National Energy Board

Reasons for Decision

TransCanada Pipelines Limited

RH-5-85

May 1986

Availability of Services

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In the Matter of

TransCanada Pipelines Limited

Availability of Services

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Abbreviations

Act	*National Energy Board Act*
AOI	Authorized Overrun Interruptible
APMC	Alberta Petroleum Marketing Commission
Board	National Energy Board
B.C.	British Columbia
B.C. Hydro	B.C. Hydro and Power Authority
CD	Contract Demand
CMP	Competitive Marketing Program
Company	TransCanada PipeLines Limited
Consumers'	The Consumers' Gas Company Ltd.
CPA	Canadian Petroleum Association
Consolidated	Consolidated Natural Gas Limited
Cyanamid	Cyanamid Canada Inc.
GMi	Gaz Métropolitain, inc.
ICG	ICG Utilities (Manitoba) Ltd.
IGUA	Industrial Gas Users Association
IPAC	Independent Petroleum Association of Canada
IT	Interruptible Transportation Service
NEB	National Energy Board
Northern and Central	Northern and Central Gas Corporation Limited
Northridge	Northridge Petroleum Marketing Inc.
Ontario	Minister of Energy for Ontario
PGRT	Petroleum Gas Revenue Tax

Plains-Western	Plains-Western Gas (Manitoba) Ltd.
Polysar	Polysar Limited
PS	Peaking Service
Québec	Procureur général du Québec
Simplot	Simplot Chemical Ccmpany Limited
SCD	Short-Term Contract Demand
SGS	Small General Service
STS	Storage Transportation Service
STT	Short-Term T-Service
T-AOI	Authorized Overrun Interruptible Transportation Service
T-Service	Transportation Service
TCPL, TransCanada	TransCanada PipeLines Limited
TOPGAS	TOPGAS Holdings Ltd. and TOPGAS Two Inc.
Union	Union Gas Limited
September 1985 Reasons for Decision	National Energy Board Reasons for Decision in the Matter of the Application under Part IV of the National Energy Board Act (Tolls Application) of TransCanada PipeLines Limited - September 1985
Agreement	Agreement among the Governments of Canada, Alberta, British Columbia and Saskatchewan on Natural Gas Markets and Prices, dated 31 October 1985
Topgas I	1982 Agreement under which TOPGAS HOLDINGS LTD. assumed TCPL's outstanding take-or-pay liabilities
Topgas II	1983 Agreement under which TOPGAS TWO INC. advanced funds to producers for gas not taken in the 1982/83 contract year

Glossary of Terms

TransCanada PipeLines Limited
Description of Classes or Types of Service

1. Annual Contract Quantity - ACQ

TCPL agrees to sell to a Buyer in the Eastern Rate Zone an annual quantity of gas designated as the Annual Contract Quantity. Forty percent of this annual quantity is scheduled for delivery in the winter period and sixty percent in the summer period. Various curtailment rights are available to TCPL. Transportation charges relate to the volume taken each month, with provision for an annual supplemental charge for volumes offered and not taken.

2. Authorized Overrun Interruptible - AOI

TCPL sells to a Buyer quantities of gas in excess of quantities contracted for by a Buyer and which TCPL may have available from time to time for delivery to a Buyer. Buyer must pay a transportation charge related to the volume taken.

3. Contract Demand - CD

TCPL agrees to sell to a Buyer, in a specified delivery area, up to a specific quantity of gas each day, which represents TCPL's maximum daily obligation to deliver to a Buyer. For transportation of the gas buyer must pay a fixed monthly demand charge regardless of volumes actually taken and also a commodity charge related to the volume taken.

4. Interruptible Transportation Service - IT

An interruptible transportation service provided by TCPL for gas which is owned by another shipper. IT-Service has the lowest priority of services offered by TCPL. The shipper must pay a transportation charge related to the volume taken.

5. Peaking Service - PS

TCPL agrees to sell to a Buyer a designated volume during the winter period in addition to gas purchased by a Buyer from TCPL under TCPL's CD Service Contract. Buyer must pay a transportation charge related to the volume taken. Volumes contracted must be taken or paid for if not taken.

6. Short-Term Contract Demand - SCD

A short-term firm sales service equivalent to Contract Demand Service but available for a period of one to three years.

7. Short-Term Transportation Service - STT

A short-term firm transportation service equivalent to T- Service but available for a period of one to three years.

8. Small General Service - SGS

TCPL agrees to sell to a Buyer, in a specified delivery area, up to a specific quantity of gas each day which represents TCPL's maximum daily obligation to deliver to a Buyer. A Buyer must pay a transportation charge related to the volume taken. Such service is available for a Buyer with primarily residential and commercial space heating load customers.

9. Storage Transportation Service - STS

A Buyer desires to have volumes of gas delivered into Union's storage at Lisgar and/or Dawn, Ontario during the summer period, and requires TCPL to transport the withdrawal of storage gas during the winter period to market. A Buyer must pay a fixed monthly demand charge for this service and also a commodity charge related to the volume of gas delivered into storage.

10. T-AOI Service - T-AOI

An interruptible transportation service provided by TCPL for gas which is owned by another shipper. This is an overrun service available only after daily contractual obligations for T-Service have been fulfilled. The shipper must pay a transportation charge related to the volume taken.

11. T-Service

The tolls paid by the customer for T-Service are designed on a zone basis. Buyer has arranged to have certain volumes of gas delivered to TCPL at the point where the facilities of NOVA join the facilities of TCPL, and to have TCPL transport such volumes to the Buyer's market. Buyer must pay a fixed monthly demand charge for this service regardless of volumes actually taken and also a commodity charge related to the volume taken.

12. Temporary Winter Service - TWS

TCPL agrees to sell to a Buyer a designated volume subject to curtailment provisions during the winter period in addition to gas purchased by a Buyer from TCPL under TCPL's CD Service Contract. Buyer must pay a transportation charge related to the volume taken. Volumes contracted must be taken or paid for if not taken.

13. Transportation

The tolls paid by the customer for transportation service are designed on a point to point basis. TCPL transports gas for a customer from specific receipt points to specific delivery points. Customer must pay a fixed monthly demand charge, regardless of volumes actually transported, and a commodity charge related to the volumes actually transported.

Recital and Appearances

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

IN THE MATTER OF a hearing held pursuant to subsections 17(l), 20(3) and Part IV of the *National Energy Board Act;* and

IN THE MATTER OF a request made in Paragraph 7 of the Agreement on Natural Gas Markets and Prices dated 31 October 1985 entered into between the federal government and the governments of the Provinces of British Columbia, Alberta, and Saskatchewan.

HEARD at Ottawa, Ontario on 13, 14, 15, 27, 28, 29, 30 and 31 January 1986; 3, 4, 5, 6, 17, 18, 19, 20, 21, 24, 25, 26, 27 and 28, February 1986; 3, 4, 5, 6, 7, 10, 11, 12, 13, 17, 18, 19, 20, 21 and 24 March 1986; 7, 8, 9, 10, 11, 16 and 17 April 1986.

BEFORE:

L.M. Thur	Presiding Member
J.R. Jenkins	Member
R.B. Horner, Q.C.	Member

APPEARANCES:

J.R. Smith, Q.C.	Alberta Natural Gas Company Ltd.
W.M. Smith	Alberta Petroleum Marketing Commission
M.M. Peterson G. Willcocks	Allied Chemical, a division of Allied Canada Inc.
M.L. Pillman S.C. Lipton	Amoco Canada Petroleum Company Ltd.
K.F. Keeler	Bralorne Resources Limited
M.M. Moseley	British Columbia Petroleum Corporation
G.N. Addy	Canadian Chemical Producers' Association
C.K. Yates	Canadian Petroleum Association
J.F. Sherwood	City of Edmonton
M.M. Peterson G. Willcocks	C-I-L Inc.
H.M. Kay S.F. McAllister	Consolidated Natural Gas Limited

W. Miller S. Fréchette	Consumer and Corporate Affairs, Director of Investigation and Research - *Combines Investigation Act*
J.H. Farrell P.A. Wylie	Consumers' Gas Company Ltd., The
E.B. McDougall	Cornu Resources Marketing Limited
R.B. Wallace	Concil of Forest Industries of British Columbia
J. Ryan	Cyanamid Canada Inc. and Cyanamid Canada Pipeline Inc.
H.R. Ward K.C. Fowlie	Dome Petroleum Limited
J. Hopwood, Q.C.	Foothills Pipe Lines (Yukon) Ltd.
R. Meunier	Gaz Métropolitain, inc.
P.G. Rogers J.D. Brett	Greater Winnipeg Gas Company
J. Nozick	Gulf Canada Limited
P.G. Rogers J.D. Brett	ICG Utilities (Manitoba) Ltd.
A.S. Hollingworth J. Snider	Independent Petroleum Association of Canada
P.C.P. Thompson, Q.C. P. Doody	Industrial Gas Users Association
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J.H. Smellie	Natural Gas Pipeline Company of America
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R. van Baming	Nitrochem Inc.
P.F. Scully G Laidlaw	Northern and Central Gas Corporation Limited
L.E. Smith	Northridge Petroleum Marketing, Inc.
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D.G. Hart, Q.C.	Ocelot Industries Ltd.
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T.M. Hughes G.J. Finn	Polysar Limited
D. Davies	ProGas Limited
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R. Shirkey	Saskatchewan Power Corporation
S.R. Miller	Signalta Resources Limited
L.E. Smith	Simplot Chemical Company Ltd.
A. Bigué R. Bédard	SOQUIP
S. Carscallen	Sulpetro Limited
M.M. Peterson G. Willcocks	Suncor Inc.
H. Soloway, Q.C. E.B. Abbott	Tenessee Gas Pipeline Company, a Division of Tenneco Inc., and Midwestern Gas Transmission Company

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Texas Eastern Transmission Corporation

D.A. Brown, Q.C. J.A. Swartz J.D. Glatt	TOPGAS Holdings Limited and TOPGAS Two Inc.
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W.G. Burke-Robertson, Q.C.	Transcontinental Gas Pipe Line Corporation
L.A. Leclerc	Trans Québec & Maitimes Pipeline Inc.
P. Gilchrist G.J. Pratte	Union Gas Limited
J. Lutes	Westcoast Transmission Company Limited
J. Morel L. Meagher	National Energy Board

Executive Summary

NOTE: This summary is provided solely for the convenience of the reader and does not constitute part of this decision or the reasons for it.

