

National Energy
Board



Office national
de l'énergie

File OF-Tolls-Group1-T211-2011-02 01
9 September 2011

Mr. Bernard Pelletier
Manager, Tolls and Tariffs
Regulatory Services
TransCanada PipeLines
Limited
450 First Street S.W.
Calgary, AB T2P 5H1
Facsimile 403-920-2347

Ms. Jennifer Scott
Senior Legal Counsel
Law and Regulatory Research
TransCanada PipeLines
Limited
450 First Street S.W.
Calgary, AB T2P 5H1
Facsimile 403-920-2347

C. Kemm Yates, Q.C.
Blake, Cassels & Graydon LLP
3500, 855 Second Street S.W.
Calgary, AB T2P 4J8
Facsimile 403-663-2297

Dear Mr. Pelletier, Ms. Scott, and Mr. Yates:

**TransCanada PipeLines Limited (TransCanada)
Application for Mainline Final 2011 Tolls**

Further to its letter of 17 June 2011, the National Energy Board has considered all submissions filed in May, June and July 2011 related to TransCanada's Application dated 29 April 2011 for Mainline Final 2011 Tolls (Application).

Summary of Application and Submissions

In its Application, TransCanada requested approval of the annualized Mainline Final 2011 Tolls that reflect a Mainline revenue requirement derived in accordance with the 2007-2011 Mainline Settlement (Settlement). However, TransCanada also asked the Board to enable TransCanada to continue charging tolls at the level of current interim tolls for the remainder of 2011 and to carry forward for inclusion in the 2012 revenue requirement the difference between the annualized Mainline Final 2011 Tolls and the tolls charged in 2011.

TransCanada's position is that the Settlement remains an extant and valid agreement approved by the Board and the Settlement properly governs the calculation of the 2011 revenue requirement and determination of 2011 tolls. TransCanada also indicated that the parties that support or do not oppose the Application represent a broad cross-section of Mainline stakeholders, whereas those parties opposed to the Application represent less than 10 per cent of Mainline firm demand charges.

Parties opposed to the Application, such as Brooklyn Navy Yard Cogeneration Partners, LP (BNYCP), the Association of Power Producers of Ontario (APPrO), as well as several APPrO

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members and Dynegy Gas Imports, L.L.C. assert that the tolls derived under the Settlement are no longer just and reasonable, are no longer in the public interest and should be abandoned. These parties submitted that a more complete review of the Application should be conducted prior to deciding on any further increases to Mainline tolls.

BNYCP also submitted that the Settlement is not enforceable and must be set aside on grounds of either “frustration, mutual mistake, or lack of full disclosure”. TransCanada stated that each of these grounds is either not applicable in the Canadian regulatory context or is untrue.

APPrO added that even if the Board determines that it should continue to apply the Settlement in 2011, the Board requires a more complete record on how tolls should be determined under that Settlement. Without a supporting consensus, APPrO submitted that the Board requires more evidence on several of the “flow-through” elements of the revenue requirement, such as the continuing prudence of the TransCanada’s Transmission by Others (TBO) arrangements and the amount of “used and useful” rate base and resulting impacts on costs for depreciation and return.

BNYCP and APPrO also challenged TransCanada’s view that the Settlement contemplated the deferral of an incremental toll increase. They submitted that while the deferral of variances from forecast flow-through cost components is allowed under the Settlement, the deferral of finally determined tolls is not. TransCanada acknowledged that the requested 2011 Variance is not a traditional variance as contemplated under the Settlement, but submitted that the concepts of deferral and carry forward are consistent with the Settlement. TransCanada stated that BYNCP and APPrO’s position on this aspect is a “distinction without a difference”.

North Utilities, Inc. (Unitil) and Columbia Gas of Massachusetts (CMA) opposed the Application based on a concern with the calculation of the East Hereford delivery pressure demand toll. They recommended two changes to how this toll is calculated for 2011. TransCanada explained that it calculated this delivery pressure toll in accordance with the existing toll design and previously approved methodology. TransCanada submitted that there is no justification to depart from established practice for 2011, but this issue could be addressed as part of the 2012-2013 Application.

Board Decision

The Board has decided that the Settlement will continue to apply for the purpose of determining the 2011 revenue requirement. The Board is not persuaded that the Settlement should be set aside because of the increase in tolls over the term of the Settlement or because TransCanada proposes to adjust for the difference between the annualized Mainline Final 2011 Tolls and the tolls charged in 2011 in future years. Nor is the Board persuaded that it should set aside the Settlement on the grounds of frustration, mutual mistake, or lack of full disclosure. The Board finds that these grounds do not apply for the reasons stated by TransCanada in its reply submissions.

