board converted a previous interim order into a final toll order which included the establishment of a deferral account, its jurisdiction to order a refund was ousted. C-I-L further submitted that to order a refund, the Board would either have to find that its final toll order was not really final or that the final toll was, as the CPA contends, an interim toll, "in effect". In C-I-L’s opinion the Board does not have the authority under Section 52.2 of the Act to order a refund.

Tennessee Gas Pipeline Company and Midwestern Gas Transmission Company cautioned that while they did not dispute the Board’s jurisdiction to order a refund in the appropriate case, the Board should clearly state that intention in its final toll order. In their submission the Board’s previous toll order that established deferral accounts and the Board’s Reasons for Decision in RH-3-86, did not disclose an intention that the Board would consider a refund of the deferral account balances instead of crediting those balances to a future cost of service as has been the Board’s usual past practice in these matters. In their submission, the Board should signal in advance any change in toll methodology before departing from past practice.

**Views of the Board**

The Board has reviewed with interest the legal arguments put forward by parties that its jurisdiction under the NEB Act includes the power to order a refund of deferral account balances. The Board agrees that the NEB Act does confer upon it the power to order a refund in the appropriate case.

**3.3 Deferral Account Adjustment Procedures**

Concern was expressed during the hearing that supporters of a refund might have a different view if the balance in deferral accounts had been a net debit and an extra billing was required. Cyanamid indicated that, if required, an additional assessment would be acceptable. However, it suggested that a procedure should be put in place to keep shippers informed of the current balances in deferral accounts in order that they not be caught by surprise. Northridge and the CPA expressed similar views.

**Decision**

**In its decision released on 17 June 1988, the Board directed the Company**

**to file a proposal for an adjustment procedure which could operate during a test year to avoid the future accumulation of large balances in deferral accounts.**

### 3.4 Amortization Period

Parties advocated that if the Board selected the option of crediting the deferred balances to the cost of service, the amortization should commence as soon as possible through a reduction in the 1988 interim tolls.

The principal reason advanced for amortizing the deferred balances within the 1988 test year is that it would minimize the risk of intergenerational inequities.

While, for the most part, the balance of the 1988 test year was the preferred amortization period, a few parties suggested a four-month period to 1 November 1988 in order to get the reduction out of the way before the next round of contract renegotiations was completed. Union suggested an 18month period, presumably to minimize the yo-yo effect.

#### Views of the Board

It has been the Board's practice to amortize operating deferral account balances within the following test year. In this instance, approximately six months of the 1988 test year remained from 17 June 1988, the date of the Board's decision on this matter.

While amortizing such a large amount over the remaining six months of 1988 will result in a significant toll reduction, the Board doubts that the toll fluctuation will confuse or inconvenience market participants. These parties should be aware of the reasons for the toll fluctuations and can govern their affairs accordingly.

Use of a four-month period in order to complete the amortization by 1 November 1988, the beginning of the new contract year, would have a greater impact on tolls. The Board does not see any significant advantage in completing the amortization by the end of the present contract year.

#### Decision

**On 17 June 1988 the Board issued Order No. AO-2-TGI-55-87 approving new interim tolls, effective 1 July 1988, which reflect the amortization of the 1987 operating deferral account balances over six months**

### 3.5 1988 Revenue Surplus

TCPL testified that the interim tolls approved by the Board, effective 30 December 1987, would result in a revenue surplus for the first three months of 1988 of approximately $30.6 million. TCPL estimated that by 30 June 1988 the pre-tax revenue surplus would be approximately $33.6 million and would rise to approximately $73.5 million by the end of 1988 if the interim tolls remained unchanged.

At the outset of the hearing, the CPA moved that the scope of the hearing should be expanded to include an examination of the appropriate rate of carrying charges for the 1988 interim period revenue surplus and the desirability of changing the interim tolls. The motion received wide support. The Board decided that it would consider the matter of the method for determining the level of carrying charges for any revenue surplus which may occur in the 1988 test year. In addition, the Board decided to re-examine the continued appropriateness of the existing interim tolls in the light of TCPL's revised projections of its 1988 revenue requirement.

TCPL proposed that the 1988 interim revenue surplus to 30 March 1988 be refunded to system users.

On 18 May 1988 the Board stated that TCPL's proposal was not acceptable as the Board interprets Section 52.2 of the NEB Act to allow it only to order a refund of the variance between interim tolls and final tolls which are found to be just and reasonable, and not between two different levels of interim tolls.

In the light of the Board's views on its powers under Section 52.2, all parties who spoke to the issue urged the Board to reduce the interim tolls for the last six months of 1988 to offset the accumulated revenue surplus and reduce the likelihood of a large revenue surplus occurring in 1988.

**Views of the Board and Decision**

**Interim tolls should be set at a level which best approximates the anticipated revenue requirement for the interim period so that any revenue variance may be minimized.**

**On 17 June 1988 the Board decided to reduce the interim tolls by 30 percent effective 1 July 1988. The Board expects this toll reduction will offset the revenue surplus to 30 June 1988 and minimize the net revenue variance for the year.**

### 3.6 Carrying Charges on Deferral Accounts

In the past the Board has allowed carrying charges on operating deferral accounts to be calculated using the approved rate of return on rate base. This practice was reviewed by the Board during the RH-3-86 proceedings. At that time the Board decided that in special, non-recurring situations, such as those associated with the Eurodollar foreign exchange loss and revenue deficiencies, carrying charges should be calculated using a rate that approximates TCPL's probable cost of financing the deferred balances.

The CPA and Union took the position that a shortterm rate is appropriate for all deferral accounts, arguing that deferral accounts are short-term assets with less risk than the long-lived assets in the rate base. However, they also suggested that such a change should be made prospectively. They pointed to the fact that since 1984 TCPL had earned approximately $2.9 million more on the amortization of deferred balances

using the rate of return on rate base than it would have if a shortterm rate had been used.

Referring to the Board's statement in RH-3-86 that, with respect to operating deferral accounts, debit and credit balances should offset each other, the CPA argued that the current use of rate of return on rate base for calculating carrying charges is having the effect of moving towards a balance. For this reason, the CPA proposed that it would be equitable to switch to a short-term borrowing rate at a time when there are neither winners nor losers.

TCPL pointed out that if one went back to 1980, the net difference would be less than half a million dollars. TransCanada characterized the CPA's proposal of moving toward a balance before changing to a short-term rate as retroactive ratemaking because the prior balances have been disposed of by the Board. IPAC also supported the use of a short-term debt rate for carrying costs. However, unlike the CPA, it suggested the change should be effective 1 January 1988. Consumers Gas expressed support for the use of a short-term rate but held no views concerning the appropriate date for a change.

**Views of the Board**

Evidence adduced during the hearing served to confirm the Board's view that debit and credit balances in operating cost and revenue deferral accounts should offset each other and that the net balance should not be significant over time. Although several parties expressed views on the ongoing appropriateness of calculating carrying charges on operating deferral accounts using the rate of return on rate base, this topic was not an issue in these proceedings. Before changing its policy, confirmed in the RH-3-86 proceedings, the Board would wish to hear expert-financial evidence on this matter.

**3.6.1 1987 Deferred Amounts**

TCPL argued that the size of the 1987 deferred balance and the probable delay in disposition due to the timing of the hearing justify treating the post 31 December 1987 carrying charges on 1987 deferred balances as a special situation, as defined in RH-3-86, and eligible for a lower rate. With regard to the size of the 1987 deferred balances, parties argued that it was not unusual, pointing to net credit balances in 1984 of approximately $60.5 million and net debit balances in 1985 of some $70 million. It was also noted that, if amortization were to commence 1 July 1988, the delay would be only six months. TCPL acknowledged that a six-month delay would be within the bounds of what had occurred historically. Many parties pointed to these facts in arguing that neither the amount nor the time delay were unusual and that no special circumstances exist to justify the use of a short-term rate in calculating carrying charges on the 1987 deferred balances.

**Views of the Board**

In its RH-3-86 Reasons for Decision the Board stated that, in the case of deferral accounts for special, non-recurring situations, carrying charges

should be calculated using a rate that approximates TCPL's probable cost of financing the deferred balances. In indicating that the deferral accounts for the Eurodollar foreign exchange loss and revenue deficiencies were examples of such special situations, the Board was not intending to limit the type of accounts that might be considered to result from special situations. However, the Board did specify that such accounts should be for non-recurring situations.

In the case of the net balance of the 1987 operating deferrals, the Board sees no special situation. It is likely that TCPL'S deferral accounts will continue to have a net debit or credit balance at future year-ends. In the past these balances have been disposed of within six months of the year-end and the amounts, although significant, are not unusual.

**Decision**

**The Board has decided that no special situation exists with respect to the net balance of the 1987 operating deferral accounts. TCPL is directed to calculate carrying charges on the 1987 deferred balances, which amount to a net credit of $76,403,494, using the rate of return on rate base approved in the RH-3-86 Reasons for Decision of 13.5 percent per annum for the period 1 January to 30 June 1988. For the unamortized balances during the period 1 July to 31 December 1988, the applicable rate for calculating carrying charges will be the rate of return on rate base to be determined by the Board in Phase II of these proceedings.**

### 3.6.2 1988 Interim Revenue Variance

TCPL has requested that the 1988 interim revenue variance be considered to be a special situation, as provided for in the Board's RH-3-86 Reasons for Decision. Consequently, TCPL proposed that carrying charges be calculated using an appropriate short-term rate.

**Views of the Board**

The Board has adjusted the interim tolls effective 1 July 1988 in an effort to minimize any variance which may occur. The Board continues to view interim revenue variances as special, nonrecurring events and expects that in the future, once the many issues resulting from deregulation have been resolved, interim revenue variances will be less likely to occur.

**Decision**

**As part of Phase II the Board will examine the disposition of any variance between the approved revenue requirement for the interim period and the total revenue generated from interim tolls. In calculating this variance, the Board has decided that carrying charges will be based on the actual monthly variance, using the average of the opening and closing monthly balances, and using an unfunded debt rate, the level of which is to be determined during Phase II of these proceedings.**

## Chapter 4

## Tariff Matters

### 4.1 Availability of Services

TCPL's tariff sets out provisions requiring that a shipper must first obtain all certificates, permits or other authorizations and have a gas supply, or assurances thereof, before becoming eligible for service. The two principal authorizations typically required by TCPL are provincial removal permits and gas supply assurances covering the full volume and the full term of the proposed transportation service.

TCPL maintained that the availability conditions should continue to be applied as a precondition to service. The Company argued that if the conditions were removed, there would be unjust discrimination between shippers requesting service when there is capacity available and those for whom new facilities must be constructed. The discrimination, in TCPL's view, would stem from the Board's requirement for a demonstration of adequate gas supply and removal permits under Part III of the NEB Act when new facilities are required. TCPL also argued that the lack of full-term/full-volume assurances could increase the risk of non-recovery of demand charges. TCPL associated this risk with the increased number of short-term shippers and with the probability of shipper bankruptcy. In addition, TCPL stated that it wished to ensure it was complying with all applicable legislation.

TCPL received no support from interested parties for the availability conditions as presently implemented. With regard to the claim of unjust discrimination against shippers who require
new facilities, it was suggested that in the new deregulated environment it may be more appropriate to examine the overall supply of natural gas available to the pipeline. Thus, at the time of a Part III application, evidence on supply may be required from all shippers, not just those requesting a new service. In these circumstances, it was

noted that if the availability conditions in question were eliminated there would not be any discrimination

It was argued that TCPL's application of the conditions was excessively rigid, particularly the requirement for full-term and full-volume matching of removal permits, gas supply and transportation contracts. It was pointed out that if TCPL was concerned about a shipper's ability to pay the demand charge then this should be more properly addressed under financial assurances than under availability conditions. It was noted as well that TCPL agreed that having supply and removal permits in place for the full term and full volume of the requested transportation service did not guarantee that a shipper would not suffer bankruptcy. Intervenors maintained that the requirement to pay the demand charge was a sufficient incentive to ensure that the shipper would use the space or assign it to someone else. Moreover, IPAC stated that it is common for a shipper to

obtain gas from other sources in the event its usual sources do not supply the requisite volumes. The CPA's position was that the review of supply involved in obtaining a gas removal permit from the Alberta Energy Resources Conservation Board should eliminate any requirement for TCPL to police supply.

C-I-L stated that the availability provisions were just one more hoop that direct purchasers of nonsystem gas had to jump through to implement a direct purchase and that a similar hoop was not applicable to direct purchasers of WGML's gas.