In the Western Accord of 28 March 1985, the Governments of Canada, Alberta, British Columbia and Saskatchewan agreed that a more flexible and market-oriented pricing regime was required for the domestic pricing of natural gas. The Agreement on Natural Gas Markets and Prices (Agreement) dated 31 October 1985 intended to create the conditions for such a regime.

Paragraph 7 of the Agreement requested the National Energy Board (the Board) to review the following concerns:

(i) whether inappropriate duplication of demand charges will result from possible displacement of one volume of gas by another; and

(ii) whether the policy regarding the availability of T-Service, as outlined in the Board's latest TransCanada PipeLines toll decision is still appropriate, taking into account, among other things, interested parties' views on the fair and equitable sharing of take-or-pay charges".

To respond to the Governments' request a hearing was held from 13 January 1986 to 17 April 1986, pursuant to subsection 20(3) and Part IV of the *National Energy Board Act* (NEB Act).

Decisions and Recommendations

The major decisions and recommendations of the Board with respect to this hearing are summarized below:

Availability of T-Service

The Board has decided that the displacement proviso presently included in TransCanada PipeLines Limited's (TCPL, TransCanada) T-Service, Short-Term T-Service (STT), Interruptible Transportation (IT) and T-AOI Toll Schedules be removed in order that transportation service can be made available to direct purchasers of natural gas displacing gas supplies previously acquired from TCPL.

Duplication of Demand Charges

The duplication of demand charges, also referred to as double demand charges, occurs when a customer, who previously purchased gas through a distributor, arranges an alternate supply through a direct purchase. In these circumstances, the direct purchaser is required to pay the demand toll twice: once to TCPL for T-Service and once to its distributor to indemnify the distributor for the unabsorbed demand charges which occur as a result of the displacement.

It is the view of the Board that the duplication of demand charges resulting from displaced volumes is inappropriate.

Having considered all of the proposed solutions, it is the decision of the Board that, effective 1 November 1986, the Board will implement a new system of toll design and allocation for TCPL based on the establishment of an operational demand volume for the purpose of determining demand tolls.

The operating demand level for each distributor will be calculated as the CD volumes specified in its CD contract with TCPL, less the volume of all direct displacement sales occurring in its franchise area.

The operating demand volume will be used instead of the contracted demand volume in determining the daily demand under the CD Toll Schedules.

Displacement

The implementation of the operational volume solution to the double demand charge problem necessitates the adoption of a definition of displacement.

The distinction between incremental and displacement sales must be clear. The best way to approach these two categories of sales is to analyse their effects from a distributor's viewpoint.

Considering the above, the Board will apply the following definition of displacement volumes for tariff purposes:

> "the volume of gas contracted under a direct purchase, firm service contract is to be considered a displacement volume for fixed cost allocation purposes, if assuming the absence of such direct purchase, the distributor could supply the account on a firm contract basis without itself contracting for additional firm volumes to accommodate the resulting demand."

Simplot Chemical Company (Simplot)

It is the view of the Board that, under the definition of displacement stated above, the direct purchase by Simplot qualifies as a sale which displaces volumes provided for under the CD contract of ICG Utilities (Manitoba) Ltd. (ICG). Accordingly, ICG will be granted relief from double demand charges effective 1 January 1986.

Topgas Carrying Charges

A central issue to this hearing was whether or not non-system gas sales should be required to pay a share of the carrying charges on the advances made by TOPGAS to TCPL's producers for prepaid gas. These advances were originally made to satisfy the take-or-pay provisions of TCPL's gas purchase contracts, and were made at a time when it was expected that TCPL would maintain its preferred position in the domestic market.

It is the Board's view that there is a shared responsibility for the occurrence of the oversupply situation and the ensuing take-or-pay problem and, accordingly, that it is fair and equitable to require non-system gas sales to bear some portion of the Topgas carrying charges. The Board recommends that all non-system gas originating in Alberta for shipment on the TCPL pipeline system, with the exception of volumes being transported under T-Service and Transportation contracts entered into

before 1 November 1985, bear a portion of the Topgas carrying charges. The Board recommends that the following contributions be made for a period of three years while the industry adapts to the new market-oriented pricing regime for natural gas in Canada:

- for the year 1 November 1986 to 31 October 1987, a contribution of $.10 per gigajoule of gas sold;
- for the year 1 November 1987 to 31 October 1988, a contribution of $.09 per gigajoule of gas sold; and
- for the year 1 November 1988 to 31 October 1989, a contribution of $.08 per gigajoule of gas sold.

These charges represent approximately 50 percent of the Topgas per unit carrying charges which might have occurred had there been no displacement.

TCPL system producers would continue to pay the annual Topgas carrying charges as per the existing methodology, less the above contributions from non-system gas production.

It is the Board's view that all contributions to the payment of the Topgas carrying charges should continue to be recovered in the Alberta cost of service.

In the event that the signatories to the Agreement were to prefer the surcharge mechanism, the Board would be ready to apply it, if so requested.

Chapter 1
Background

In October 1985, the National Energy Board (the Board) released its September 1985 Reasons for Decision in respect of a toll application, as amended, which was filed by TransCanada PipeLines Limited (TCPL, TransCanada) on 8 February 1985. The hearing of this application was conducted from 24 April to 18 July 1985.

One of the issues in those proceedings held, pursuant to Board Order RH-2-85, was the availability of T-Service on the TCPL system. At the time TCPL filed its application the T-Service Toll Schedules contained a displacement proviso.

Several parties at the proceeding considered the upholding of a displacement proviso in the toll schedules as discriminatory and proposed that it be removed. Those parties argued that the displacement proviso would have an adverse impact on the ability of certain producers and end-users to take advantage of a future market-oriented pricing regime for natural gas.

In its Reasons for Decision, the Board stated the following:

> “”"The Board notes the concerns of the intervenors with respect to the ability of parties to participate in direct sales. However, the Board also recognizes that TCPL has been the prime long-term supplier, transporter and marketer of natural gas in eastern Canada. The Company has entered into supply agreements and trust deed arrangements to provide the underpinning for the construction and operation of the pipeline. TCPL’s take-or-pay obligations were incurred during a period of anticipated sales growth to serve its markets. Distributors entered into long-term CD contracts with TCPL to provide protection for their own markets. Taking this into account, the Board is of the view that a displacement proviso is not unreasonable in the present circumstances.
>
> “”Discussions between the federal government, the provinces and industry regarding changes to interprovincial gas marketing policies are currently underway. The outcome of these discussions may have an impact on the matter of direct sales; however, no conclusions have yet been reached.
>
> “”For these reasons, the Board is not prepared to remove the displacement proviso at this time. The displacement proviso will also be included in the tariff schedules for IT, Short-Term T-Service and T-AOI Service.".

Accordingly, the Board approved the inclusion of the following displacement proviso in the toll schedules for T- Service, IT Service, STT and T-AOI Service:

> “PROVIDED ALWAYS that Shipper’s gas transported by TransCanada will not, in whole or in part, displace or substitute for volumes of gas which any party has under contract to purchase from TransCanada.”

The Agreement Among the Governments of Canada, Alberta, British Columbia and Saskatchewan on Natural Gas Markets and Prices (Agreement) was released on 31 October 1985. (See Appendix II).

The intent of the Agreement is to create the conditions for a more flexible and market-oriented pricing regime for the domestic pricing of natural gas.

Paragraph 7 of the Agreement reads as follows:

"To enable the market-responsive pricing system to operate within the intent of this Agreement, the governments request the National Energy Board to review the following concerns:

(i) whether inappropriate duplication of demand charges will result from possible displacement of one volume of gas by another; and

(ii) whether the policy regarding the availability of T-Service, as outlined in the Board's latest TransCanada PipeLines toll decision is still appropriate, taking into account, among other things, interested parties' views on the fair and equitable sharing of take-or-pay charges."

On 12 November 1985, the Board issued Hearing Order RH-5-85 (See Appendix III) which indicated that a hearing would be held beginning on 13 January 1986 to respond to the governments' request in Paragraph 7 of the Agreement. In addition, the Board stated that the hearing would also be held to review those aspects of the Board's Reasons for Decision dated September 1985, which were related to the concerns expressed in Paragraph 7, namely, the availability of transportation service and the possibility of double demand charges resulting from volumes being displaced.

Before the hearing began and by letter dated 2 December 1985, Simplot Chemical Company Limited (Simplot) requested the Board to stay that part of its September 1985 Reasons for Decision which related to the double demand charge issue.