However, the Board is persuaded that a more detailed evidentiary record is required before deciding on certain of the “flow-through” elements of the revenue requirement, such as the continuing prudence of the TransCanada’s TBO arrangements and the amount of “used and useful” rate base. As part of the proceeding examining TransCanada’s 2012-2013 Tolls Application, TransCanada will be directed to file additional evidence related to these 2011 costs and parties will be given the opportunity to examine that evidence. However, costs or cost parameters that are predetermined in the Settlement, as listed in the attached Order TG-007-2011, will not be tested further.

The Board has decided to finalize the interim tolls that TransCanada has charged since 1 January 2011 and to set final tolls for the remainder of 2011 at the level of current interim tolls. These tolls have been calculated in accordance with previously approved toll methodologies and are based on the principles contained in the Settlement with an adjustment to the revenue requirement to reduce toll impacts. The Board notes that parties who support or do not oppose the tolls pay a significant portion of Mainline demand charges. By finalizing 2011 tolls now, shippers will have added certainty and stability, as there will be no possibility of 2011 toll adjustments. Weighing these factors, the Board has decided to make 2011 tolls final. As indicated above, parties will have an opportunity in the upcoming proceeding on 2012-2013 Mainline tolls to examine certain information related to 2011 costs. Once the final 2011 revenue requirement is determined, any surplus or shortfall that results from final 2011 tolls will be placed in a deferral account for consideration in 2012 and/or subsequent years.

Concerning the issue of the East Hereford delivery pressure toll, the Board is of the view that Unitil/CMA have not provided an adequate justification to depart from the established toll methodologies. However, the Board recognizes that this issue can be addressed in the pending Mainline 2012-2013 tolls hearing.

The Board directs TransCanada to serve a copy of this letter and Order on all interested persons, including parties to the RH-2-2004 proceeding, the Mainline Tolls Task Force, Mainline shippers, Alberta System shippers, and the Alberta System Tolls, Tariff, Facilities and Procedures Committee.

Yours truly,



Anne-Marie Erickson
Secretary of the Board

Attachment



ORDER TG-007-2011

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

IN THE MATTER OF an application filed with the National Energy Board by TransCanada PipeLines Limited (TransCanada) dated 29 April 2011 pursuant to Part IV of the Act for Mainline final 2011 tolls under file OF-Tolls-Group1-T211-2011-02 01.

BEFORE the Board on 8 September 2011.

WHEREAS the Board issued Order TG-06-2007 approving TransCanada's 2007-2011 negotiated settlement (Settlement) for the Mainline;

AND WHEREAS TransCanada charged interim tolls between 1 January 2011 and 28 February 2011 that were approved in Order TGI-04-2010;

AND WHEREAS TransCanada has charged interim tolls since 1 March 2011 that were approved in Order AO-1-TGI-04-2010;

AND WHEREAS TransCanada filed an application dated 29 April 2011 for approval of Mainline final 2011 tolls (Application);

AND WHEREAS the Board issued a letter dated 5 May 2011 allowing interested parties to file submissions on the Application and TransCanada the opportunity to file reply submissions;

AND WHEREAS the Board issued a letter dated 17 June 2011 requiring TransCanada to file additional information about the Application and allowing interested parties to file additional submissions and TransCanada an opportunity to file reply submissions;

AND WHEREAS the Board is in receipt of submissions filed in May, June and July 2011 from TransCanada and interested parties;

AND WHEREAS some of the interested parties oppose the Application;

AND WHEREAS the Board has considered TransCanada's Application and all submissions filed by TransCanada and interested parties;

AND WHEREAS the Board's decision on the Application is set out in a letter dated 9 September 2011 and in this Order.

THEREFORE, IT IS ORDERED, pursuant to Part IV of the Act, that:

1. Interim tolls authorized in Order TGI-04-2010 and charged from 1 January 2011 through 28 February 2011 are hereby made final;
2. Interim tolls authorized in Order AO-1-TGI-04-2010 and charged from 1 March 2011 through the date of this Order are hereby made final;
3. From the date of this Order and continuing until 31 December 2011 unless amended by a subsequent Board Order, final tolls will be charged at rates equal to the interim tolls authorized under Order AO-1-TGI-04-2010;
4. The Settlement will apply for the purpose of determining the 2011 revenue requirement. Therefore, the following 2011 costs or cost parameters that are predetermined in the Settlement will not be tested further:
 - a. Operations, Maintenance and Administrative Costs,
 - b. The Performance Incentive Envelope programs,
 - c. Depreciation rates and the segmented approach to depreciation,
 - d. Rate of return on common equity, capital structure, and the use of the weighted average cost of debt capital, and
 - e. The treatment of the 8.25% junior subordinated debentures as outlined in clause 1(B)(5)(c) of the Settlement.
5. Once the final 2011 revenue requirement is determined, any surplus or shortfall that results from final 2011 tolls will be placed in a deferral account for consideration in 2012 and/or subsequent years.

NATIONAL ENERGY BOARD



Anne-Marie Erickson
Secretary of the Board