Interested parties noted that TCPL's current implementation of the availability conditions does not ensure compliance with Alberta laws governing removal of gas from the province. The legislation requires that a valid removal permit be in place on the day gas is removed from the province. Even if a permit is in place before a transportation agreement is made, this does not ensure that that permit will still be valid when gas is removed from the province.

Parties also addressed the question of whether TCPL would be guilty of an offense under the Alberta legislation if the Board were to order that it could not require shippers to provide removal permit information and TCPL subsequently transported gas for which a removal permit was not in place. Most parties agreed that TCPL's legal liability was unclear. They felt that in such a situation TCPL could face litigation on the constitutional question of whether an order made pursuant to a federal statute would take precedence over provincial legislation with which it conflicts. There was general agreement that such litigation would be undesirable. Parties stated that it could prove difficult to ensure a removal permit was in place at the time of signing a transportation agreement, which could be a significant time before gas flowed. However, they also said that it would not be too onerous to provide a gas removal permit before the day on which gas was actually to be removed from the province.

**Views of the Board**

The proof of whether it is appropriate to continue to include an item in the tariff is whether TCPL can show that the item serves a useful purpose and that such usefulness outweighs any negative consequences for current and potential shippers. In the case of the availability conditions in question, TCPL has not demonstrated that they serve a useful purpose. It is difficult to see how the presence of a removal permit or gas supply for a period of one to three years reduces the risks of non-recovery of the costs of facilities where that recovery is spread over a much longer time period. Moreover, the Board does not agree with TCPL's assessment that the risk of shipper bankruptcy is materially decreased if full-term/full-volume permits and supply are in place.

The Board has also noted, as IPAC pointed out, that it is common practice for a shipper running short of gas volumes to make alternative supply arrangements.

Amending the availability conditions will not result in unjust discrimination. The Board sees a distinction between requirements under

Part III of the NEB Act, when new facilities are examined, and requirements under Part IV of the NEB Act. With regard to facility additions, supply information is required before facilities are constructed in order to determine whether they will be used and useful. The concern should not be restricted to the gas supply of any one shipper but rather an evaluation should be made of whether the facilities will be required to meet the needs of this or any other shipper. Evidence on gas supply will continue to be a consideration pursuant to Part III information requirements.

With regard to TCPL's potential liability if gas is removed from a province without a valid removal permit, the Board agrees that there is no useful purpose to be served in forcing TCPL to risk litigation on what ultimately is a constitutional issue. The Board notes that interested parties objected primarily to the full-volume/full-term aspect of the condition. Most parties agreed that it would not be unduly onerous to demonstrate that a removal permit was in place when the gas was being removed from the province.

**Decision**

**TCPL is directed to remove from its tariff the availability conditions that require shippers to obtain all certificates, permits, or other authorizations and to have assurances of gas supply before being eligible to receive service. TCPL may include a provision in its tariff to allow it to satisfy itself that a valid removal permit is in place when removal of gas from the province begins and to confirm that a valid permit is in place at reasonable intervals thereafter. TransCanada is directed to file the necessary amendments to its tariff with the Board and with shippers by 1 March 1989.**

## 4.2 Provision of Fuel by Shippers

In its RH-3-86 Reasons for Decision, the Board allowed shippers the option of providing their own compressor fuel. The toll for those shippers who elect this option consists of a demand toll and a commodity toll, which excludes the cost of fuel. In addition, shippers must provide fuel according to an approved fuel ratio. The Board initially approved an annual average fuel ratio for each domestic toll zone and export point but subsequently approved the use of monthly fuel ratios for firm service commencing 1 January 1988. This change was based on TCPL’s submission that annual average fuel ratios were not workable because they would require a significant storage capability which TCPL does not have. During the hearing, several proposed refinements to the existing procedures respecting the provision of fuel by shippers were examined. Each of these proposals is addressed in the following sections.

### 4.2.1 Monthly versus Annual Fuel Ratios

TCPL argued that monthly fuel ratios should continue to be used on its system for firm service and be implemented for other services because they provide a fair and reasonable compromise between the actual hourly swings in the system fuel requirement and the annual average fuel ratios advocated by some parties.

TCPL submitted that the effect of using an annual average fuel ratio would be to leave the system producers taking the swings in the fuel requirement for all other system users. While upstream and downstream storage could be employed in order to smooth out the fuel requirements, TCPL stated that it does not have access to storage at this time and, even if it did, the cost of such storage would have to be recovered from all system users.

TCPL stated that it would continue to provide shippers with the following month’s fuel ratio on the 25th day of the current month. This would give shippers time to make arrangements with their gas suppliers and NOVA.

Adjustments for variances between the actual fuel ratio and the forecasted fuel ratio would be dealt with within two months of the month in which the variance occurred. Any disputes could be brought to the Board to be resolved.

TCPL stated that while some parties are arguing that TCPL’s dominant position as a user of NOVA capacity is one of the major reasons for changing to annual fuel ratios, this argument should be rejected. TCPL stated that the witnesses for IGUA and Cyanamid testified that the necessary amendments to the removal permits and transportation contracts on NOVA to accommodate the application of monthly fuel ratios had not been a great burden and in fact new users are continually electing the direct purchase option and are able to have their gas delivered to TCPL’s pipeline.

TCPL argued that the real driving force for parties to seek an annual fuel ratio is to reduce or eliminate the additional NOVA costs that suppliers are now including in the price of fuel gas.

IPAC, C-I-L and Polysar supported the use of monthly fuel ratios. IPAC stated that use of monthly fuel ratios would result in tolls that are more cost-related.

IGUA and Cyanamid supported annual average fuel ratios. IGUA stated that the use of annual ratios avoids the impact of WGML's dominance on the NOVA system. Cyanamid preferred annual ratios because they are administratively simpler and their use avoids the necessity of suppliers ensuring firm capacity on NOVA for a maximum amount of fuel.

PPG submitted that the Board should fix annual average fuel ratios for FS service because it is now clear that for the year commencing 1 July 1987, the actual average fuel ratio has exceeded the approved ratio of 4.81 percent. PPG also submitted that fuel ratios should be based on energy rather than on volume.

**Views of the Board**

In its RH-3-86 Reasons for Decision, the Board granted shippers the option of providing their own fuel. Its purpose was to encourage competition and further foster market-oriented pricing. This step was undoubtedly perceived as a benefit to shippers since a high percentage of shippers have made the election.

Since shippers have benefited from providing their own fuel gas, fairness would dictate that they should be prepared to bear any reasonable costs associated with the change in procedures required to bring about this benefit.

The evidence is clear that the compressor fuel requirement on the TCPL system can swing significantly depending mainly on system throughput. These swings have traditionally been borne by the system producers when they were the sole suppliers of compressor fuel for the system.

Now that virtually all shippers have elected to provide their own fuel, system suppliers should not be required to bear the swings without being appropriately compensated. The use of an annual average fuel ratio would not achieve this.

The use of monthly fuel ratios is more reflective of the manner in which the system requires fuel. This ensures that those shippers receiving the benefits associated with providing their own fuel are responsible for the related costs and ultimately it ensures that tolls are more cost-based.

**Decision**

**The Board approves the use of monthly fuel ratios for all services.**

**4.2.2 Reconciliation of Monthly Fuel Ratios to an Approved Annual Ratio**

TCPL's tariff requires that there be an annual reconciliation of each shipper's provision of fuel gas to an approved annual average fuel ratio.

TCPL stated that reconciliation to what amounts to an artificial annual average ratio is unnecessary because TCPL is proposing to correct any variances between the forecasted and actual fuel ratios in the second month following the month in which the variance occurred. Moreover, it is unlikely that the actual annual fuel ratios will match any approved fuel ratios which are based on a forecast of annual system requirements and system operation.

TCPL also submitted that reconciliation by customer to an annual average fuel ratio would result in different ratios being calculated for different customers for the same service to the same zone because all customers do not operate at the same load factor. TCPL argued that this would be contrary to Section 52 of the NEB Act.

TCPL also argued that a major advantage of eliminating the reconciliation would be that the number of components in the compressor fuel deferral account would be reduced.

Polysar supported TCPL's position that there be no reconciliation while IGUA, Cyanamid, and PPG argued that an annual reconciliation provided TCPL with an incentive to control fuel costs.

**Views of the Board**

Given the Board's decision to approve monthly fuel ratios, the Board finds the proposal to adjust the monthly fuel ratio to account for prior month variances between forecast and actual fuel ratios to be in accord with the objective of cost-based tolls. This is because it results in a closer matching of the fuel supplied by shippers and the fuel required to render service. Therefore, reconciliation to an annual average fuel ratio for each customer is no longer necessary.

For monitoring purposes, the Board is to receive a copy of the monthly fuel ratio requirement that is currently sent to shippers and expects that, in its monthly notice, TCPL will provide explanations for variances in the fuel ratios.

D**ecision**

**The Board approves the proposal to remove from TCPL's tariff the requirement for an annual reconciliation of monthly fuel ratios to an approved annual fuel ratio.**

**4.2.3 Inclusion of Lost and Unaccounted-For Gas in the Fuel Ratios**

TCPL proposed to include lost and unaccountedfor gas as part of the monthly fuel ratio commencing 1 January 1989.

Under the proposal, the variance between a zero level of unaccounted-for gas and the actual level of unaccounted-for gas for each month would be included in the fuel ratio for the second subsequent month.

TCPL argued that the only real opposition to its proposal came from the CPA who believed that the inclusion of lost and unaccounted-for gas as a

component of the fuel ratio should be a forecast based on historical experience rather than actuals.

TCPL stated that its proposal was more appropriate because it would yield a more accurate result and it would provide ample opportunity for review by the Board and customers. Furthermore, the Company finds that it is responsive to the new deregulated environment and enhances its withdrawal from the merchant function.

The CPA argued that it would not be appropriate to use actual gains or losses as the unaccounted-for gas volume to be applied against the monthly fuel and company-use requirement. This would effectively implement a deferral account for lost and unaccounted-for gas, which the CPA has consistently opposed and which the Board has consistently denied in the past.

The CPA stated that the deferral account has been consistently rejected because its allowance would remove the financial incentive for TCPL to continue its attempts to minimize the associated costs. The CPA argued that that incentive should be maintained, and can be maintained, through the continuation of the requirement to forecast lost and unaccounted-for gas.

Thus, the CPA submitted that TCPL should continue to be required to forecast lost and unaccounted-for gas. Once a forecast has been found to be reasonable, that volume can be allocated and included in the monthly fuel ratios.

The CPA position was supported by IGUA, Cyanamid and Polysar. Polysar argued that TCPL's effort in these proceedings fell far short of the panels of metering experts of the past whose evidence was not sufficient to convince the Board to establish a deferral account

**Views of the Board**

The proposal to include actual lost and unaccounted-for gas volumes in the monthly fuel ratios would have the same effect as the establishment of a deferral account for this item. The Board has consistently denied the request to establish this deferral account. It has done so on the grounds that approval of such a deferral account would remove some of the incentive for TransCanada to investigate and correct the related metering errors. The Board has not changed this view.

Inclusion of the actual lost and unaccounted-for gas volumes in the fuel ratio could result in significant swings being experienced in the amount of fuel required from month to month. These variations in the fuel ratio should be minimized wherever possible.

As in the past, the Board finds it appropriate to include a provision in the revenue requirement for lost and unaccounted-for gas based on a threeyear rolling average of past gains or losses. Lost and unaccounted-for gas is more appropriately allocated on a volumetric basis, as it is related to the metering function. To include lost and unaccounted-for gas in the fuel ratio would imply that it is related to

the transmission function and would result in it being allocated on a volumedistance basis. The amount to be included in the revenue requirement will be considered during Phase II of these proceedings.

**Decision**

**The Board denies the request to include lost and unaccounted-for gas in the fuel ratio.**

### 4.2.4 Inclusion of the Great Lakes Gas

### Transmission Company (Great Lakes) Fuel Requirement in the Fuel Ratios

IPAC proposed that the fuel requirement on the Great Lakes system in the provision of T-4 service for TCPL be included in TCPL’s fuel ratios. IPAC stated that if this recommendation were followed it would reduce the need for a tendering process.

In response, TCPL argued that this proposal should not be approved. TCPL believed that existing contracts and export licences should be honoured and that it could be extrajurisdictional for the Board to determine from whom Great Lakes must buy fuel gas for use within the United States. In addition, TCPL stated there would be problems and complexities involved in having shippers deliver fuel gas to the Emerson export point.

IPAC argued that TCPL’s reasons for opposing its proposal were not convincing and that any savings that could be effected should be implemented.

Polysar supported IPAC and argued that if shippers were allowed to supply Great Lakes fuel to TCPL, which TCPL then provided to Great Lakes, TCPL should be able to find a way around the difficulties that this raised.