In response to Simplot's letter of 2 December 1985, the Board, on 20 December 1985, denied the request for a stay, but decided that TCPL should be required to record, in a deferral account each month beginning 1 January 1986, an amount of revenue equal to the demand charge revenue received under the Simplot T-Service contract, pending the final decision of the Board on the matters being examined in the RH-5-85 proceedings. In this regard, the Board issued Order No. TGI-13-85. (See Appendix IV).

Chapter 2
Review of the Board's Reasons for Decision Dated September 1985

2.1 Availability of T-Service

The Agreement requested the Board to review whether, "the policy regarding the availability of T-Service, as outlined in the Board's latest TransCanada PipeLines toll decision is still appropriate".

The historical circumstances and events leading to the inclusion of this issue as part of the review hearing are fully summarized in the chapter entitled Background.

In its Order No. RH-5-85, the Board requested interested parties to address whether there are inappropriate restrictions to accessibility of services on the TCPL system, as reflected in sections 1.1 of the Toll Schedules.

Most interested parties, other than TOPGAS, supported the removal of such restrictions from the tariff. In argument, TCPL noted that, "It is clear that the policy intent of the Agreement seeks removal of the displacement proviso".

In TCPL's view, implementation of this new policy requires the Board to also consider the double demand charge issue and the issue of the sharing of take-or-pay carrying charges referred to in Section 2.2 and Chapter 3 of these Reasons for Decision.

In argument, TCPL supported the intent of the Agreement by stating its willingness, without intervention of this Board or any other authority, to provide T-Service to misplacement direct purchasers and voluntarily reduce contract demand to the extent of the displacement, so long as fair and equitable sharing of take-or-pay carrying charge arrangements were put in place.

In light of the intent of the Agreement to enable a market-responsive pricing system to operate in Canada, and the support of interested parties in general, the Board believes that it is now in the public interest to remove the wording of the existing displacement proviso from the T, STT, IT, and T-AOI Toll Schedules in TCPL's tariff.

2.2 Duplication of Demand Charges

Pursuant to Paragraph 7 of the Agreement, the Board was requested to review whether inappropriate duplication of demand charges will result from the possible displacement of one volume of gas by another.

The duplication of demand charges, also referred to as double demand charges, occurs when a customer, who previously purchased gas through a distributor, arranges an alternate supply through a direct purchase. In these circumstances, the direct purchaser is required to pay the demand toll twice: once to TCPL for T-Service and once to its distributor to indemnify the distributor for the unabsorbed demand charges which occur as a result of the displacement. This indemnification is paid because

provincial regulators, most notably the Ontario Energy Board, have ruled that a distributor's remaining customers should not be burdened with the costs associated with the unutilized Contract Demand (CD) resulting from a direct sale. Accordingly, they have ruled that the customer who arranges a direct purchase must pay the costs incurred by the distributor for the CD capacity rendered unnecessary because of the direct purchase.

Virtually all parties to this hearing agreed that double demand charges are not appropriate and frustrate the intent of the Agreement.

TCPL argued that it does not overrecover its demand charges since the demand charge revenues collected for new services provided after the tolls had been approved are accumulated in a separate deferral account and credited to the cost of service in subsequent toll hearings. However, TCPL did acknowledge that some customers are now being required to pay demand tolls twice for the same volumes of gas and that this results in a skewing[1] of demand tolls.

TCPL has been unwilling to reduce its distributors' CD contracts to compensate for the volumes lost to direct sales because it has entered into long-term gas purchase contracts to service its CD contracts. Substantial take-or-pay obligations have been incurred by TCPL under these contracts and additional obligations could be incurred in the future if TCPL's sales volumes were to decline. Most of TCPL's take-or-pay obligations to date have been assumed by TOPGAS who has advanced funds to TCPL's producers for take-or-pay gas volumes to be delivered in the future. Recovery of the prepaid gas is dependent, to some extent, on TCPL's ability to retain its markets for natural gas. TCPL has covenanted with TOPGAS to do everything it can to retain and develop its gas markets and could face substantial financial liabilities if it should fail to do so. For this reason TCPL has refused to reduce its CD contracts to facilitate direct gas purchases from others.

TCPL proposed that it would voluntarily agree to reduce the volumes specified in its CD contracts with the distributors if the purchasers of gas, which displaces gas formerly supplied by TCPL, agreed to pay a full share of the Topgas carrying charges. This proposal was debated at length during the hearing.

While parties argued that the simplest solution to the double demand problem would be for the Board to order TCPL to amend its CD contracts with its distributors to reflect the volumes displaced by direct sales, TCPL argued that the Board does not have jurisdiction to amend its CD contracts.

Simplot and ICG Utilities (Manitoba) Ltd. (ICG) suggested that deferral accounts could be used to eliminate the effects of double demand charges. Under this proposal, demand charge revenues from T-Service, displacing gas formerly provided for under a CD contract with a distributor, would be recorded in a deferral account to be credited, perhaps monthly, to the distributor whose CD had been displaced. The amount to be refunded to the distributor would be reduced by the amount that the distributor would have paid for overrun and peaking services during the period if it had not utilized the excess CD capacity. Many parties stated that this would be an acceptable interim solution. However, they did not think it would be a good permanent solution of the problem. CIL Inc. proposed that a nil demand charge could be set for T-Service volumes, displacing volumes previously supplied

---

[1] Expression used in the hearing for this inappropriate allocation of fixed costs.[1]

under a distributor's CD contract, on the basis that the displacing customer would be paying the TCPL demand charge to the distributor for unutilized transmission capacity.

The Consumers' Gas Company Ltd. (Consumers') and Cyanamid Canada Inc. (Cyanamid) suggested that the Board could utilize the distributor's operating demand volumes, when setting tolls, rather than the volumes specified in the CD contracts with TCPL. Under this method, the operating demand volumes would be defined as the volumes specified in the distributors' CD contracts, less the volumes deemed to have been displaced by direct sales, as determined under the rules to be established for defining displacement volumes.

It is the view of the Board that the duplication of demand charges resulting from displaced volumes is inappropriate. Double demand charges frustrate the establishment of a flexible and market-oriented pricing regime for natural gas by imposing a substantial financial penalty on direct purchasers. The Board recognizes that the duplication of demand results in a skewing of transportation tolls in favour of customers who have experienced no displacement, as the demand volumes used to calculate the tolls would be greater than the demand utilized. This results in a lower overall toll at the expense of direct shippers who are required to pay twice for the transportation of gas which displaces gas sales formerly made by TCPL. Further, double demand charges promote an inefficient allocation of pipeline capacity as space is reserved for a daily demand that will not be used.

In the Board's view the duplication of demand charges is inconsistent with the establishment of just and reasonable tolls. For this reason, the current method for determining tolls is no longer appropriate. The Board would prefer that the parties involved negotiate the simplest solution to the problem, that is, agree to reduce the volumes set out in CD contracts entered into between them to a level that acknowledges the displacements occasioned by direct sales. The Board expects that, given its recommendation on the sharing of Topgas carrying charges, this voluntary renegotiation of CD contracts will occur.

The Board does not, however, agree with TCPL that the solution to the double demand problem is dependent on TCPL's willingness to negotiate CD relief. The Board has decided that it will exercise its jurisdiction under Part IV of the National Energy Board Act (NEB Act) to implement the solution, as described below, effective 1 November 1986. The Board is allowing an interim period until 1 November 1986 in keeping with the provisions of the Agreement. During this interim period, the use of the deferral account mechanism, as provided for in individual orders issued to direct sales shippers, under subsection 59(2) of the Act, will continue to operate.

The Board considered the proposal that the deferral account mechanism be employed as an ongoing solution to the double demand problem but rejected this solution because, in the Board's view, it is administratively cumbersome and would unnecessarily increase the direct shippers' working capital requirements. In addition, the deferral account solution does not solve the problem of the inefficient allocation of pipeline resources that occurs when space is reserved on the pipeline under two contracts for the same volumes.

Having considered all of the proposed solutions, it is the decision of the Board that, effective 1 November 1986, the Board will implement a new system of toll design and allocation for TCPL based on the establishment of an operational demand volume for the purpose of determining demand tolls. In the Board's view, Part IV of the NEB Act gives the Board wide discretion in choosing the method to be used by it and the factors to be considered by it in assessing the justness and reasonableness of

tolls. The Board looks to the BC Hydro[1] and TMPL[2] decisions for support of this interpretation of its jurisdiction. The Board believes that the implementation of its decision will result in just and reasonable tolls. The Board does not agree with TCPL that the adoption of the operational volume solution to the double demand problem is outside the Board's jurisdiction because it has the effect of altering sales contracts. The NEB Act specifically gives the Board the power to suspend a tariff filed by TCPL and to substitute for it another tariff. Should the CD contracts on file with the Board on 1 November 1986 be inconsistent with the tariff which the Board will impose on that date, the CD contracts will be disallowed as tariffs. In addition, in the Board's view, the fact that the method it chooses to establish just and reasonable tolls has an incidental effect on the CD contracts negotiated by TCPL and its distributors does not oust the Board's jurisdiction to proceed in the way it has decided to. In this respect, the Board looks to the Saskatchewan Power[3] case for support.

The operating demand volume will be incorporated into TCPL's tolls and tariffs in the following manner:

- The monthly demand charge for firm service to a distributor will be based on the distributor's operating demand volume for CD service rather than the contracted demand volume.

- The operating demand volumes will be used instead of the contracted demand volumes for the allocation of fixed costs in the setting of tolls.