**Views of the Board**

The proposal to include the fuel requirement on the Great Lakes system for the provision of T-4 service in TCPL’s fuel ratios raised many complexities and difficulties which were not fully examined in these proceedings. Moreover, the Board is of the view that it could become extrajurisdictional for the Board to require Great Lakes to purchase fuel gas from parties other than those to whom it had originally contracted to provide transportation service within the United States.

**Decision**

**The Board denies IPAC’s proposal to include the Great Lakes fuel requirement in the fuel ratio.**

### 4.2.5 Requirement versus Option to Provide Fuel

Section 3 of TCPL’s Uniform Toll Schedule contains the following provision:

"Commencing January 1, 1988, shippers who do not elect pursuant to

Section 4.1 hereof to supply TransCanada with fuel shall, in addition to all other applicable charges, pay TransCanada each month for fuel, an amount determined by multiplying the quantity of fuel expressed in gigajoules used during such month by $1.90 per gigajoule."

This provision was included in the tariff to give effect to the Board's decision in RH-3-86 that shippers be given the option of providing their own fuel. TCPL requested that this provision now be deleted and that all shippers be required to provide their own fuel.

In taking this position, TCPL argued that the price for the sale of natural gas should be negotiated between buyers and sellers as this would be consistent with the Gas Agreement. The $1.90 per gigajoule (GJ) price in the tariff was not negotiated and in TCPL's view it may not recover the costs associated with supplying those fuel volumes.

TCPL also argued that it is appropriate to eliminate the involvement of the pipeline in the merchant function. Those shippers who desire to have their fuel supplied by system producers should approach WGML to negotiate the purchase of such gas at an appropriate price. Alternatively, parties should approach other suppliers.

IPAC supported TCPL on this issue while Eastern Canada Natural Gas Brokers Inc. (ECNGB), GMi and IGUA argued that the option should be maintained.

ECNGB stated that several smaller shippers have elected, as a matter of convenience, to have TCPL provide the required fuel gas notwithstanding the $1.90 per GJ price. If the provision of fuel gas is made mandatory, it could be difficult for these smaller shippers to arrange for the small volumes of fuel required.

IGUA stated the option of providing fuel ought to continue to be made available because it is a pipeline service component of TCPL's operations.

**Views of the Board**

The provision of fuel gas should not be a condition of access to the pipeline system. The provision of fuel is an integral part of the transmission function of the pipeline and the fact that the fuel is, for the most part, the same as the product being transported should not relieve TCPL from providing the fuel when requested to do so. Therefore, the option of TCPL providing the fuel, at a price to be specified in the tariff, should continue for those parties who either cannot or choose not to provide it themselves.

**Decision**

**The Board denies the request to require all shippers to provide their own fuel. The provision contained in Section 3 of the Uniform Toll Schedule will remain in the tariff**

**4.2.6 IGUA's Proposal**

IGUA stated that the procedure for the provision of fuel by shippers should contain a direction requiring distributor buy/sell shippers to pass on any benefits from their right to provide their own fuel to the end-user of the operating demand on TCPL's system.

In response, Consumers Gas argued that an enduser that wants to supply its own fuel can choose either an Ontario buy/sell or T-Service over an Alberta buy/sell but, in any event, this is not a problem for this Board to resolve.

**Views of the Board**

This issue raised by IGUA is a matter to be resolved by the contracting parties and not a matter that the Board needs to decide.

### 4.3 Tendering Process for CompanyUse Gas Requirements

In Section 7.7 of its RH-3-86 Reasons for Decision, the Board directed TCPL to adopt a tendering process for its company-use gas requirements in Canada. In addition, Section 10.1.5.1 of the same Reasons for Decision directed TCPL to file tariff amendments to allow shippers the option of supplying their own fuel commencing 1 November 1987.

In response to these directives, TCPL filed a proposed tariff amendment dated 14 October 1987, which sought to remove the commodity cost for company-use gas from TCPL's cost of service, effective 1 November 1987.

In its 14 October 1987 submission TCPL proposed, in lieu of tendering for its fuel requirements, that its tariff be amended to require all shippers, whether for sales or transportation services, to provide their own fuel, and to eliminate the fuel component from all its commodity tolls. On the basis of this proposal, TCPL would provide the fuel required for its sales services at no cost to the tollpayers.

TCPL believed that the implementation of a tendering process was not practical since any supplier bidding for TCPL's fuel requirements would have to show that:

1. It has a secure and adequate gas supply available on a firm basis at all times;

2. It holds the required provincial removal permits; and

3. It has an assured firm maximum daily transportation service available at all times for delivery of fuel gas to TransCanada's system.

A tariff amendment, effective 4 December 1987, allowed shippers the option of providing their own fuel. TCPL was still required to provide fuel for shippers if requested. The majority of shippers elected to provide their own fuel.

The Board was not fully convinced that there was sufficient evidence at that time to make a decision on the tendering of company-use gas requirements. It indicated in its Hearing Order No. RH-1-88 that it wished to re-examine the need for a tendering process for the company-use gas requirements in light of the majority of shippers electing to provide their own fuel.

In the current application, TCPL proposed to amend the tariff to eliminate the current requirement that TCPL provide the fuel if requested to do so by a transportation customer.

TCPL currently supplies the fuel for seven direct shippers. The annual volume amounts to 2.3 106m3, which is 0.15 percent of the total system fuel requirements. TCPL claimed this was insignificant relative to the Company's annual fuel requirement of approximately 1 700 106m3.

TCPL proposed that if the Board required all shippers to provide their own fuel, then the only remaining fuel requirement would be swing gas required to balance the fuel requirements. TCPL noted that this would be significant only if the Board ordered the implementation of an annual average fuel ratio methodology. TCPL contended that whatever the requirement for swing gas, it would be impossible to estimate both its extent and timing and, therefore, it could not be obtained by tender

TCPL contended that if the Board imposed the tendering of fuel, it would be exceeding its jurisdiction by directing the Company as to the manner in which it acquires gas supply. For these reasons, TCPL submitted that any attempt to implement a tendering process for company-use gas requirements would be inappropriate.

IGUA believed that the tendering of fuel volumes may be necessary if an annual average fuel ratio is adopted. IGUA argued that a reasonable estimate of the swing in gas volumes could be determined, to enable tenders for the supply volumes to be made

Union submitted that, under the present netback pricing arrangements between TCPL and the LDCs, the cost of fuel is implicit in the price of gas charged to LDCs. To the extent that such costs are paid for by the LDCs, Union asserted that fuel costs should be no higher than the market price for that gas. Union believed that if bargaining could be brought into the TCPL/LDC relationship, then the issue of tendering for fuel gas would disappear. If the bargaining process does not result in competitively-priced fuel gas, then requiring TransCanada to tender for its fuel gas would provide some benefit to the small shippers.

Some LDCs proposed they should have the right to tender for the fuel that is used in supplying CD Service. IPAC maintained that the LDCs have conceded that they are buying a service at the inlet to their systems and therefore, they do not have a say in the provision of the fuel used to provide that service.

**Views of the Board**

The tariff changes allowing shippers to provide their own fuel (with TCPL

providing its own fuel for sale services) achieved the original objective of requiring TCPL to tender for its own fuel-use volumes which was to obtain the lowest possible company-use gas costs for toll purposes.

No new evidence was adduced in these proceedings to cause the Board to conclude that the tendering of TCPL's fuel-gas requirements would, at this stage in the process of deregulation, better achieve this objective.

The Board disagrees with TCPL's contention that if the Board directed the Company to tender for its company-use gas requirements, the Board would be exceeding its jurisdiction by directing TCPL as to the manner in which the Company acquires gas supply.

In previous orders and decisions, the Board considered that a tendering process for company-use gas was necessary in order to determine the lowest possible cost of purchased company-use gas for toll purposes, but did not direct TCPL to purchase its gas supply from any particular source.

The Board believes it has jurisdiction to use a tendering process in order to obtain a market-driven price for company-use gas requirements used in setting transmission tolls.

Union's concerns about the bargaining process in TCPL/LDC relationships should be alleviated as a result of the Board's decision on selfdisplacement, because the parties would be negotiating fuel costs in a competitive contracting environment.

There are two remaining fuel gas volumes that could be subject to tender. These are the volumes

required to supply swing gas, in the event the Board ordered the implementation of an annual average fuel ratio methodology, and the fuel volumes necessary to service the small direct shippers who requested such volumes from TCPL.

In Section 4.2.1 of the current Reasons for Decision, the Board maintained a monthly fuel ratio methodology, alleviating the requirement to provide any significant swing gas volumes, and therefore the need to tender for such volumes.

**Decision**

**The Board has decided to maintain the existing tariff provision allowing shippers the option of providing their own fuel requirements (see Section 4.2.5). Since the majority of shippers have elected to provide their own fuel, there remain only a few shippers for which TCPL currently supplies relatively small fuel volumes. The Board concurs with TCPL that tendering for such small volumes would be impractical**

**The Board, therefore, has decided not to require TCPL to adopt a tendering process for its company-use gas requirements at this time.**

### 4.4 The Inclusion of Sales and Marketing Matters in the Tariff

TCPL's tariff contains matters related to gas sales and marketing and, therefore, distinguishes between shippers/transportation service and buyers/sales service. TCPL stated that the remaining distinctions, with the exception of those mentioned below, were necessary for the meaningful interpretation of gas sales service contracts. TCPL submitted that the tariff could only be amended when and if the parties to each sales contract, through the process of fair and competitive negotiations, included comparable language in those sales contracts. TCPL further submitted that since it, through its agent WGML, and the distributors were in the process of negotiating the sales contracts, it would be inappropriate for the Board to influence those negotiations by deleting related provisions from the tariff, thereby adding more variables to the negotiations.

TCPL acknowledged that some provisos in the tariff could be revised immediately. These provisos are identified in Appendix IV.

**Views of the Board**

The buying and selling of natural gas and its transportation are separate and separable activities. Current policy provides for primary reliance on the proper functioning of competitive markets to determine gas supply, demand and prices. To improve the potential for market operations to be objective and non-discriminatory, TCPL's tariff should deal solely with pipeline transportation matters, including tolls, access and conditions of service for transportation.

**Decision**

**TCPL shall remove from its tariff all matters which, either directly or by reference, relate to sales and marketing of natural gas. Those sections which can now be revised shall be amended and revisions filed with the Board and shippers by 1 March 1989. By 1 November 1989, TCPL shall file with the Board and with all shippers a new tariff, to be called the TransCanada PipeLines Limited Transportation Tariff (TCPL Tariff). This amended tariff shall not contain any matters related to gas sales and marketing. If all remaining sales contracts were to be unbundled and if this unbundling were to take place before 30 September 1989, TCPL would be required to file the new TCPL Tariff which excludes sales and marketing matters within two months after the demise of the last sales contract.**

### 4.5 The Amalgamation of the Uniform Toll Schedule and the General Terms and Conditions

TCPL's tariff includes a "Uniform Toll Schedule" and "General Terms and Conditions" both of which describe general conditions applicable to all services. Moreover, there is some duplication since both sections include definitions.

TCPL stated that it saw no pressing need for an amalgamation but that it could be accomplished if required. TCPL was concerned, however, that it would be a time-consuming task. It stated that its transportation

department was operating in an environment of staff shortage and time limitations and had a number of significant matters to address. TCPL submitted that any amalgamation should wait until after the Board's Decision on Phase II of the current proceedings was released.

No interested parties opposed the amalgamation and several supported it.

**Views of the Board**

TCPL's tariff should be in a form that is as easy to understand as possible. Unnecessary duplication or repetition of conditions and definitions should be avoided since they can complicate the tariff and could result in conflicts.

**Decision**

**The TCPL Tariff to be filed on or before 1 November 1989 (see Section 4.4) will amalgamate the "Uniform Toll Schedule" and the "General Terms and Conditions". Therefore, it will include only one set of general term& and conditions that applies to all services. As directed in Section 4.4, this TCPL Tariff will contain no matters relating to sales and marketing of natural gas.**

**This TCPL Tariff shall include:**

**(a) Maps as in the current Gas Tariff;**

**(b) A schedule setting out the tolls as approved by this Board to be charged for all services provided by TransCanada;**

**(c) Terms and conditions for specific services;**

**(d) General terms and conditions; and**

**(e) Operating demand volumes.**

### 4.6 The Availability of Temporary Winter Service (TWS)

TCPL proposed that Section 1.1(a) of the TWS Toll Schedule, which restricts the availability of TWS Service to customers who also have contracts for service under TCPL's FS, Small General Service (SGS) and/or ACQ Toll Schedules, be removed.