- A distributor's operating demand volume will be determined to be the contracted demand, as specified in the distributor's CD contracts with TCPL, less the total amount by which the distributor's CD volumes are displaced.

- Displacement will be determined in accordance with the definition of displacement provided in Subsection 2.3 of this decision.

- The distributors' operating demand volumes will be reviewed by the Board as part of each TCPL toll hearing.

- The Board will consider applications for amendments to the operating demand volumes included in TCPL's tariff as required.

- Any increase in operating demand volumes will be subject to the availability of space on the pipeline.

- The operating demand volume will be used, instead of the contracted demand volume, in determining the daily demand under the CD Toll Schedules.

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[1] B.C. Hydro v. Westcoast Transmission Company (1981) 36 N.R. 33 (FCA)

[2] Trans Mountain Pipe Line Company Ltd. v. The National Energy Board (1979) 2 F.C. 118 (FCA)[2]

[3] Saskatchewan Power Corporation and Many Island Pipe lines Limited v. TransCanada PipeLines Ltd. and the National Energy Board (1981) 2 S.C.R. 688 (SCC)

- The operating demand volume will be used, instead of the contracted demand volume, in determining a distributor's eligibility for services under other tariffs, where applicable.

The Board's decision will eliminate the payment of double demand charges effective 1 November 1986. Demand revenues deferred under the various orders issued by the Board, pursuant to subsection 59(2) of the NEB Act, will continue to be recorded in the deferral account until that date and will require disposition. The Board is prepared to authorize refunds of the demand revenues recorded by TCPL to the distributors. The Board directs TCPL, in consultation withdirect purchasers and distributors, to calculate the appropriate amount of the balances at 30 June 1986 to be refunded and to bring the amounts to the Board by 31 July 1986 for approval. TCPL should also outline a proposed methodology for disposing of revenues deferred under Orders already issued for the period July to October 1986 on a monthly basis, and should also propose a methodology for disposing of revenues deferred as a result of any displacements occurring between now and 1 November 1986.

During the course of the hearing, Northern and Central Gas Corporation filed a Notice of Motion requesting relief under its CD contract with TCPL in respect of a direct purchase in their franchise area by Nitrochem Inc. The Board's decision, as outlined above, provides for such relief.

2.3 Definition of Displacement

As outlined in Section 2.2 the implementation of the operational volume solution to the double demand charge problem necessitates the adoption of a definition of displacement.
The distinction between incremental and displacement sales must be clear. The best way to approach these two categories of sales is to analyse their effects from a distributor's viewpoint. If the direct purchase had not occurred, would the distributor have been able to service the end-user on a firm contract basis without entering into a new firm service contract with TCPL? A direct purchase by an industrial end-user would be considered incremental if the distributor would otherwise have to increase its firm service supply and/or transportation contract to provide firm service to the end-user.

Considering the above, the Board will apply the following definition of displacement volumes for tariff purposes:

> "the volume of gas contracted under a direct purchase, firm service contract is to be considered a displacement volume for fixed cost allocation purposes, if assuming the absence of such direct purchase, the distributor could supply the account on a firm contract basis without itself contracting for additional firm volumes to accommodate the resulting demand".

2.4 Simplot Demand Charge Revenue

ICG (formerly Plains-Western) is a gas distribution utility operating in Manitoba. All natural gas distributed by ICG is delivered by TCPL and is, therefore, subject to TCPL's tolls and tariffs. On 26 January 1981, Simplot advised Plains-Western that it was contemplating obtaining Alberta gas directly at a rate of 282 10^3m^3/day for use in a new plant at the Simplot fertilizer complex in Brandon, Manitoba. Simplot requested that Plains-Western buy this gas from Simplot in Alberta, and deliver it to Simplot's plant in Brandon, and then resell the gas to Simplot. At that time, Plains- Western responded that it already had sufficient gas volumes under a CD contract with TCPL to supply all of Simplot's requirements.

A combination of unforeseen delays made it clear that Simplot would be unable to have its own gas available for the start-up of its plant expansion. Accordingly, Plains-Western supplied Simplot with additional gas beginning May 1982 to meet its new requirement until Simplot's own gas could come on stream.

In June 1984, Simplot's own gas became available and it entered into a T-Service contract with TCPL to have the gas delivered to its Brandon plant. Plains-Western requested TCPL to reduce its CD level by an amount equivalent to the T-Service quantities Simplot was now acquiring directly. TCPL refused to grant this request on the basis that the T-Service sales were, in its view, incremental. The demand charge revenue from the Simplot T- Service was recorded in the existing CD and T-Service revenue deferral account.

In the 1985 tolls hearing held pursuant to RH-2-85, ICG, which in the meantime had purchased Plains-Western, proposed that a portion of the accumulated deferred revenues from the Simplot T-Service be directly credited to ICG for subsequent refund to

Simplot since Simplot was not only paying TCPL demand charges pursuant to its T-Service contract but was also paying ICG demand charges for the capacity which in ICG's view had been displaced by the Simplot T-Service volumes, i.e., Simplot was paying double demand charges.

ICG also asked the Board to order a reduction of 282 10^3m^3/day in the CD contract between ICG and TCPL for the balance of the T-Service contract to avoid the future payment of double demand charges by Simplot.

The Board, in its decision on RH-2-85, relied on the evidence which showed that TCPL signed this T-Service contract with Simplot on the understanding that this volume of gas was incremental to the existing contracted supply with Plains-Western. Under the then-existing displacement proviso, TCPL satisfied itself as to the incrementality of the Simplot volumes and entered into the T-Service contract with Simplot.

The Board also relied on the evidence which showed that Simplot signed the T-Service contract with the full knowledge that Plains-Western had sufficient gas under contract to serve the new load and Plains-Western went ahead with its buy/sell arrangement with Simplot even though TCPL had informed Plains-Western that it could not and would not reduce its CD level due to its Topgas obligations.

Accordingly, in its Decision of September 1985, the Board decided to deny ICG's two proposals referred to above and, therefore, ordered that the Simplot accumulated deferred demand revenue be credited to all users of the TCPL system.

On 31 October the Agreement was signed. To enable the market-responsive pricing system to operate, the governments requested the Board in Paragraph 7(i) to review whether inappropriate duplication of demand charges will result from possible displacement of one volume of gas by another.

As a result of the Agreement, Simplot applied to the Board on 2 December 1985, requesting that the Board stay that part of the TCPL 1985 Tolls Decision as it relates to the double demand charge issue. Simplot also requested that a deferral account be established on an interim basis in order that the

demand revenues from Simplot T- Service contract may continue to be recorded in a T-Service deferral account pending the Board's final decision on the hearing held pursuant to Order RH-5-85.

On 20 December 1985, the Board denied Simplot's request for a stay of a portion of the TCPL 1985 Tolls Decision. However, the Board, by Order TGI-13-85, established a deferral account to record each month beginning 1 January 1986, for accounting and toll-making purposes, the demand charge revenues from the Simplot T-Service together with the associated carrying charges. Also, the Board established a second deferral account to record an amount of costs equal to the amount of revenues being deferred together with the associated carrying charges.

During the RH-5-85 proceedings, TCPL argued that the Board did not err in law or jurisdiction in reaching its 1985 decision. The only changed circumstance or new fact that has arisen since the issuance of the decision is the Agreement, and any facts that were not placed in evidence during RH-2-85 could have been discovered by reasonable diligence.

Simplot also argued that the Agreement is the only changed circumstance since the last decision, all material facts were known and presented to the Board last summer, and the controversy only relates to the question of whether the Simplot volumes were incremental or displacement. Simplot, as well as ICG and IGUA, argued that Plains- Western has clearly suffered a displacement of market although no contract between it and Simplot had been breached.

ICG also stated that under cross-examination the TCPL witness admitted that TCPL now regards this case as a case of displacement.

The Board agrees with both TCPL and Simplot that the only changed circumstance or new fact that has arisen since the issuance of the last decision is the Agreement. This Agreement has resulted in a new definition of displacement as set out in Section 2.3 of this report.

Under this new definition, the Board believes that the Simplot T-Service volumes have displaced a load that the distributor had previously supplied and accordingly is of the view that an inappropriate duplication of demand charges is occurring in this case and relief should be granted.

It is the Board 's view that such relief should only be granted beginning 1 January 1986, the date at which the Board issued Order TGI-13-85 ordering the deferral of the Simplot demand charge revenues. The Board was not convinced by Simplot's argument that relief should be granted beginning June 1984.

Therefore, in accordance with the procedure established in Section 2.2, the Board directs TCPL, in consultation with ICG and Simplot, to calculate the appropriate amount of the balance at 30 June 1986 of the Simplot demand revenue recorded, pursuant to Board Order TGI-13-85, and to make a submission to the Board by 31 July 1986 requesting approval of the refund. The submission should outline a proposed methodology for disposing of revenues for the period 1 July to 31 October 1986 on a monthly basis.

Chapter 3
The Fair and Equitable Sharing of the Topgas Carrying Charges

3.1 Historical Background to the Topgas Agreements

Views as to what would constitute a fair and equitable sharing of the Topgas carrying charges were largely based on parties' interpretations of the events which led to the development of the Topgas problem as well as on their own specific interests in the gas market. Accordingly, this section provides a brief review of the historical context within which the Topgas problem arose.

Since it commenced operations in October 1958, TCPL has traditionally been a buy/sell pipeline, i.e., it has bought most of the gas to be transported through its system, thereby acquiring ownership of the gas, and has then resold this gas to local distribution companies[1] TCPL was not under an obligation to carry gas for third parties until the recent Board orders under sub-section 59(2) of the *NEB Act,* which orders have been issued following the Agreement.

Given the structure of the domestic gas industry, with hundreds of producers of varying size and sophistication, separated by over 3,000 kilometres from the major market centre, this arrangement made eminent sense, particularly in the early 1960's when the distribution companies in southern Ontario were new to the business and were occupied with developing their markets.

TCPL has thus historically provided the gas distributors with a gas acquisition service in addition to its gas transmission service.

TCPL has traditionally contracted for its gas supply with producers in Alberta. TCPL's gas purchase contracts normally contained take-or-pay clauses which required TCPL to take minimum specified volumes under contract, and failing to do so, to pay for volumes not taken. TCPL then had the right to make up these volumes by taking the gas within a specified period, after which it would lose the right to take the prepaid gas.

Take-or-pay clauses have been common practice in gas purchase contracts throughout the North American natural gas industry. These clauses have been necessary to ensure producers of a minimum cash flow and to enable them to obtain financing for gas exploration and development expenditures. In turn, the gas purchase contracts provided security that sufficient gas supply would be available and thereby aided pipelines in obtaining financing for the construction of transmission facilities.

Throughout the 1960's, natural gas use grew steadily in central Canada, and Alberta gas producers were provided with a continually expanding market. Gas export opportunities also grew rapidly, and the Board issued several gas export licences throughout the 1960's. With growing market demand, TCPL honoured its take-or-pay commitments and the minimum take clauses did not cause any problems for the company.

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[1] In the 1984/85 contract year, TCPL's sales of its own gas accounted for approximately 87 percent of the domestic gas market east of Alberta.

As late as mid-1970, the supply outlook was that Canada could afford to export substantial additional quantities of gas. However, after particularly rapid growth between 1967 and 1970, demand was beginning to bump up against supply capability and in early 1971 the gas supply/demand picture started to change rapidly. In mid-1971, the Board concluded that Canada was facing a natural gas shortage, and, therefore, no new exports could be allowed.

Canadian oil and natural gas supplies became tighter between 1971 and 1973. The events that occurred in the domestic natural gas industry following the first oil crisis were discussed at some length in the present hearing. All gas supply and demand forecasts of the day, including those of this Board, predicted that Canada was facing an impending natural gas shortage. Gas distribution companies also indicated to TCPL a concern about the long term security of their gas supply.

In the light of the prevailing circumstances, TCPL aggressively contracted for Alberta gas reserves between 1974 and 1976. To encourage producers to prove up additional gas supplies, a number of incentives were added to the gas purchase contracts during this period. These included an increase in TCPL's minimum take obligations and area-based contracts, which allowed producers to include additional volumes found within a specified area in the volumes covered in the gas purchase contract.

At the same time that TCPL was contracting for additional gas supplies, a profound change occurred in the way in which natural gas was priced in Canada. Negotiations between the federal and Alberta governments on domestic oil and gas prices resulted in the adoption of a pricing policy under which prices became subject to government regulation as of 1 November 1975.

Thus, the prices in TCPL's gas purchase contracts existing as of that date were over-ridden by government- regulated prices.

Increasing natural gas prices helped induce a rapid increase in productive capacity, and TCPL stopped contracting for new gas supplies in early 1977. At the same time, higher prices induced consumer conservation, and natural gas demand stayed constant rather than growing rapidly as previously anticipated.

TCPL incurred its first major take-or-pay liabilities in the 1977/1978 contract year, paying out $134 million to producers for gas that it could not take. In April 1978, TCPL introduced a market allocation program to ensure that the available market would be equitably shared among its producers.

Up to the 1979/1980 contract year TCPL made full payments for gas not taken. During this period, TCPL felt that take-or-pay was a temporary problem and would disappear within a year or two when demand was expected to once again catch up with supply. However, the effect of higher gas prices in encouraging both producer drilling and consumer conservation was underestimated. Supply increased rapidly, largely due to the dual incentives of guaranteed prices and guaranteed minimum sales given to system producers. At the same time, TCPL was prevented from marketing the surplus gas by lowering prices because prices were regulated by government.

In 1980, following the Iranian oil crisis and the introduction of the National Energy Program, Canada adopted a new regulated pricing regime. Oil prices were kept below world levels at the outset of the

program, and gas prices were set at 65 percent of energy-equivalent oil prices at the Toronto city-gate. Importantly, the National Energy Program provided for regular increases for both domestic gas and oil prices.

TCPL's system producers continued active drilling under their reserve-based contracts in 1980 and 1981 and, hence, TCPL's contracted supply continued to grow. As demand remained stagnant, TCPL experienced increasing difficulties with its take-or-pay commitments. TCPL therefore negotiated a new allocation program with its producers which reduced TCPL's minimum take obligations to 80 percent from 100 percent of contracted levels for the 1980/81 and 1981/82 contract years.

Following the economic recession of 1981, domestic demand weakened, the U.S. gas bubble emerged and the take-or-pay problem facing pipeline companies throughout North America reached a peak. By the end of 1981, TCPL had paid out approximately $1 billion for gas that it had been unable to take and its ongoing take-or-pay commitments were constraining the company's business flexibility. Although TCPL had already negotiated a number of modifications to its gas purchase contracts with its producers, including an extension of the make-up period for TCPL's right of recovery on prepaid gas, a more comprehensive solution was considered necessary. The Topgas I program was introduced as the preferred solution in May 1982 and was implemented in the autumn of 1982.

3.2 Review of the Topgas I and Topgas II Agreements

3.2.1 The Topgas I and Topgas II Agreements

Under the Topgas I Agreement, TOPGAS Holdings Ltd., a new corporate entity consisting of a consortium of thirty domestic and foreign banks and financial institutions, assumed TCPL's outstanding take-or-pay liabilities and advanced $2-3 billion to producers. Approximately $1 billion of this covered TCPL's previous prepayments to producers, and the producers were required to refund these monies directly to TCPL. TCPL was thereby able to remove from its balance sheet approximately $1 billion in debt obligations which it had incurred in making the prepayments.

The rest of the advances, about $1.3 billion, covered the sum of TCPL's take-or-pay obligations for the 1980/81 and 1981/82 contract years. Of this $1.3 billion, approximately $1 billion represented payments for gas that producers had already agreed to forego under the then-existing allocation program in which producers had agreed to reduce TCPL's minimum take requirements to 80 percent of their contracted level. In return for these advances, producers agreed to reduce TCPL's future take-or-pay liabilities to the lesser of 60 percent of the minimum annual obligation for the 1981/82 contract year or 75 percent of TCPL's minimum annual obligation for the year in question. For its part, TCPL undertook to protect and expand its market to the maximum extent possible.

TCPL's gas sales did not improve in the 1982/83 contract year and it was unable to fulfill its minimum take obligations under the Topgas 1 agreement. Given the success of Topgas I, TCPL and TOPGAS Two Inc., a consortium of twenty domestic and foreign banks and financial institutions, proposed the Topgas II program to its producers. Under Topgas II, a further $350 million was advanced to producers for gas not taken in the 1982/83 contract year and, in return, TCPL's minimum annual take-or-pay obligation for the 1983/84 contract year was reduced to 50 percent of the 1981/82 annual obligation and, for future years, to between 50 and 60 percent of the 1981/82 minimum annual obligation depending on actual delivery levels in the immediately preceding two years. Similarly to

the Topgas I agreement, the Topgas II agreement made it possible for TCPL to remove its pre-paid gas liabilities from its balance sheet because TOPGAS Two Inc. assumed these liabilities.

Producers representing respectively 99 percent and 93 percent of TCPL's system supply were signatory to the Topgas I and Topgas II agreements. TCPL remained obliged to honour its gas purchase contracts with those producers who did not enter into the agreements.

From the producers' viewpoint, the Topgas agreements were largely a recognition of the fact that, although TCPL was contractually bound to pay them for gas not taken, the value of these contracts was ultimately limited by TCPL's ability to pay. There was also some uncertainty as to whether the take-or-pay provisions in their contracts were enforceable given that administered pricing reduced TCPL's ability to market its gas supplies. At the time, a number of producers were experiencing cash flow problems, and the Topgas advances constituted a timely cash injection. The Topgas program allowed producers to continue to finance much of their on-going expenditures, provided a boost to the Alberta economy and was supported by the Alberta government. The Topgas agreements thus largely represented a practical solution to the take-or-pay problem.

3.2.2 Repayment Mechanisms

Under the Topgas agreements, the principal on the monies paid to producers is recovered by TCPL through nomination for delivery of prepaid gas- Upon the sale of the prepaid gas, TCPL withholds from the price otherwise payable to producers the amount which was advanced to producers for this gas, and pays this amount to the TOPGAS consortia.

The annual amount payable by each producer is collected over the first five months of the gas year, with one-fifth of the annual amount being recovered from the first volumes of gas deliveries in each month. Producers receive any surplus if the delivered price is higher than the initial price they were paid when they received their Topgas advances. However, if the selling price is less than the initial price, producers are liable for the difference. In the latter case, TCPL has the right to make up any deficiencies by retaining monies from other gas deliveries by the producers in question.

Repayment of the Topgas advances commenced in November 1984, and the minimum annual scheduled installments on the principal are calculated as the monies owing on 10 percent of the prepaid gas[1]. Recovery is automatically accelerated up to a maximum of 20 percent per year if total sales by TCPL exceed certain specified levels and, therefore, the recovery schedule is not fixed. If repayment proceeds at the minimum specified levels, the monies would be repaid by 1994 but, if accelerated recovery were to occur, repayment could be completed as early as 1990.