This restriction in the tariff was originally imposed to ensure that TWS customers would use this service only as a form of overrun service to firm service contracts. In this regard, it was noted that in Section 10.2 of the RH-3-86 Reasons for Decision the Board established a two-tiered interruptible service and eliminated the concept of interruptible service being tied to the provision of firm service.

Generally, intervenors supported TCPL's position to remove the restriction

**Views of the Board and Decision**

**The removal of this restriction will result in the availability of TWS being consistent with the availability of Peaking Service (PS) and IS.**

**The Board directs TCPL to remove this restriction from Section 1.1(a) of the TWS Toll Schedule.**

### 4.7 Transportation Services Delivery Obligations

TCPL proposed a tariff amendment that would set the level of delivery obligations under transportation services at the delivery point. Under the existing tariff, TCPL's obligation is to deliver the volume of gas received from the shipper at the upstream receipt point.

The intent of TCPL's proposal is to ensure that, for transportation services, the same amount of energy is delivered to a customer by TCPL as is delivered by the customer to TCPL for transportation.

During cross-examination, TCPL elaborated on its position that adoption of this proposal would eliminate problems associated with defining its volume obligations under sales and transportation services at different ends of its pipeline system, especially in determining OD volumes for both transportation sales and service customers and providing appropriate OD relief to customers. TCPL noted that one advantage of its proposal in the determination of OD volumes at the delivery point is that direct shippers who require Saskatchewan gas would not have to contract and pay for additional IS service required to enable the displacement shippers to deliver the total energy equivalent to that displaced on the distribution system.

In its direct evidence, TCPL cited a number of additional administrative advantages such as using TCPL's own measurement facilities rather than those of NOVA This would provide TCPL with greater control over monthly measurements of throughput and more timely accounting information for billing purposes; additional advantages also result, namely in alleviating problems associated with the volume allocation procedures of NOVA (in redetermining TCPL's maximum daily volume obligation), and streamlining its computer systems for accessing billing data.

Although intervenors were generally supportive of TCPL's proposal, IGUA and Cyanamid opposed it. They argued that this proposal would result in cross-subsidization between shippers having different sources of gas supply with varying heat contents.

TCPL testified that its proposal, if implemented, would result in a fairer system of cost allocation than the current tariff provision provides. TCPL explained that demand tolls are calculated based on OD volumes, and are not calculated based on energy. The energy delivered to customers must equal the energy received on behalf of customers; however, tolls are designed based on volumes. TCPL's proposal puts both sales and transportation volumes on an equal basis by having the obligation at the delivery end of the system. Saskatchewan gas is generally at a slightly lower heat content than Alberta gas.

In implementing this proposal, TCPL recognized there would be some minor changes in the cost allocation to each of the different zones and export points depending on the mix of Alberta and Saskatchewan gas in each zone. TCPL believed that putting cost allocation for sales and transportation services on the same basis recognizes the integrated nature of its system.

TCPL asserted that its proposal ensures a greater level of fairness and equity in the cost allocation process. Each tollpayer would be paying the same toll for the same volumes of the blended stream of gas. TCPL has an obligation to deliver sales services volumes at the delivery end of the system even though these volumes are predominately Alberta gas. TCPL submitted it is seeking equality in the treatment for cost allocation purposes between sales and transportation services.

By basing cost allocation on the delivery point rather than on the receipt point, it recognized the demand being placed on the TCPL system at the downstream end and on the length of the system these volumes have to be transported.

TCPL asserted that the positive effects of its proposal on the efficiency, operation and administration of the pipeline will result in sales and transportation volumes being treated fairly and equally in terms of transportation services provided.

**Views of the Board**

The implementation of its proposed tariff amendments is a natural consequence of the progress of deregulation in the direct sales market. It results in a better matching of the process for establishing delivery obligations for both sales and transportation services on the entire TCPL system, and permits the determination of OD volumes for both sales and service customers to be more finely tuned to the appropriate OD relief required by distributors for displacement gas.

**Decision**

**The Board approves the proposed tariff amendments.**

## 4.8 Interruptible Service (IS) Toll Schedule

### 4.8.1 Section 2.4 re Customer Forecast

Section 2.4 of the IS Toll Schedule denies service to customers who fail to provide a forecast by the 15th day of the month immediately preceding the month in which the IS is required.

In its decision in Section 4.2.1, the Board decided that a monthly fuel ratio rather than an annual average fuel ratio was to be used for toll purposes. To implement this decision, a monthly forecast of interruptible volumes is required. TCPL submitted that an IS forecast is required to enable it to perform its simulation of throughput and to determine the fuel requirements for the month following the date the forecast is due. A best-efforts forecast for IS by shippers helps ensure that the monthly fuel ratios, applicable to the forecast month, reflect the anticipated level of system use. TCPL testified that its Gas Control Department requires an update of IS by the 15th of the month to undertake flow studies to determine optimum system throughput and fuel requirements for each of the remaining months of the contract year taking into account:

1. The flow split between the northern Ontario line and Great Lakes;
2. Contractual commitments;
3. Planned compressor and pipeline maintenance; and
4. System capabilities.

Consumers Gas objected to the harsh penalty of denial of service in the event of a failure to provide a forecast by the 15th of the month, and advocated a lower priority for IS as a more appropriate penalty.

Consumers Gas pointed out that with such a severe penalty provision in the tariff, failure to make timely best-efforts forecasts may result in IS forecasts that are timely but are made at the expense of accuracy and suggested that such results would be counter-productive.

Consumers Gas suggested that a requirement for a forecast should remain, but that the penalty provision should be eliminated. Any remedial action that may be necessary should be taken after a year’s actual experience of receiving IS forecasts.

ICG (Ontario) also viewed the denial of service penalty provision as punitive and suggested TCPL should be required to rely on the honour system of providing best-efforts monthly IS forecasts.

Cross-examination of TCPL established that the monthly forecast of IS will not be the determining factor in the quantity of IS a shipper receives. In obtaining a best-efforts forecast of IS, TCPL would be able to determine monthly fuel requirements, but would prorate available capacity on the basis of IS nominations.

Polysar submitted that access to relevant information, identified by the Pipeline Review Panel in Section 5.1 of its report issued in June 1986, was vital to the efficient and effective operation of a competitive, market-sensitive pricing regime.

Polysar added that with information supplied by all shippers, TCPL should be able to provide more accurate information to both existing and potential shippers.

Polysar urged the Board to encourage the provision of such information as a necessary element of an open-access pipeline and to encourage TCPL to institute a system to provide information to shippers on a regular basis as soon as reasonably possible.

**Views of the Board**

The Board is concerned that abuses may occur as a result of inaccurate IS forecasts being submitted to satisfy the time requirement in this provision. The Board does, nevertheless, recognize the importance to TCPL of obtaining timely forecasts of IS requirements for the purpose of making the best possible monthly estimates of shippers' fuel requirements.

As a start to providing an information system for shippers, the Board requires TCPL to include in its monthly newsletter, a comparison of each shipper's actual IS nominations and its forecast of IS nominations for the preceding month. This would enable TCPL, and other IS customers affected, to determine which IS customers may be submitting inaccurate forecasts and thereby negatively affecting the monthly calculations of the fuel requirements for subsequent months.

Should a situation evolve that parties are unable to resolve among themselves, recourse can be sought through specific application to the Board.

**Decision**

**The Board approves the proposed restriction but directs TCPL to add the following words to Section 2.4 of the IS Toll Schedule:**

**"TCPL shall include in its monthly newsletter (or otherwise notify IS shippers in a manner acceptable to the Board) a comparison of each shipper's actual IS nominations and its forecast of IS nominations for the preceding month."**

### 4.8.2 Section 3.2 re IS-1 Nominations

Section 3.2 of the IS Toll Schedule provides that, notwithstanding any customers who have nominated IS-1, if available capacity is sufficient to fully satisfy all IS customers requesting service, then all IS customers will Pay the IS-2 toll.

TCPL included this provision in the tariff in 1987 when it was filed and

approved by the Board. Since TCPL is not able to provide its customers with an estimate of the available capacity for IS at the time of nomination, a customer cannot evaluate the likelihood of nominating and receiving IS-2 service.

In TCPL's view this provision provides a benefit of a lower toll to IS shippers recognizing this deficiency in the nominating process for IS service.

TCPL argued that there is a benefit to firm service customers in having IS shippers and IS volumes on its system because the imputed fixed costs in the IS toll are credited to a future cost of service. Therefore, it is to the benefit of all firm service tollpayers to attempt to have as much available capacity filled with interruptible volumes as possible. This current provision in the IS toll may promote greater use of the service. TCPL asserts that removal of this provision could, in fact, cause voluminous daily requests concerning IS availability, which it is not prepared to handle.

Most intervenors supported the retention of this provision in the tariff.

The CPA argued that parties nominating IS-1 service, even if capacity was available to satisfy the requirements of all interruptible customers, should pay for what they nominate. The CPA argued that a party, in nominating IS-1 service, wants greater assurance of transportation of its nominated volumes, and is prepared to pay for such greater assurance. The fact that no interruption occurred is insufficient reason for not paying the higher toll.

**Views of the Board**

The two levels of priority of IS and the corresponding two levels of tolls enable shippers to reduce the risk of interruption by paying a higher toll and obtaining a higher priority of IS service.

The treatment of a request for higher-priority IS-1 as a conditional request for lower-priority IS-2 with its lower toll if capacity is available is similar in treatment to providing a refund of an insurance premium when the event being insured against does not occur.

A request for a particular type of service should result in that service being provided and paid for.

The Board notes that maintenance of this section of the IS Toll Schedule would tend to reduce the fixed cost portion of IS revenues available as a revenue credit to future cost of service, to the detriment of all other shippers.

**Decision**

**The Board directs TCPL to remove Section 3.2 from the IS toll Schedule.**

### 4.8.3 Priority of Domestic versus Export IS Volumes

The current tariff provides that domestic interruptible service volumes are accorded higher priority than export interruptible service volumes in the event of interruption or curtailment.

TCPL could not continue to support this distinction in priority and recommended its removal from the tariff. In TCPL's view, continuation of this present policy would be unjustly discriminatory.

The CPA also argued for removal of this distinction but added it would not oppose a transition period during which priority would be separately established within each of the IS-1 and IS-2 categories.

IPAC stated that most other parties requesting the retention of priority for domestic volumes are suggesting that it be on a temporary basis so that an adjustment in purchasing practices can take place. IPAC also alleged that the distributors who are taking IS, and at the same time requesting retention of their priority for domestic interruptible volumes, are acting out of self-interest. IPAC pointed to distributors who have reduced their CD nominations by virtue of the OD mechanism but have nominated for more IS service than used to be the case, and would like to preserve their priority status at times when spare capacity is limited. IPAC also advocated immediate removal of this clause .

Based on historical reliance of some distributors on this service, IGUA proposed a two-year phasein for the elimination of the distinction in priority to allow distributors' purchasing habits to adjust.

Consumers Gas requested that the distinction in priority be maintained until 1 November 1989. It explained that domestic users of IS are able to purchase such discretionary gas only to the extent that TCPL has excess capacity available to provide IS, whereas export buyers of spot gas generally have access to a number of interstate pipelines for transportation service.

In late 1987, spare capacity available to provide IS was extremely limited on the TCPL system, and in fact IS could not be offered for a number of months in the early summer of 1988.

Consumers Gas argued that domestic users have reacted to the unavailability of IS by contracting for additional firm service, a process that is still ongoing. Consumers Gas believed it fair and reasonable to allow domestic users to make alternative transportation arrangements, since they do not have any alternate means to transport discretionary gas as do export customers on the TCPL system. As a result, Consumers Gas contended that for a short transition period, domestic customers should be allowed to maintain their priority over export buyers for the same level of interruptible service (i.e. like-for-like service).

For similar reasons, Ontario supported Consumers Gas position for a one-year delay before eliminating the distinction in priority of IS service.

C-I-L supported retention of the distinction in priority arguing that export customers may use excess capacity at Emerson, leaving little or no

capacity available for IS to downstream areas. If there were allocations of capacity based on nominations, United States customers could much better absorb such swings because of the nature of their systems. C-I-L expressed concern that a domestic industrial user is much more limited in its ability to accept higher level of deliveries in the event of an allocation based on nominations, and may lose its share of deliveries which it would otherwise be entitled to.

However, if the Board decided to eliminate the priority for domestic services, then it should adopt some formula for allocation, rather than allocating on the basis of nominations. C-I-L suggested that under Article 904 of the Free Trade Agreement, a record of prior deliveries would be readily available, and could be used as a basis for allocating capacity for domestic versus interruptible exports.

ICG (Ontario) testified that the immediate elimination of the priority of domestic IS over export interruptible service would worsen the sudden reduction in availability of IS service on TCPL, and disadvantage the domestic IS customers of ICG (Ontario).

Accordingly, ICG (Ontario) preferred a two or three-year adjustment period, recognizing that over time priority of domestic IS over export interruptible would be inconsistent with the provisions of the Free Trade Agreement.

Union also argued for a two-year transition period to 1 November 1990 to eliminate the priority and allow time for TCPL to construct its new facilities.

**Views of the Board**

In a deregulated environment no distinction in priority should be made between interruptible shippers based on the destination of their gas.

The immediate elimination of the distinction in priority between domestic and export interruptible service customers should not place any undue burden on domestic interruptible shippers, since this service was always subject to interruption.

The risk of interruption of IS service is accepted by shippers when they contract for this transportation service. Any negative consequences which could arise as a result of interruption should be considered when contracting for this service.

**Decision**

**The Board directs TransCanada to remove from the tariff the distinction in priority between domestic and export interruptible service.**

## 4.9 Availability of Temporary Summer Service (TSS)

In its RH-3-86 Reasons for Decision, the Board denied TCPL's proposals to implement TSS and Transportation-Temporary Summer Service (T-TSS) because the services and associated tolls were inappropriate in light of the

Board’s decision to establish a two-tiered toll design for interruptible service. The Board stated, however, that it would consider alternative proposals should a specific need for this type of service arise.

During these proceedings, TCPL stated that while it has had a number of general inquiries respecting TSS, it has had only one firm request for the service.

TCPL also stated that it is not opposed, in principle, to providing such a service. But the Company considers it to be inappropriate to file a tariff or toll schedule for this service at this time, since TCPL does not have capacity to offer TSS east of compressor station 41 during the 1987-88 contract year and does not expect to have firm capacity for TSS during the 1988-89 contract year.

IPAC stated that the availability of TSS would be desirable because it would have the effect of using system capacity that traditionally has been available during the summer period. IPAC argued that, notwithstanding TCPL’s evidence that there is no capacity for this service, it should be implemented in order that it could be utilized should that situation change.

**Views of the Board**

The addition of TSS service to TCPL’s menu of services would be desirable so that TCPL’s customers have a wider range of services from which to meet their needs and to improve the efficient operation of the system during the summer Period.

However, because a proposed toll design and toll schedules were not filed during these proceedings and because of TCPL’s evidence that capacity for TSS will likely be unavailable until after the 1988-89 contract year, it would be appropriate to examine the toll schedules and toll design for TSS during TransCanada’s next toll hearing.

Decision

The Board directs TransCanada to bring forward for examination at its next toll hearing a proposed tariff and toll design for TSS.

**4.10 Toll Schedules for Storage Transportation Service (STS)**

TCPL filed an STS Toll Schedule with a revision eliminating Section 2.1(b). As a result, TCPL is now willing to allow STS deliveries at Dawn, even if it has the effect of increasing deliveries of ACQ at Oakville in the central delivery area.

Of the three current STS customers, both GMi and ICG (Ontario) were generally satisfied with the provisions of the tariff.

Consumers Gas believes the elimination of Section 2.1(b) could force Consumers Gas to incur westerly transportation costs on the Union system to move ACQ to Dawn, but it was prepared to accept the final version of the proposed STS Toll Schedule.

The CPA submitted that the generic STS Toll Schedule is reasonable, but it would like to examine the derivation of the toll in Phase II of these proceedings.

ICG (Ontario) and Union also wish to address the toll design for STS service in Phase II of these proceedings.

**Decision**

**The Board approves the toll schedule for STS as filed with the exception of Section 5.3 which is addressed in Section 4.11 of these Reasons for Decision. The toll design for this service will be a subject of examination in Phase II of this hearing.**

### 4.11 Conflict in Interpretation of Tariffs and Contracts

Section 5.3 of the Uniform Toll Schedule states:

"Except where the contract expressly states another meaning, the terms used in the

Uniform Toll Schedule, the applicable Toll Schedule and the General Terms and Conditions shall apply."

Identical language is found in Section 10.3 of the FS Toll Schedule, Section 5.3 of the ACQ Toll Schedule, Section 5.3 of the TWS Toll Schedule, Section 5.3 of the PS Toll Schedule, Section 4.3 of the IS Toll Schedule, and Section 5.3 of the STS Toll Schedule.

TCPL argued that the intent of these provisions is to give precedence to the Board-approved tariff where the language conflicts, unless the contract expressly provides otherwise. TCPL noted that the contract in all cases is part of the filed tariffs, and if the Board considered that an express provision in the contract which overrides some provision in the tariff were unduly discriminatory or otherwise offensive, it could disallow it. TCPL submitted that these sections should not be changed.

**Views of the Board**

All parties should be subject to the same terms and conditions of pipeline service. Furthermore, these terms and conditions should be clearly specified in a publicly available transportation tariff. It is not appropriate that contracts negotiated between private parties override any tariff provisions since this could result in discrimination in service.

Decision

TCPL is directed to eliminate the words "Except where the contract expressly states another meaning", from the tariff and to file an

amended tariff immediately. Moreover, the filing of a contract purporting to amend the Board-approved tariff will not be effective unless, and until, TCPL has specifically sought and received the Board's approval for the amendment.

## Chapter 5

## Disposition

The foregoing chapters, together with Order No TG-8-88, constitute our Reasons for Decision and Decision on this matter.

R. Priddle
Presiding Member

A.D. Hunt
Member

W.G. Stewart
Member

Ottawa, Canada
November 1988

**Appendix I**

File No.: 1562-T1-26
19 February 1988

VIA TELECOPIER

Mr. J.W.S. McOuat, Q.C.
Vice-President, Law
TransCanada PipeLines Limited
P.O. Box 54
Commerce Court West
Toronto, Ontario
M5L 1C2

Dear Mr. McOuat:

Re: 1988/89 Toll Application

Further to the Board's letter of 29 January 1988 and your application dated 5 February 1988, the Board is today announcing that it will hold Phase I of its two-phase public hearing with respect to the above-referenced application for tolls effective 1 January 1988 and 1989 commencing on 16 May 1988 in Ottawa. The attached Hearing Order RH1-88 contains the Board's directions on procedure with respect to Phase I.

Due to the unavailability of appropriate accommodation in Calgary during the time frame contemplated by the Board for Phase I, the Board has deferred consideration of holding part of these proceedings in Calgary until the timing for Phase II has been finalized.

The Board is aware of the desirability of rendering a decision with respect to Phase I matters in a timely fashion in order to provide parties with sufficient time to take appropriate steps with respect to contracting for the 1988 gas year. For this reason the Board is prepared to defer certain matters that would normally fall within Phase I until Phase II of the hearing.

Appendices IV and V of Hearing Order RH-1-88 contain the Board's initial list of toll design and tariff issues to be dealt with during these proceedings. It is the Board's intention to examine certain of the issues referenced therein with a view to establishing consistent treatment between sales service and transportation service and further encouraging the move towards open access to the TransCanada system. These issues have been segregated into the following categories:

I- Issues to be addressed in Phase I;

II- Issues which could be addressed in Phase II.

The Board wishes to obtain the views of TransCanada and Interested Parties with respect to proceeding in this manner. As outlined in Paragraph 13 of Order No. RH-1-88, parties are asked to address the

division of issues proposed by the Board. The Board considered disposing of certain matters in writing, but concluded that this would unduly confuse the process and result in possible overlap. The Board therefore concluded that it would not be appropriate.

Parties are asked to provide their comments in this regard by 3 March 1988, when they file their Notice of Intervention

TransCanada is required to serve a copy of this letter on all parties being served with a copy of Hearing Order RH-1-88.

Attachment
Yours truly

J.S. Klenavic Secretary

File Number: 1562-T1-26 Date: 17 February 1988

**Hearing Order RH-1-88**

**Directions on Procedure**

**PipeLines Limited**
**Application for Tolls Effective 1 January 1988 and 1989**

By application dated 5 February 1988, TransCanada PipeLines Limited ("TransCanada" or "the Applicant") has applied to the National Energy Board ("the Board") for certain orders respecting tolls under Part IV of the National Energy Board Act.

Having considered the application on 17 February 1988, the Board decided to hold a public hearing in two phases. Phase I will commence on 16 May 1988 in Ottawa, Ontario. The Board directs 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 Commerce Court West, 54th Floor, corner of King and Bay Streets, Toronto, Ontario and in its Calgary office, 530-8th Avenue S.W. A copy of the application is also available for viewing during normal business hours in the Board’s Library, Room 962, 473 Albert Street, Ottawa, Ontario, and at the Board’s Calgary office, 4500 - 16th Avenue, N.W.

## METHOD OF HEARING

2. The hearing will be held in two phases: Phase I will deal with toll design and tariff matters, an initial list of which is identified in Appendix IV. Phase II will deal with all other issues, including throughput forecasts, rate base, rate of return and cost of service for the test years 1988 and 1989 and those issues identified in Appendix V.

## INTERVENTIONS

3. Interventions are required to be filed with the Secretary by 3 March 1988. Interventions should include all the information set out in Section 32 of Part III to the Board's revised Draft Rules of Practice and Procedure dated 21 April 1987.

4. The Secretary will issue a list of intervenors shortly after 3 March 1988.

## PHASE I

### WRITTEN EVIDENCE OF THE APPLICANT

5. Any additional written evidence that the Applicant wishes to present with respect to Phase I shall be filed with the Secretary and served on all other parties to the proceeding by 25 March 1988.

### INFORMATION REQUESTS TO THE APPLICANT

6. Information requests with respect to Phase I addressed to the Applicant are required to be filed with the Secretary and served on all other parties to the proceeding by 8 April 1988.

7. Responses to information requests made pursuant to paragraph 6, received within the specified time limit, shall be filed with the Secretary and served on all other parties to the proceeding by 19 April 1988.

### WRITTEN EVIDENCE OF THE INTERVENORS

8. Intervenors' written evidence with respect to Phase I is required to be filed with the Secretary and served on all other parties to the proceeding by 26 April 1988.

**LETTERS OF COMMENT**

9. Letters of comment with respect to Phase I are required to be filed with the Secretary and served on the Applicant by 26 April 1988.

**INFORMATION REQUESTS TO THE INTERVENORS**

10. Information requests with respect to the material filed pursuant to paragraph 8 are required to be filed with the Secretary and served on all parties to the proceeding by 2 May 1988.

11. Responses to the information requests made pursuant to paragraph 10, received within the specified time limit, shall be filed with the Secretary and served on all parties to the proceeding by 9 May 1988.

**HEARING**

12. Phase I of the hearing will commence in the Hearing Room of the National Energy Board, 473 Albert Street, Ottawa, Ontario, on 16 May 1988 at 1:00 p.m. and will continue until 3 June 1988 at which time the hearing will adjourn for one week. The hearing will reconvene on Monday, 13 June 1988 at 1:00 p.m.

**LIST OF ISSUES**

13. The Board intends to examine in Phase I, but does not limit itself to, the issues specified in Appendix IV. Appendix V identifies issues which the Board believes could be examined in Phase II. In their interventions parties are to address the following questions:

(a) Are there any additional issues which should be addressed and if so should they be addressed in Phase I or Phase II?

(b) Are there any changes which should be made to the assignment of issues between Phase I and Phase II?

Shortly after the receipt of interventions the Secretary will issue an amended Appendix IV.

**PRE-HEARING CONFERENCE**

14. A pre-hearing conference to discuss procedural matters, clarify responses to information requests, if necessary, and to provide for the exchange of documents among parties, will be held on Thursday, 21 April 1988 at 9:00 a.m. in room 201BDF of the Metropolitan Toronto Convention Centre, 255 Front Street West, Toronto, Ontario.

**SERVICE TO PARTIES**

15. The Applicant shall serve one copy of these Directions on Procedure on all parties to RH3-86, all its shippers who were not parties to RH-3-86 and the parties listed in Appendix

III of this Order. The Applicant is requested to file with the Board one copy of the list of all parties served.

**NOTICE OF HEARING**

16. The publications in which the Applicant is required to publish the Notice of Public Hearing are listed in Appendix II.

**PHASE II**

17. The Applicant shall file with the Secretary of the Board and serve on all parties who will have intervened pursuant to paragraph 3 of this order, supplementary evidence in support of the 1988 and 1989 tolls to be dealt with in Phase II by 4 July 1988.