The interest on the outstanding amount of the advances is paid by system producers through the collection of a charge by TCPL in its Alberta cost of service which it then remits to the TOPGAS consortia. This interest is set monthly at the Canadian prime rate plus 7/8 of one percent. The total monthly interest costs are spread across all gas sales to TCPL by Topgas producers. The carrying

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[1] Recovery of the principal is on a first-incurred first-recovered basis in that prepayments for gas made in, for example, 1979, are recovered before prepayments made in 1980. Because the prices originally paid under the prepayments vary, the annual principal owing is not equal from year to year in dollars although it represents 10 percent of the prepaid gas by volume. Recovery of 10 percent of the principal could be achieved, on average, from about 16 percent of TCPL's annual sales levels if sales and prices were maintained at their 1984/85 contract year levels.

charges are calculated under seven different categories in which producers are grouped according to the status of their participation or non-participation in the Topgas I and Topgas II agreements. In addition, there is an eighth category for solution gas and 100 percent load factor contracts.

In sum, the producers are liable for the repayment of both the principal and the interest owing on the Topgas advances and TCPL essentially acts as a collection agency in the arrangement. TCPL has, however, an unlimited liability to the TOPGAS consortia in the event that producers default on payment of the Topgas carrying charges and is also liable for up to $355 million in the event that producers default on repayments of the principal.

Finally, the Alberta and federal governments allow the interest on the Topgas carrying charges to be deducted from the field price prior to the calculation of provincial royalties and the Petroleum Gas Revenue Tax (PGRT) payable.

3.3 The Natural Gas Agreement and the Topgas Problem

3.3.1 The Natural Gas Agreement

On 31 October 1985, the federal government and the gas producing provinces of Alberta, British Columbia and Saskatchewan entered into the Agreement on Natural Gas Markets and Prices. The intent of the Agreement was clearly stated in Paragraph 1, as follows:

> "In the Western Accord of 28 March 1985 on Energy Pricing and Taxation, the governments of Canada, Alberta, British Columbia and Saskatchewan agreed that a more flexible and market-oriented pricing regime was required for the domestic pricing of natural gas. The present Agreement is 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. This will have favourable effects on investment, employment and trade and will provide energy security for all Canadians."

In Paragraph 2, this intent was further clarified, as follows:

> "Effective 1 November 1986, the prices of all natural gas in interprovincial trade will be determined by negotiation between buyers and sellers."

The implementation of this policy will have profound implications for TCPL because its historic role as a buy/sell pipeline will diminish as direct sales become an increasingly important component of the domestic natural gas market. Following the announcement of the Agreement, TCPL separated its gas acquisition and gas transmission functions when on 1 January 1986 it created its subsidiary, Western Gas Marketing Ltd., to act as its agent for its gas acquisition and marketing activities.

As discussed in subsection 3.2.1, TCPL undertook, as part of the Topgas agreements, to protect and expand its markets to the maximum extent possible. However, the thrust of the Agreement was that TCPL should no longer be able to protect its markets by denying access to other sellers to the pipeline. It follows that the realization of the intent of the Agreement could cause problems for the parties to the Topgas agreements, as outlined below.

3.3.2 The Topgas Problem

The Topgas agreements are noteworthy in that the Topgas consortia advanced approximately $2.65 billion to producers without the producers' gas being secured as collateral against the advances. Rather, Topgas largely relied on TCPL's dominant market position as its security that the Topgas advances would be repaid.

Topgas testified that, in the event of bankruptcy, they were reasonably assured of repayment of the Topgas advances even though the gas was not hypothecated. The reason was that a trustee in receivership would have had little practical choice but to sell the gas to TCPL, given the regulatory regime existing at the time the Topgas agreements were signed.

The Topgas agreements were therefore made possible because TCPL was the only practical outlet for system producers' gas. The implementation of a policy allowing direct sales now clearly threatens the underpinning of the Topgas agreements. Topgas depicted the fears of the parties to the Topgas agreements as lying in the possibility of the following chain of events occurring:

(i) Removal of the displacement proviso would allow non-system gas sales to capture some markets formerly served by TCPL system gas with the following consequences:

- system producers would experience reduced net cash flows as deliveries of gas to repay the Topgas principal would constitute a larger percentage of their total sales;
- the Topgas carrying charges would be spread over a smaller volume of system gas sales;
- the increased competition from non-system gas would drive prices down; and
- given that many producers are already experiencing financial difficulties, some producers might not be able to honour their obligations under the Topgas agreements.

(ii) As TCPL is liable to Topgas for up to $355 million against producer default on repayment of the principal and has an unlimited liability against producer default on the interest payments, it could incur substantial liabilities in the event of widespread producer defaults. Further, if its system gas sales were seriously eroded by non-system gas sales, TCPL could also incur new take-or-pay liabilities.

(iii) If producers were to default en masse, there would be a risk that Topgas would have trouble recovering the Topgas advances. This could occur because a trustee in bankruptcy would not be legally bound by the Topgas agreements to sell the gas to TCPL and could choose instead to sell the gas via the direct sale route.

Each party to the Topgas agreements thus has its own special concerns, and each believes that its financial position could be hurt by the implementation of the Agreement.

The parties to the Topgas agreement believe that the government policy regarding direct sales could be implemented without harming the integrity of the Topgas agreements if the Topgas carrying charges

were shared by direct shippers in what they view to be an appropriate manner. These parties did not, however, request direct shippers to share in the repayment of the outstanding principal on the Topgas advances.

Parties' views on the possible solutions with respect to the sharing of the Topgas carrying charges are outlined in the following section.

3.4 The Possible Solutions

The parties to the Topgas agreements argued that the Agreement could be implemented in a manner that would be fair to them if non-system gas sales were required to share the payment of the Topgas carrying charges with system gas sales on an equal basis per unit of gas sold. They were supported in their position by the Alberta government.

Briefly, their argument was that, if non-system sales were not required to share in the payment of the Topgas carrying charges, they would have an unfair competitive advantage over system gas sales. This would unduly penalize the parties to the Topgas agreements because this would result in increased erosion of TCPL's markets by non-system sales, thereby leading to the chain of events described in the previous section. Thus, in their view, sharing would be necessary to ensure a level playing field between non- system gas sales and TCPL system gas sales and to thereby ensure a fair and orderly transition from a regulated pricing regime to the market oriented pricing regime envisaged in the Agreement.

Parties opposed to sharing argued that the Topgas carrying charges should remain the sole responsibility of the parties to the Topgas agreements and that third parties should not in any way be required to share in the payment of these charges. These parties included some provincial governments, gas consumer interests, some direct sellers and gas brokerage representatives.

Briefly, their argument was that direct sellers already bear the interest costs associated with development of their gas reserves and to burden them with the additional costs of the Topgas carrying charges would place non-system sales at a competitive disadvantage with TCPL system sales. Further, to require non-system sales to bear a portion of the Topgas carrying charges would effectively provide protection to TCPL's near-monopoly market position and would thwart the intent of the Agreement.

The majority of parties took a firm position either for no sharing or full sharing, thereby fully supporting the solution which would be in their best interests. Union Gas Limited (Union), however, advocated a compromise solution which would require non- system sales to pay a portion of the Topgas carrying charges, although a lower rate per unit of gas sold than paid by TCPL system suppliers. Union argued that the situation was analogous to one in which two armed camps were facing each other and neither side was willing to compromise. Union suggested that the reality of the situation was that there was merit in the arguments of both sides and the fairest and most equitable solution would be a compromise.

Some parties, including the Director of Investigation and Research, Gaz Métropolitain, inc. (GMi) and Consolidated Natural Gas Limited (Consolidated) indicated that, if the Board were not to adopt their preferred solution of no sharing, they would prefer a compromise solution which required non-system sales to bear a portion of the Topgas carrying charges rather than the full sharing solution.

For example, although Consolidated supported no sharing, it indicated that it would support a solution which put a cap on the Topgas payments per gigajoule payable by system producers. The cap would be set at the level at which system gas producers would have paid in the absence of new non-system sales and non-system sellers would only be required to pay that portion which would cause the payments per gigajoule by system sellers to exceed the cap.

In summary, the three generic solutions which were discussed at the hearing were as follows:

1. No Sharing

Non-system gas sales would not be required to bear any of the Topgas carrying charges.

2. Full Sharing

Non-system gas sales would be required to bear the Topgas carrying charges on an equal basis per gigajoule of gas sold with TCPL system sales.

3. Partial Sharing

Non-system gas sales would be required to bear some portion of the Topgas carrying charges, but a lesser amount per gigajoule of gas sold than TCPL system gas.

The arguments which parties made in support of their positions as to the fair and equitable sharing of the Topgas carrying charges and the Board's views on these arguments are addressed in the following section:

3.5 Fairness and Equity Arguments

The arguments advanced by parties on the fair and equitable sharing of the Topgas carrying charges can be grouped under the following four headings:

a. Who was responsible for the take-or-pay problem?

b. Who benefitted from the Topgas agreements?

c. Can TCPL system sales compete with non-system sales? and

d. What would be the implications for future take-or-pay?

The main arguments advanced by parties against sharing, by parties in favour of sharing and by parties recommending a compromise solution and the Board's views on these questions are addressed separately.

3.5.1 Parties Against Sharing

a. Who was responsible for the take-or-pay problem?