18. Directions on Procedure for Phase II of the hearing will be issued at a later date.

**PROCEDURE FOR HEARING OF EVIDENCE**

19. For the purpose of the hearing of evidence in each phase, the following procedure shall apply:

(a) the Applicant shall present its evidence;

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

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

(d) after each Intervenor has presented its evidence, other Intervenors, the Applicant and Board Counsel shall have the right of cross-examination.

**FILING AND SERVICE REQUIREMENTS**

20. Where parties are directed by these Directions on Procedure or by the Board's revised Draft Rules of Practice and Procedure dated 21 April 1987, to file or serve documents on other parties, the following number of copies shall be served or filed.

(i) for documents to be filed with the Board, provide 35 copies;

(ii) for documents to be served on the Applicant, provide 3 copies;

(iii) for documents to be served on Intervenors, provide 1 copy.

21. Parties filing or serving documents at the hearing shall file or serve the number of copies specified in the preceding paragraph.

22. Persons filing letters of comments should serve one copy on the Applicant and file one copy with the Board, which in turn will provide copies for all other parties.

23. Parties filing or serving documents fewer than five days prior to the commencement of the hearing shall also bring to the hearing a sufficient number of copies of the documents for use by the Board and other parties present at the hearing.

**SIMULTANEOUS INTERPRETATION**

24. The proceeding including the pre-hearing conference will be conducted in either of the two official languages and simultaneous interpretation will be provided.

**GENERAL**

25. Unless otherwise directed by the Board, the hours of sitting shall be from 8:30 a.m. until 1:00 p.m. except Mondays when the hours shall be from 1:00 p.m. to 4:30 p.m.

26. All parties are asked to quote Order No. RH1-88 and File No. 1562-T1-26 when corresponding with the Board in this matter.

27. Subject to the foregoing, the procedures to be followed in this proceeding shall be governed by the Board's revised Draft Rules of Practice and Procedure dated 21 April 1987.

28. For information on this hearing, or the procedures governing the hearing, contact Denis Tremblay, Regulatory Support Officer, at (613) 998-7199.

NATIONAL ENERGY BOARD

J.S. Klenavic Secretary

**APPENDIX I**

**To Order RH-1-88**

**NATIONAL ENERGY BOARD**

**NOTICE OF PUBLIC HEARING**

**PipeLines Limited**

**Application for Tolls Effective 1 January 1988 and 1989**

The National Energy Board ("the Board") will conduct a hearing into an application dated 5 February 1988 by TransCanada PipeLines Limited ("TransCanada") pursuant to Part IV ofthe National Energy Board Act for certain orders respecting tolls that TransCanada may charge for services rendered for the period commencing1 January 1988 and concluding 31 December 1989.

Phase I of the hearing, which will deal with toll design and tariff matters, will commence on Monday, 16 May 1988 at 1:00 p.m. local time in the Hearing Room of the National Energy Board, 473 Albert Street, Ottawa, Ontario.

A pre-hearing conference to discuss procedural matters will be held in room 201BDF of the Metropolitan Toronto Convention Centre, 255 Front Street West, Toronto, Ontario on 21 April 1988 at 9:00 a.m.

Phase II of the hearing, to be held at a later date, will consider all other issues, including throughput forecasts, rate base, rate of return and cost of service for the test years 1988 and 1989 and those toll design and tariff matters not considered in Phase I. TransCanada is expected to file material for Phase II by 4 July 1988.

The hearing will be public and will be held to obtain the evidence and relevant views of interested parties on the application.

Anyone wishing to intervene in the hearing must file a written intervention with the Secretary of the Board and serve three copies on TransCanada at the following address:

Mr. James W.S. McOuat, Q.C. Vice President Legal and Regulatory Affairs, Pipeline TransCanada PipeLines Limited P.O. Box 54 Commerce Court West Toronto, Ontario M5L 1C2

TransCanada will provide a copy of the application to each intervenor.

The deadline for receipt of written interventions is 3 March 1988. The Secretary will then issue a list of intervenors.

Anyone wishing only to comment on the application should write to the Secretary of the Board and send a copy to TransCanada. The deadline for receipt of comments is 26 April 1988.

Information on the procedures for this hearing (Hearing Order No. RH-1-88) or the Board’s Draft Rules of Practice and Procedure dated 21 April 1987, governing all hearings (both documents are available in English and French) may be obtained by writing to the Secretary or telephoning the Board’s Regulatory Support Office at (613) 998-7204.

John S. Klenavic
Secretary
National Energy Board
473 Albert Street
Ottawa, Ontario
K1A 0E5

(Telex No. 0533791)
(Telecopier No. 990-7900)

February 1988

**APPENDIX II to Order RH-1-88**

| Newspaper | Location |
| --- | --- |
| "The Times Colonist" | Victoria, British Columbia |
| "Sun", "Vancouver Province" and "Le Soleil de Colombie" | Vancouver, British Columbia |
| "Herald" and "Sun" | Calgary, Alberta |
| "The Edmonton Journal", and "Le Franco-Albertain" | Edmonton, Alberta |
| "The Leader-Post" and "Journal L'eau Vive" | Regina, Saskatchewan |
| "The Winnipeg Free Press" | Winnipeg, Manitoba |
| "La Liberté" | St. Boniface, Manitoba |
| "Le Devoir", "La Presse", and "The Gazette" | Montreal, Quebec |
| "Le Journal de Québec", "Le Soleil" and "The Chronicle Telegraph" | Quebec, Quebec |
| "The Globe and Mail" "Toronto Star" "The Financial Post", "Financial Times of Canada", and "L'Express" | Toronto, Ontario |
| "The Ottawa Citizen", "Le Droit" and the "Canada Gazette" | Ottawa, Ontario |

**APPENDIX III to Order RH-1-88**

Assistant Deputy Minister for Energy
Ministry of Energy, Mines and
Petroleum Resources
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Mr. Geoffrey Ho
Senior Solicitor
Department of Energy and Natural Resources
10th Floor, South Tower
Petroleum Plaza
9915 - 108th Street
Edmonton, Alberta
T5K 2C9

Attorney General for the
Province of Saskatchewan
Department of Justice
8th Floor
1874 Scarth Street
Regina, Saskatchewan
Attention: Mr. Greg Blue

General Manager
British Columbia Petroleum Corporation
6th Floor
1199 West Hastings Street
Vancouver, B.C.
V6E 3T5

Commission Secretary
British Columbia Utilities Commission
4th Floor, 800 Smithe St.
Vancouver, B.C.
V6Z 2E1

Procureur général du Québec
Édifice Delta
1200 route de l'église
Ste Foy (Québec)
G1R 4X7

Vice President, Corporate Secretary
Canadian Gas Association
55 Scarsdale Road
Don Mills, Ontario
M5B 2R3

**APPENDIX IV to Order RH-1-88**

**INITIAL LIST OF ISSUES TO BE ADDRESSED IN PHASE I**

**A - Displacement and Operating Demand ("OD") Methodology**

1. Self-displacement, including the following considerations:

(a) Should self-displacement be allowed?

(b) If "no", what should the restrictions be?

(c) If "yes":

(i) When should self-displacement begin and should it be phased-in?

(ii) Is there a necessity to maintain the OD concept?

(iii) Under what circumstances should OD relief be granted for selfdisplacement volumes?

(iv) For OD purposes should selfdisplacement volumes be included in the formula for prorating displacement volumes?

(v) Are there any other considerations in allowing self-displacement?

2. The application of OD methodology to Annual Contract Quantity ("ACQ") service.

3. TransCanada's proposed tariff amendment to calculate a weighted average daily OD Volume based on the number of days during the month for which an OD Volume is in effect relative to the total number of days in such month.

**B - Other Toll Design Issues**

1. The disposition of the balances in deferral accounts as of 31 December 1987 for toll purposes.

2. TransCanada's proposed change in the cost allocation process in respect of Interruptible Service ("IS").
3. The toll design and Toll Schedules for Storage Transportation Service ("STS").

4 The allocation of administrative costs for toll design purposes (Sec. 9.7 of RH-3-86).

**C - Other Tariff Matters**

1. The appropriateness of Sections 1.1(e) and (f) of the Firm Service ("FS") and Peaking Service ("PS") Toll Schedules, Sections 1.1 (f) and (g) of the Temporary Winter Service ("TWS") Toll Schedules and Sections 1.1(d) and (e) of the IS Toll Schedules. These sections require the

shipper to obtain all certificates, permits or other authorizations and to have assurances of gas supply before being eligible to receive service.

2. An examination of any possible refinements to the existing procedures respecting the provision of fuel by shippers, including the use of monthly versus annual fuel ratios.

3. Re-examination of the need for a tendering process for the company-use gas requirements in light of the majority of shippers electing to provide their own fuel.

4. The offering of ACQ as a transportation service to non-system gas shippers.

5. The continuation of the need to distinguish between Shippers and Buyers in TCPL's Tariff, Toll Schedules, and the General Terms and Conditions.

6. The amalgamation of the Uniform Toll Schedule and the General Terms and Conditions

7. The restriction of the availability of TWS service to customers who also have contracts for service under TCPL's FS, SGS and/or ACQ Toll Schedules (Section 1.1(a) of the TWS Toll Schedule).

8. The elimination from the tariff of all matters which are purely related to gas sales and marketing and not to transportation; for example, Section 7 of the FS Toll Schedule, Section 1.1(b) of the TWS Toll Schedule and Section 1.1(a) of the IS Toll Schedule.

9. The desirability of standard transportation contracts for each service.

10. TransCanada's proposed tariff amendment to set the level of delivery obligations under transportation services at the delivery point.

11. Section 2.4 of the IS Toll Schedule which denies service to customers that fail to provide a customer forecast by the date required.

12. Section 3.2 of the IS Toll Schedule which states that if the capacity available for interruptible service is sufficient to fully satisfy the requirements of all interruptible customers requesting service then, notwithstanding that customers may have nominated IS-1, interruptible service provided shall be classified as IS-2 and the toll payable shall be the applicable IS-2 toll.

13. The priority of IS for deliveries of volumes for export from Canada.

**APPENDIX VI**
**To Order RH-1-88**

**TIMETABLE**

| | Event | Date |
|---|---|---|
| A | TCPL Filed Application | 5 Feb. 88 |
| B | Issue Hearing Order - Initial Issues List | 19 Feb. 88 |
| C | Intervention + Response to Initial Issues List | 3 Mar. 88 |
| D | Distribute List of Intervenors | 11 Mar. 88 |
| E | Amend Issues List | 14 Mar. 88 |
| F | TCPL Files Evidence | 25 Mar. 88 |
| G | Information Requests to TCPL | 8 Apr. 88 |
| H | Reply by TCPL | 19 Apr. 88 |
| | Pre-hearing Conference (Toronto) | 21 Apr. 88 9:00 a.m. |
| J | Intervenors File Evidence or Comments | 26 Apr. 88 |
| K | Information Request to Intervenors | 2 May. 88 |
| L | Reply by Intervenors | 9 May. 88 |
| M | Phase I Hearing Starts (Ottawa) | 16 May. 88 1:00 p.m. |
| N | Phase I Hearing Breaks | 3 Jun. 88 |
| O | Phase I Hearing Resumes (Ottawa) | 13 Jun. 88 1:00 p.m. |
| P | TCPL Files Evidence for Phase II | 4 |

Jul. 88

Q Issue Phase I Decision Tentative
31 Aug. 88

R Phase II Begins (Calgary) Tentative
19 Sep. 88

S Phase II Breaks Tentative 3
Oct. 88

T Phase II Resumes (Ottawa) Tentative
11 Oct. 88

File: 1562-T1-26
14 March 1988

VIA TELECOPIER

Mr. J.W.S McOuat, Q.C. Vice President Legal and Regulatory Affairs, Pipeline TransCanada PipeLines Limited P.O. Box 54 Commerce Court West Toronto, Ontario M5L 1C2

Dear Mr. McOuat:

Re: Hearing Order RH-1-88
Directions on Procedures

The Board has considered the views of intervenors to RH-1-88 concerning additional issues which could be addressed in the above-referenced hearing and the assignment of issues between Phase I and Phase II.

The Board continues to find it appropriate to defer certain toll design matters until Phase II and has revised the list of issues accordingly. The attached revised lists will replace the initial lists provided by Appendices IV and V to Order RH-1-88.

In addressing the question of the additional issues to be dealt with in Phase I and the assignment of issues between Phase I and II, the Board was guided by the following:

(1) Some of the proposed additional issues and concerns identified by parties fall within the scope of the issues identified by the Board. Therefore, while not specifically cited in the revised list, the Board expects many of these matters to be addressed in the direct evidence, during cross-examination and in final argument;
(2) Some of the issues proposed by intervenors are currently being dealt with in the GH-2-87 proceedings. Depending on the Board's decision in that hearing, it may be appropriate to examine further some of those issues in Phase II of RH-1-88;

(3) The Board considers it appropriate to examine at this hearing those traffic, toll and tariff issues directly related to establishing

consistent treatment between TransCanada's gas sales customers and transportation service customers and where any discrimination may exist, to ensuring it is not unjust discrimination;

(4) With respect to certain other issues raised by intervenors, the Board is not persuaded that it is appropriate to re-examine these issues at this time. The Board is of the view that no undue hardship will result from this decision;

(5) The Board is aware of the desirability of rendering a decision with respect to Phase I matters in a timely fashion in order to provide parties with an early opportunity to take the implications of any changes in toll methodology into account when contracting for gas supplies.

TransCanada is required to serve a copy of this letter and the amended Hearing Order on all intervenors to RH-1-88.

Yours truly

J.S. Klenavic
Secretary

Attachment

14 March 1988

**ORDER AO-1-RH-1-88**

**(Amending Hearing Order RH-1-88)**
**Amendment to Directions on Procedure**
**TransCanada PipeLines Limited**

**Application for Tolls Effective 1 January 1988 and 1989**

On 17 February the Board issued Hearing Order RH-1-88. In Appendix IV and Appendix V thereof the Board identified certain issues to be addressed in Phase I and Phase II, respectively. In paragraph 13 of the Order the Board requested intervenors to suggest any additional issues that should be addressed and to comment on the assignment of issues between Phase I and Phase II. The Board has considered the issues identified by intervenors and their indicated preference for dealing with issues between Phase I and Phase II.

Accordingly, Appendix IV and Appendix V of Hearing Order RH-1-88 are revoked and replaced by "Appendix IV, as amended" and "Appendix V, as amended", attached hereto.

NATIONAL ENERGY BOARD

J.S. Klenavic
Secretary

**APPENDIX IV, as amended, To Order RH-1-88**

**ISSUES TO BE ADDRESSED IN PHASE I**

**A - Displacement and Operating Demand ("OD") Methodology**

1. Displacement, including the following considerations:

(a) Should self-displacement be allowed?

(b) If "no", what should the restrictions be?

(c) If "yes":

(i) When should self-displacement begin and should it be phased-in?

(ii) Under what circumstances should OD relief be granted for selfdisplacement volumes?

(iii) For OD purposes should selfdisplacement volumes be included in the formula for prorating displacement volumes?

(iv) Are there any other considerations in allowing self-displacement?

(d) Is there a necessity to maintain the OD concept?

2. The application of OD methodology to Annual Contract Quantity ("ACQ") service including considerations relating to the maintenance of the flexibility provided by the current level of ACQ service.

3. TransCanada's proposed tariff amendment to calculate a weighted average daily OD Volume based on the number of days during the month for which an OD Volume is in effect relative to the total number of days in such month.

4. The prorating of OD reductions.

**B - Other Toll Design Issues**

1. The disposition of the balances in deferral accounts as of 31 December 1987 for toll purposes.

**C - Other Tariff Matters** 1. The appropriateness of Sections 1.1(e) and (f) of the Firm Service ("FS") and Peaking Service ("PS") Toll Schedules, Sections 1.1 (f) and (g) of the Temporary Winter Service ("TWS") Toll Schedules and Sections 1.1(d) and (e) of the Interruptible Service ("IS") Toll Schedules. These sections require the shipper to obtain all certificates, permits or other authorizations and to have assurances of gas supply before being eligible to receive service.

2. An examination of any possible refinements to the existing procedures respecting the provision of fuel by shippers, including the

use of monthly versus annual fuel ratios.

3. Re-examination of the need for a tendering process for the company-use gas requirements in light of the majority of shippers electing to provide their own fuel.

4. The elimination from the tariff of all matters related to gas sales and marketing, thereby removing the need to distinguish between Shippers and Buyers in TCPL's Tariff, Toll Schedules, and General Terms and Conditions. Examples of matters related to gas sales and marketing are Sections 1.1(a) and 7 of the FS Toll Schedule, which place restrictions on the ultimate disposition of gas sold by TransCanada. Further examples are Section 1.1(b) of the TWS Toll Schedule and Section 1.1(a) of the PS Toll Schedule which include the proviso

"PROVIDED ALWAYS, that no Buyer will sell gas purchased hereunder to any other Buyer or exchange gas purchased hereunder with any other Buyer ..."

5. The amalgamation of the Uniform Toll Schedule and the General Terms and Conditions.

6. The restriction of the availability of TWS service to customers who also have contracts for service under TCPL's FS, SGS and/or ACQ Toll Schedules (Section 1.1(a) of the TWS Toll Schedule).

7. TransCanada's proposed tariff amendment to set the level of delivery obligations under transportation services at the delivery point.

8. Section 2.4 of the IS Toll Schedule which denies service to customers that fail to provide a customer forecast by the date required.

9. Section 3.2 of the IS Toll Schedule which states that if the capacity available for interruptible service is sufficient to fully satisfy the requirements of all interruptible customers requesting service then, notwithstanding that customers may have nominated IS1, interruptible service provided shall be classified as IS-2 and the toll payable shall be the applicable IS-2 toll.

10. The priority of IS for deliveries of volumes for export from Canada.

11. The availability of a Temporary Summer Service ("TSS").

12. The Toll Schedules for Storage Transportation Service ("STS").

**APPENDIX V, as amended, To Order RH-1-88**

**TOLL DESIGN AND TARIFF MATTERS TO BE ADDRESSED IN PHASE II**

**A - Displacement and OD Methodology**

(Issues on displacement and OD methodology are to be considered in Phase I.)

**B - Other Toll Design Issues**

1. The tariff and toll design for ACQ service including the method of calculating the ACQ differential.

2. The appropriateness of designing tolls for volumes delivered to the export market on a point-to-point basis when tolls for domestic volumes are designed on a zone basis.

3. The appropriateness of the Eastern zone FS toll for deliveries of export volumes to Dawn, Ontario.

4. The disposition of any interim toll period revenue deficiency or surplus.
5. TransCanada's proposed change in the cost allocation process in respect of IS.

6. The toll design for STS.

7. The allocation of administrative costs for toll design purposes (Sec. 9.7 of RH-3-86).

**C - Other Tariff Matters**

1. The Transportation Service Agreements between WGML and TCPL for gas destined for the export market and whether these contractual arrangements result in any advantages to WGML that are not available to other shippers. Refer to the Board's letter to TCPL dated 30 October 1987.

2. The desirability of standard transportation contracts for each service.

3. The appropriateness of the restrictions on diversion rights.

4. The offering of additional ACQ as a transportation service to non-system gas shippers.

**Appendix II**

File No.: 1562-T1-26
17 June 1988

To: Interested Parties to RH-1-88

**Re: RH-1-88, DISPOSITION OF ISSUE B-1**

The following are the Board's decisions with respect to issue B-1 to Hearing Order AO-1RH-1-88. Included is the disposition of the balances in deferral accounts as of 31 December 1987; the rate of carrying charges thereon from 1 January 1988 to the time of disposition; and the appropriate rate and method for calculating carrying charges for any variance between the revenues generated from interim tolls and the approved revenue requirement for 1988. The Board is issuing its decisions without the attendant reasons in order that the new interim tolls can be effective 1 July 1988. In addition TransCanada will be able to take the Board's decisions into account in preparing its submission for Phase II which is to be filed on 4 July 1988.

It is the decision of the Board that the 1987 deferred balances listed in Exhibit B-19 to these proceedings, which amount to a net credit of $76,403,494, shall be amortized to the cost of service during the six-month period commencing 1 July 1988 on a monthly basis. Carrying charges for the period 1 January to 30 June 1988 are to be calculated monthly using the rate of return on rate base approved in RH-3-86 of 13.5% per annum. For the unamortized balances during the period 1 July to 31 December 1988, the carrying charges applicable will be the rate of return on rate base to be determined by the Board in Phase II of these proceedings.

The Board has issued Amending Order No. AO-2-TGI-55-87, a copy of which is attached, which approves new interim tolls, effective 1 July 1988, to reflect the amortization of the 1987 deferred balances and to minimize the anticipated variance between the approved revenue requirement for 1988 and the revenue generated from the interim tolls in effect during 1988.

The average toll for Firm Service taken at 100% load factor in the Eastern Zone (FS-100) has been reduced, effective 1 July 1988, by 30% from the level of interim tolls currently in effect. Tolls for all other services in all zones reflect corresponding reductions.

As part of Phase II the Board will examine the disposition of any variance between the approved revenue requirement for the interim period and the total revenue generated from interim tolls. In calculating this variance the Board has decided that carrying charges shall be based on the actual monthly variance, using the average of the opening and closing monthly balances, and using an appropriate unfunded debt rate, which rate is to be determined during Phase II of this proceeding.

In Phase II the Board wishes to consider the issue of whether it would be appropriate to institute an adjustment procedure which could operate during a test year to avoid future accumulation of large balances in deferral accounts. To this end the Board directs the Company to file a proposal as part of its Phase II evidence.

J.S. Klenavic
Secretary

**ORDER NO. AO-2-TGI-55-87**

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

IN THE MATTER OF an application by TransCanada PipeLines Limited ("TransCanada") for certain orders respecting tolls under Part IV of the National Energy Board Act, filed with the Board under File No. 1562-T1-26.

BEFORE the Board on Tuesday the 14th day of June 1988.

WHEREAS by Order No. TGI-55-87 dated 30 December 1987 the Board made the tolls established by Order No. TG-3-87 interim tolls effective 1 January 1988;

AND WHEREAS the Board by Order No. AO-1-TGI-55-87 varied the level of interim tolls approved by Order No. TGI-55-87;

AND WHEREAS an application dated February 1988 has been made to the Board by TransCanada seeking, inter alia, orders under Part IV of the Act fixing the just and reasonable tolls TransCanada may charge for and in respect of the transportation of gas sold by TransCanada and for the transportation of gas owned by others;

AND WHEREAS during Phase I of the hearing held pursuant to Order No. RH-1-88, the Board has heard the evidence and submissions of TransCanada and all interested parties with respect to the disposition of balances contained in certain deferral accounts as of 31 December 1987;

AND WHEREAS evidence presented at the hearing indicates that the existing interim tolls would produce a substantial revenue surplus in 1988;

AND WHEREAS the Board has decided that new interim tolls should be established effective 1 July 1988;

IT IS ORDERED THAT, pursuant to subsection 16.3(2), subsection 17(1) and Section 52.2 of the Act:

1. Paragraph 1 of Board Order No. TGI-55-87 is deleted and replaced with the following:

"1.(a) The tolls set out in Schedule A to this Order shall be interim tolls effective during the period 1 January to 30 June 1988.

(b) The tolls set out in Schedule B to this Order shall be interim tolls effective 1 July 1988."

2. Board Order No. TGI-55-87 is further amended by adding thereto the following paragraph:

"4. The deferred net credit balance totalling $76,403,494 as at 31 December 1987 brought forward by TransCanada for disposition in the hearing held pursuant to Order No. RH-1-88, as detailed in Exhibit B-29 to that proceeding, together with carrying charges for the period 1 January to 30 June 1988 calculated using the rate of 13.50%, shall be amortized over six months beginning 1 July 1988."

3. Board Order No. TGI-55-87 is further amended by adding thereto the attached Schedule B".

NATIONAL ENERGY BOARD

J.S. Klenavic Secretary

Appendix III

**ORDER NO. TG-8-88**

IN THE MATTER OF the National Energy Board Act (hereinafter referred to as "the Act") and the regulations made thereunder; and

IN THE MATTER OF an application dated 5 February 1988 by TransCanada PipeLines Limited (hereinafter referred to as "TransCanada") pursuant to Part IV of the Act, seeking, inter alia, certain toll orders, filed with the National Energy Board (hereinafter referred to as "the Board") under File No. 1562-T1-26.

BEFORE the Board on Thursday, the 27th day of October 1988.

WHEREAS Phase I of a public hearing has been held pursuant to Hearing Order RH-1-88, as amended, in the City of Ottawa, in the Province of Ontario, at which the Board heard TransCanada and all interested parties;

AND WHEREAS the Board's decisions on those issues identified in Appendix IV, as amended, to Hearing Order RH-1-88 are set out in its Reasons for

Decision dated November 1988;

IT IS ORDERED THAT:

1. TransCanada shall for tollmaking and tariff purposes, implement the Board's decisions outlined in the Reasons for Decision dated November 1988;

2. TransCanada shall forthwith file with the Board and serve on all parties to the hearing of the application new tariffs including general terms and conditions conforming with the decisions outlined in the Reasons for Decision dated November 1988.