Parties against sharing argued that TCPL's take-or-pay problem originally arose because of the actions of TCPL and its system suppliers and that they should be the parties to bear the associated costs. These parties supported this position with the following arguments.

TCPL was imprudent in its gas purchase contracting practices and unnecessarily contracted for too much gas. It was agreed that all parties, including gas users, were concerned about security of supply in the 1974-1976 period and that TCPL's forecasts of supply and demand were not unreasonable at the time they were made. However, although the distributors indicated they were concerned about future supplies, they did not sign contracts to purchase the volumes for which TCPL was contracting with its producers. This indicated that TCPL had contracted for gas largely on speculation of growth in its markets and not in response to demands from its customers.

Some parties argued that, although TCPL may not have acted unreasonably in entering into its gas purchase contracts, it nonetheless imprudently managed those contracts after 1977 once take-or-pay had become a problem. It was suggested that TCPL should have observed the impact of higher prices in inducing new gas supplies to be developed and should have taken steps to limit the growth of its supply base, particularly under its area contracts.

Parties against sharing also rejected the argument that gas acquisition costs were part of the costs of financing the TCPL system and that they are, hence, system costs. They argued that the take-or-pay payments associated with the Topgas agreements were made for gas which was contracted for markets that never materialized and for facilities that were never constructed and, hence, could not be construed to be part of the costs of developing the TCPL system.

Domestic gas users also argued that they took gas at high load factors under their contracts and argued that the take-or-pay problem largely arose due to TCPL contracting for gas in anticipation of growth in its export markets and the subsequent non-performance of its export contracts. As such, they believe it would be unfair to penalize Canadian gas users for a problem that was not of their making.

Parties against sharing also argued that the take-or-pay problem was largely the fault of the TCPL system producers, as in their view it was irresponsible for the producers to have drilled so actively between 1977 and 1982 when it was clear that TCPL would not be able to take the additional supplies that were coming onstream.

It was further argued that the system suppliers benefitted from the regulated pricing regime because, in the absence of regulation, the surplus would have resulted in falling prices in a competitive market, and thus, they should not now be protected from competition.

b. Who benefitted from the Topgas agreements?

Parties against sharing maintained that the primary beneficiaries of the Topgas agreements were the parties to those agreements and, as such, they should be the parties to bear the associated costs. These parties made the following arguments in support of their position.

TCPL benefitted the most from the agreements as they enabled TCPL to effectively erase over $1 billion in debt from its balance sheet. This was achieved at a time when the market was stagnant and TCPL's business flexibility, by its own testimony, was suffering due to its take-or-pay debt load.

System producers benefitted from a huge cash injection at a time when the industry was suffering from a downturn in the economy. In light of the regulated pricing regime, parties against sharing maintained that TCPL could have won a court case if it had opted to declare force majeure with respect to its gas purchase contracts. Even if TCPL had lost, producers would likely have had to wait for years for the outcome of a court decision whereas the Topgas agreements provided an immediate cash flow at a time when the gas market was glutted. The Topgas agreements gave the system producers access to low-cost financing and allowed many of them to effectively refinance their outstanding debt obligations. Further, governments allowed system producers to deduct their Topgas carrying charges from the field price of gas prior to calculation of the provincial royalty and federal PGRT payable. These were key benefits that were not available to non-system producers.

Finally, it was argued that gas consumers might have been better off if TCPL had declared force majeure instead of entering into the Topgas agreements.

c. Can TCPL system sales compete with non-system sales?

A number of parties to the hearing maintained that, if TCPL can effectively compete with direct sales, then there is no Topgas problem and sharing would not be required. TCPL agreed that, if it were able to retain its markets, there would be no problem but maintained that, if sharing were not required, system sales would be put at a competitive disadvantage.

These parties made the following arguments in support of their position:

- TCPL's huge supply base gives it security of supply and flexibility of deliverability advantages;
- TCPL can roll-in industrial discount sales prices with the selling price of gas under its long-term contracts thereby allowing it to offer deep discounts;
- if a direct seller gives a similar deep discount, it significantly affects his net cash flow as the discount applies to a larger percentage of his gas sales; and
- TCPL has an in-place marketing apparatus whereas new sellers face substantial market development costs.

On the much discussed issue of the Topgas carrying charges (or, in the parlance of the hearing, the Topgas baggage), the following points were made with respect to the impact of the baggage on the ability of system gas to compete with non-system sales:

- the baggage is simply the carrying charges on the development costs of system gas supply;
- direct sellers carry similar baggage on their reservoirs and, in fact, likely pay higher interest rates than system suppliers;
- system supply was developed earlier, on average, than non-system supply and most of the development costs have already been written off;

- non-system suppliers had no access to eastern Canadian markets and had to either shut-in their gas or sell into the Alberta discount market, resulting in high fixed costs per unit of gas sold; and
- system suppliers have lower after-tax operating costs as they have the advantage of being able to deduct the Topgas carrying charges from the field price of gas, resulting in lower royalty and PGRT payments.

In addition, parties against sharing pointed out that the evidence to date indicates that system supply can indeed compete with non-system sales as, thus far, many more CMPs have been made than direct sales.

d. What would be the implications for future take-or-pay?

Parties against sharing argued that TCPL could avoid incurring future take-or-pay if it retained most of its markets. In their view, because TCPL could effectively compete, it could protect itself against future take-or-pay.

It was also argued that TCPL could negotiate out of its take-or-pay obligations with its producers and that requiring sharing would provide unnecessary regulatory protection to TCPL. It was noted that TCPL intended to renegotiate its gas purchase contracts with its producers and that a private renegotiation would be more in keeping with the spirit of the Agreement.

3.5.2 Parties Supporting Sharing

a. Who was responsible for the take-or-pay problem?

Parties supporting sharing argued that the gas supply was primarily developed for the benefit of consumers, in accordance with government policy of the day, and that, hence, the responsibility for the take-or-pay problem does not lie solely with TCPL and its system suppliers.

It was argued that, at the time TCPL entered into its gas purchase contracts, all forecasts predicted a gas shortage in Canada and that government policy supported the development of new gas reserves. Further, the domestic distribution companies communicated a concern about security of supply to TCPL and were themselves forecasting rapidly growing demand.

TCPL argued that the primary cause of the take-or-pay problem was the failure of domestic demand to grow as predicted and denied that it had developed its gas supply in anticipation of growth in demand in the export market. Rather, it claimed that the export market acted as a release valve and had allowed TCPL to sell some of the excess gas that had been contracted for the domestic market.

TCPL also maintained that it had prudently managed its gas purchase contracts and referred to decisions by the Alberta Petroleum Marketing Commission (APMC) that its management of these contracts was not imprudent. It also cited its negotiation of its minimum take obligations down to 80 percent for the 1980/81 and 1981/82 contract years and its subsequent negotiation of the Topgas agreements, in which its minimum take obligations were further reduced to approximately 50 percent, as evidence of its prudent management of the take-or-pay obligations in its gas purchase contracts.

Some intervenors, most notably the Canadian Petroleum Association (CPA), argued that the gas supply was necessary to underpin the financing of the TCPL pipeline system, that, without the gas purchase contracts, the system would not have been built and, therefore, the take-or-pay payments were an integral cost of building the system. They maintained that all users benefit from the existence of the system and that, therefore, all system users should bear the costs of the system, including the payment of the Topgas carrying charges.

The CPA cited as a precedent in support of their position that, prior to 1975, the Board had allowed the inclusion of some gas acquisition costs in TCPL's Canadian cost of service. They maintained that the fact that the Topgas carrying charges have been administered in Alberta was primarily due to the preference of the Alberta government and that the locale of administration was of little importance during a period of regulated pricing. However, they maintained that as a system cost it would be more appropriate to administer the Topgas carrying charges in TCPL's tolls in the new market-oriented pricing regime.

Parties supporting sharing also argued that governments shared some of the responsibility for the development of the take-or-pay problem. They noted that the regulatory regime recognized TCPL's dual gas acquisition and transmission functions, thereby indicating an implicit acceptance of the bundling of TCPL's gas transmission and gas acquisition activities.

It was also argued that government-regulated prices played a role in creating the take-or-pay problem because regulation prevented TCPL from lowering prices to market its surplus gas. At the same time, regulated prices, particularly the scheduled price increases under the National Energy Program, provided a strong signal to producers to continue drilling for additional gas reserves. Thus, their argument was that system producers were simply exhibiting rational economic behavior in light of the signals being provided to them by governments and the regulatory regime.

b. Who benefitted from the Topgas Agreements?

Although TCPL did not deny that it had benefitted from the Topgas agreements to date, it claimed that all system users also benefitted. It argued that, if it had attempted to honour its take-or-pay obligations in another fashion, for example by raising common equity, its credit rating would have deteriorated and tolls would have increased for all system users.

The system producers argued that they had not benefitted from the Topgas agreements but had given up certain contractual rights in return for the Topgas advances. They stressed that, by allowing TCPL to reduce its minimum take obligations, they were making a substantial concession and foregoing a contractual right to a large future revenue flow.

c. Can TCPL system sales compete with non-system sales?

The parties to the Topgas agreements agreed that, if system sales could retain their markets, there would not be a Topgas problem, but maintained that, if sharing were not required, system sales would be put at a competitive disadvantage. They supported their position with the following arguments:

- if non-system sales did not have to bear the Topgas carrying charges, they would have a before-tax cost advantage of approximately $.24 per gigajoule;

- system suppliers are only producing at 50 percent to 55 percent of their capacity whereas a non-system seller can produce at 100 percent capacity with the resultant advantage of spreading development costs over a larger volume;

- many direct sales will be to associated companies which will preclude TCPL from competing even if they offer competitive prices; and

- any roll-in advantage TCPL may have will substantially disappear after 1 November 1986 when prices in its long-term contracts will be renegotiated.