3. Those provisions of TransCanada's tariffs and tolls or any portion thereof that are contrary to any provision of the Act, to the Reasons for Decision dated July 1988, or to any order of the Board including this order, are hereby disallowed.

NATIONAL ENERGY BOARD

Louise Meagher Secretary

Appendix IV

**Tariff Provisions Relating to Sales and Marketing**
**Matters Which Can Be Revised Immediately** 1

1. Uniform Toll Schedule: Section 3 - the words "to customer" can be eliminated.

2. FS Toll Schedule:

Section 1.1 - the proviso which contains three references to buyer and one reference to sell may be eliminated.

Section 3.1 - the reference to "by customer" may be eliminated.

3. IS Toll Schedule:

Section 2.1 - the reference to "by customer" may be eliminated.

4. General Terms and Conditions:

(II) Quality - the two references "to customer" may be omitted.

(III) Measurement- the reference "to customer" in section 2(d)) may be eliminated.

5. All references to sales and buyers in the TWS and PS Toll Schedules.

1 The items were identified in TCPL's response to the Board's Information Request Item Number 9. (Exhibit B-13)

**Appendix V**

File Nos: 1562-T1-26
1564-T1-22

6 October 1988

To: Mr. J.W.S. McOuat, Q.C.
Vice-President
Legal and Regulatory Affairs,
Pipeline
TransCanada PipeLines Limited

And To: Mr. Paul H. McMillan
Manager, Regulatory Affairs
Unigas Corporation
(formerly PSR Gas Ventures Inc.)

And to: Me Lucie-Claude Lalonde
Conseiller juridique et secrétaire
adjoint
Gaz Métropolitain, inc.

And To: Mr. E.H. Merrit
Union Gas Limited

And To: Parties of Record to RH-1-88

Re: TransCanada PipeLines Limited
Application Dated 5 February 1988
for Certain Orders Respecting Tolls
Under Part IV of the NEB Act

PSR Gas Ventures Inc. ("PSR")

Application Dated 20 November 1987
for a Review of Section 11.4 of the
RH-3-86 Reasons for Decision
Pursuant to Subsection 16.1(2) and
Section 17 of the NEB Act

Having considered the evidence and arguments adduced during the course of the Phase I portion of the hearing held pursuant to Hearing Order No. RH-1-88, the Board has decided that the prorating of OD reductions (issue A-4) is no longer appropriate and should be discontinued.

The Board has released an early decision on this issue because of the immediate effect it may have on the OD volumes of PSR, Union Gas Limited

("Union") and Gaz Métropolitain, inc. ("GMi"), respectively. PSR had previously applied on 20 November 1987 for a review of the provision governing the prorating of OD reductions on a delivery area basis rather than on a franchise area basis. In directing that the review be conducted as part of Phase I of RH-1-88, the Board expanded the scope of the review to include an examination of prorationing on a generic basis.

Having reached the conclusion in the broader context that the prorating of OD reductions is no longer appropriate, the Board does not consider it necessary to render a decision on the specific question raised in PSR's application. In so doing, the Board is acting under Sections 16.2 and 50 of the NEB Act in granting PSR's application and substituting the relief so ordered for that which was requested.

In consequence of its generic decision on prorationing the Board directs TransCanada to consult with each of PSR, Union and GMi to determine whether these parties require revisions to their OD volumes and to apply to the Board by 31 October 1988 for approval if such revisions are required. In the case of T-Service contracts the revised OD volumes may be in any amount up to the maximum daily volumes provided for in the contracts.

The Board's Reasons for Decision with respect to this issue will be released at a later date together with the Board's decisions and reasons on the remainder of the issues considered during Phase I of RH-1-88.

Yours truly,

Louise Meagher,
Secretary

**Appendix VI**

File: 1560-T1-R26
27 October 1988

VIA TELECOPIER

Mr. Peter Gilchrist
Blake, Cassels & Graydon
Barristers & Solicitors
York Corporate Centre
100 York Boulevard
Richmond Hill, Ontario
L4B 1J8

Dear Mr. Gilchrist:

**Re: Union Gas Limited ("Union") Application Dated 24 March 1988, as**

**amended, re Direct Purchase by C-I-L Inc ("C-I-L")**

The Board has considered your application, together with the evidence and arguments presented by parties during Phase I of the hearing held pursuant to Hearing Order No. RH-1-88.

**The Application**

The application alleged that certain interruptible volumes shipped by C-I-L were displacement volumes within the RH-5-85 definition of displacement because Union could serve the load without contracting for additional firm service. Union requested relief by way of a revenue credit mechanism whereby Union would reduce its nominations for firm sales service during a month by the average interruptible service ("IS") deliveries received by C-I-L during the preceding month. Union would receive a credit equal to the demand charges it paid to TransCanada PipeLines Limited ("TransCanada") in respect of the difference between the contracted volume and the nominated volume. The funds for the credit would come from the deferral account in which the fixed cost portion of C-I-L's IS deliveries had been recorded.

**Views of the Board**

The definition of displacement adopted by the Board in the RH-5-85 Reasons for Decision clearly states that to be considered a displacement volume, the new direct purchase volume must be transported pursuant to a firm service contract. In addition, in the absence of such direct purchase, the affected distributor must have been able to supply the account on a firm contract basis without itself contracting for additional firm volumes. This firm-for-firm displacement concept ensures that the distinction between incremental and displacement volumes is clear.

It was not until the RH-3-86 hearing that the Board looked in detail at the issue of displacement by interruptible volumes. In Section 11.5 of the RH-3-86 Reasons for Decision, the Board decided not to amend the definition of displacement to include interruptible displacements but stated:

"The Board recognizes that there may be instances of a distributor suffering a displacement when a customer no longer contracts for services from the distributor but opts for an interruptible direct purchase. In these circumstances, the Board is prepared to consider requests for OD relief on a case-bycase basis."

When reviewing requests for OD relief for alleged interruptible displacements, the Board considers the following to determine whether relief is warranted:

(1) Has the end-user opted for an interruptible direct purchase even though its operating requirements are for firm service? and

(2) If yes, does the distributor have firm supplies under contract in order to meet the requirement of the end-user?

The C-I-L interruptible volumes do not represent gas needed to meet a firm service requirement. CI-L contracted for a firm service level of 1,516 10^3m^3/day based on its assessment of the gas needed to satisfy its firm ammonia markets. C-I-L also has, from time to time, firm-service gas transported through capacity assigned to it by other parties. The additional volumes transported on an interruptible basis are not necessarily to satisfy an immediate firm need but represent gas to effect some seasonal balancing and to meet non-firm markets. To the extent that the gas is not needed, it can be injected into Union's storage facilities for future use. Therefore, C-I-L is not dependent on these deliveries for its day-to-day plant operations.

While the Board recognizes that Union could supply C-I-L's interruptible load from existing firm supplies, the true interruptible nature of the gas requirement has led the Board to conclude that the IS volumes are not displacing Union's firm purchases from TransCanada and, accordingly, OD relief is not warranted. The Board therefore denies Union's application.

The Board notes that the revenue-credit methodology proposed by Union is substantially similar to the methodology proposed by TransCanada during the RH-3-86 hearing. The Board rejected this methodology because it does not solve a distributor's need for demand charge relief under the OD methodology. A distributor would be required to pay demand charges on an artificially high OD volume only to have a portion of it refunded in the next month. This affects a distributor's cash flow and causes system producers to keep gas in inventory in case a distributor calls on it. This method also results in an inefficient allocation of pipeline capacity. The Board still holds this view.

Yours truly

Louise Meagher
Secretary

c.c. M. Peterson, McMillan, Binch
Parties of Record to RH-1-88

"SCHEDULE B"

**TransCanada PipeLines Limited**

**Interim Transportation Tolls**

**Effective 1 July 1988**

(Fuel Provided by Shipper)

| Service | Demand Toll (\$/10^3m^3/mo) | Commodity Toll \$/10^3^3 | Fuel Ratio % |
|---|---|---|---|
| **Saskatchewan Zone** | | | |
| FS | 105.80 | 0.317 | 0.81 |
| IS-1 | | 4.664 | 0.81 |
| IS-2 | | 4.181 | 0.81 |
| PS | | 66.523 | 0.81 |
| TWS | 19.032 | 0.81 | |
| **Manitoba Zone** | | | |
| FS | 184.48 | 0.919 | 1.47 |
| IS-1 | | 8.501 | 1.47 |
| IS-2 | | 7.658 | 1.47 |
| PS | | 67.125 | 1.47 |
| TWS | | 19.635 | 1.47 |
| **Western Zone** | | | |
| FS | 304.12 | 1.872 | 2.49 |
| IS-1 | | 14.370 | 2.49 |
| IS-2 | | 12.981 | 2.49 |
| PS | | 68.077 | 2.49 |
| TWS | | 20.587 | 2.49 |
| **Northern Zone** | | | |
| FS | 472.63 | 3.152 | 3.88 |
| IS-1 | | 22.575 | 3.88 |
| IS-2 | | 20.417 | 3.88 |
| PS | | 69.358 | 3.88 |
| TWS | | 27.157 | 3.88 |
| **Eastern Zone** | | | |
| FS | 585.70 | 4.027 | 4.81 |
| ACQ | | 17.983 | 4.81 |
| IS-1 | | 28.097 | 4.81 |
| IS-2 | | 25.422 | 4.81 |
| PS | | 98.473 | 4.81 |
| TWS | | 29.802 | 4.81 |

**Saskatchewan Power Corporation**

| | | | |
|---|---|---|---|
| -from Empress and Richmond | | | |
| FS | 85.30 | 0.159 | 0.65 |
| -from Bayhurst and Liebenthal | | | |
| FS | 79.31 | 0.112 | 0.59 |
| -from Success | | | |
| FS | 53.86 | 0.398 | 0.43 |
| -from Herbert | | | |
| FS | 15.93 | 0.090 | 0.09 |
| Export Deliveries | | | |
| -from Herbert to Emerson | | | |
| FS | 169.32 | 0.823 | 1.36 |
| IS-1 | | 7.781 | 1.36 |
| IS-2 | | 7.008 | 1.36 |

**TransCanada PipeLines Limited**

**Interim Transportation Tolls**

**Effective 1 July 1988**

(Fuel Provided by Shipper)

| **Service** | **Demand Toll ($/10^3m^3/mo)** | **Commodity Toll $/10^3m^3** | **Fuel Ratio %** |
|---|---|---|---|
| -from Empress to Spruce | | | |
| FS | 202.47 | 1.075 | 1.64 |
| IS-1 | | 9.395 | 1.64 |
| IS-2 | | 8.471 | 1.64 |
| -from Empress to Emerson | | | |
| FS | 206.82 | 1.114 | 1.67 |
| IS-1 | | 9.614 | 1.67 |
| IS-2 | | 8.669 | 1.67 |
| -from Success to Niagara Falls | | | |
| FS | 583.53 | 4.047 | 4.81 |
| S-1 | | 28.028 | 4.81 |
| IS-2 | | 25.363 | 4.81 |
| -from Empress | | | |

| | | | |
|---|---|---|---|
| to Dawn | | | |
| FS | 586.70 | 4.027 | 4.81 |
| IS-1 | | 28.097 | 4.81 |
| IS-2 | | 25.423 | 4.81 |
| -from Empress to Niagara Falls | | | |
| FS | 609.63 | 4.231 | 5.03 |
| IS-1 | | 29.284 | 5.03 |
| IS-2 | | 26.500 | 5.03 |
| -from Empress to Cornwall | | | |
| FS | 618.01 | 4.296 | 5.10 |
| IS-1 | | 29.694 | 5.10 |
| IS-2 | | 26.872 | 5.10 |
| -from Empress to Sabrevois | | | |
| FS | 646.42 | 4.513 | 5.34 |
| IS-1 | | 31.078 | 5.34 |
| IS-2 | | 28.126 | 5.34 |
| -from Empress to Philipsburg | | | |
| FS | 652.12 | 4.553 | 5.39 |
| IS-1 | | 31.353 | 5.39 |
| IS-2 | | 28.375 | 5.39 |

Code:

FS Firm Service (CD, T, STCD, and STT)
ACQ Annual Contract Quantity
IS-1 Tier One Interruptible Service
IS-2 Tier Two Interruptible Service
PS Peaking Service (PS and T-PS)
TWS Temporary Winter Service (TWS and T-TWS)