With respect to the baggage issue as it relates to TCPL's ability to compete, TCPL and the CPA denied that the baggage was analogous to gas development carrying costs. They claimed that the baggage represents system development costs rather than gas development costs and, hence, are additional costs to system suppliers which would put them at a competitive disadvantage if non-system sellers were not required to share them. TCPL also claimed that any suggestion that system suppliers were not willing to compete flew in the face of the evidence that TCPL had already negotiated a number of successful CMPS.

d. What would be the implications for future take-or-pay?

TCPL argued that, if non-system gas sellers were not required to share in the payment of the Topgas carrying charges, it would be exposed to increased risk of not being able to meet its minimum take obligations in the coming years and that this would be incompatible with the intent of the Agreement to provide for "an orderly transition which is fair to consumers and producers". Therefore, in their view, it would be fair to require non-system sellers to fully share in the payment of the Topgas carrying charges in order to provide some protection to TCPL from future take-or-pay.

3.5.3 Parties in Favour of a Partial Sharing Solution

Only Union specifically proposed a compromise solution which would require non-system gas sales to bear some portion of the Topgas carrying charges, but a lesser amount per gigajoule of gas sold than borne by system gas.

Union specifically suggested that non-system gas be required to bear one third of the Topgas carrying charges per gigajoule of non-system gas sold and that system gas be required to pay the other two thirds. System gas would continue to bear the entire Topgas carrying charges applicable per gigajoule of system gas sold. Union's rationale in support of this proposal was that, in their view, system producers were the primary beneficiaries of the Topgas agreements and should, therefore, be required to bear a greater share of the charges. On the other hand, Union recognized that it had encouraged TCPL to contract for gas in the mid-1970's and that, therefore, gas users should share some of the responsibility for the take-or-pay problem. Union stressed that it was not compromise because "like arbitrator, it could not who was right or wrong", but because it genuinely found merit in both sides of the arguments.

Other parties who did not advocate a partial sharing solution did indicate that they might find a compromise to be acceptable. For example, although Consolidated supported no sharing, it indicated that it would support a solution which put a cap on the Topgas payments per gigajoule payable by system producers. The cap would be set at the level at which system gas producers would have paid

in the absence of new non-system sales and non-system sellers would only be required to pay that portion which would cause the payments per gigajoule by system sellers to exceed the cap.

In addition, the Director of Investigation and Research recommended that, if some form of sharing were to be required, it only be for a limited period.

3.5.4 Board Views

a. Who was responsible for the take-or-pay problem?

The Board is of the view that the parties primarily responsible for the development of the take-or-pay problem were TCPL and its system suppliers. On the one hand, TCPL contracted for an immense gas supply with no assurances that the gas would indeed be taken and, on the other hand, producers developed much of the supply while knowing that there was a supply overhang in the market. However, the Board does recognize that hindsight is one hundred percent and that the actions of TCPL and the system suppliers were made in light of the circumstances prevailing at the time.

The Board is of the view that other parties, including gas users and governments, bear at least a secondary responsibility for the development of the take-or-pay problem. TCPL entered into its gas purchase contracts largely in expectation of growth in domestic market demand and with some encouragement from domestic gas distributors and, therefore, in the Board's view, gas users cannot be absolved of all responsibility for the take-or- pay problem.

Government policy delivered signals to the marketplace in the form of high prices which encouraged additions to supply and reductions to demand, perhaps exceeding what may have occurred in the absence of this public sector intervention. Although government policy is changeable and governments cannot be held wholly responsible for actions taken by private entities, it may be that parties affected by policy change can, in some instances, reasonably expect that measures will be taken to ease the transition from one policy environment to another.

b. Who benefitted from the Topgas agreements?

It is the Board's view that the primary beneficiaries of the Topgas agreements were TCPL and the system producers. The fact that the agreements enabled TCPL to erase over $1 billion of debt from its balance sheet is remarkable and establishes that TCPL has indeed substantially benefitted from the Topgas agreements to date.

It is more difficult to judge the extent to which system producers benefitted from the Topgas agreements. It is true that producers received over $1 billion in cash advances at a time when they were in need of cash flow but it is also true that they gave up significant contractual rights in return for the cash advances received.

It is difficult to assess in precise terms the benefits which accrued to gas consumers and non-system producers as a result of the Topgas agreements. However, TCPL was able to continue to expand its facilities and to serve its customers without interruptions. If the take-or-pay charges had remained on its balance sheet, it is probable that TCPL's cost of financing new facilities would have been higher. To the extent that the Topgas Agreements reduced TCPL's minimum take obligations, this could be said to have favourably affected the system.

c. Can TCPL system sales compete with non-system sales?

The Board recognizes that increased competition could have a negative effect on the parties to the Topgas agreements. In particular, it recognizes that, to the extent that non-system sales erode TCPL system sales, system producers will experience higher Topgas carrying charges per unit of gas sold. Further, LOSS of their market will leave system producers with a reduced cash flow after they have made their obligatory annual payments on the Topgas principal.

On the other hand, there was no evidence that indicated that system gas would be more expensive to produce than non-system gas and, due to the royalty and PGRT deductions accorded to system gas on payments of the Topgas carrying charges, system gas may in fact be on average less expensive to produce, on an after-tax basis, than non- system gas.

It is the Board's view that TCPL and its producers will be able to compete effectively and retain a significant portion of the market.

d. What would be the implications for future take-or-pay?

It is the Board's view that TCPL will face increased risk of incurring future take-or-pay as a result of competition from non-system sales and that this risk could be somewhat greater if sharing of the Topgas carrying charges were not required. However, the Board also notes that the extent of future take-or-pay will depend upon TCPL's success in competing for markets.

The Board recognizes that TCPL must have the cooperation of its system producers if it is to effectively compete with non-system sales and, because many system producers are also potential direct sellers, some producers may be in a conflict of interest position. The Board is of the view that any future take-or-pay should be resolved between TCPL and its producers.

3.6 Recommendation on the Sharing of the Topgas Carrying Charges

The Board heard parties and rendered its decision on the sharing of the Topgas carrying charges in light of the intent of the Agreement as spelled out in Paragraph 1 of that Agreement:

> "In the Western Accord of 28 March 1985 on Energy Pricing and Taxation, the governments of Canada, Alberta, British Columbia and Saskatchewan agreed that a more flexible and market-oriented pricing regime was required for the domestic pricing of natural gas. The present Agreement is intended to create the conditions for such a regime, including an orderly transition which is fair to consumers and producers. This will have favourable effects on investment, employment and trade and will provide energy security for all Canadians."

The Board is of the view that the parties primarily responsible for the development of the take-or-pay problem were TCPL and its system suppliers. However, the Board recognizes that, at the time TCPL contracted for most of the incremental gas supplies that eventually contributed to the take-or-pay problem, all parties, including gas consumer representatives and governments, perceived an impending shortage of gas supply in Canada. Moreover, both federal and provincial governments, through a variety of policy and tax measures, provided signals to TCPL and its system suppliers to increase the available gas supply. For these reasons, the Board is of the view that it would be unjust to lay the

entire blame for the incurrence of the oversupply situation and the ensuing take-or-pay problems on these parties. The Board believes that there is a shared responsibility for the take-or-pay problem. The Board also believes that its decisions arising out of this hearing will affect the markets of the system producers.

For these reasons, it is the Board's view that, with respect to the sharing of the Topgas carrying charges, the fairest and most equitable solution would be to provide the parties to the Topgas agreements with a contribution to the payment of the Topgas carrying charges during an initial period of the freely negotiated pricing regime. In the Board's view, this would not frustrate the intent of the Agreement to foster the development of a market oriented pricing regime. The removal of the displacement proviso and other restrictions to access to the TCPL system will allow buyers and sellers to freely negotiate prices between themselves.

It is also the Board's view that it would not be fair to require non-system gas to fully share in the payment of the Topgas carrying charges on an equal basis per unit of gas with TCPL system gas. The primary beneficiaries of the Topgas agreements were TCPL and its system suppliers and, as such, they should be the parties to bear the majority of the costs.

In light of the evidence before it and for the reasons given above, it would be most appropriate, in the Board's view, to require non-system gas sales to partially share the payment of the Topgas carrying charges for three years, thereby alleviating the burden on TCPL's system suppliers and easing the transition to the new market- oriented pricing regime.

Accordingly, the Board makes the following recommendation to the governments signatory to the Agreement.

Recommendation

All non-system sales of gas originating in Alberta for transshipment on the inter-provincial TCPL pipeline system, as defined in section 3.7 below, should be required to pay the following charges in contribution to payment of the Topgas carrying charges:

- for the year 1 November 1986 to 31 October 1987, a contribution of $.10 per gigajoule of gas sold;

- for the year 1 November 1987 to 31 October 1988, a contribution of $.09 per gigajoule of gas sold; and

- for the year 1 November 1988 to 31 October 1989, a contribution of $.08 per gigajoule of gas sold.

The above charges represent approximately 50 percent of the Topgas carrying charges which might have occurred had there been no displacement.

TCPL system producers would continue to pay the annual Topgas carrying charges as per the existing methodology, less the above contributions from non-system gas production.

3.7 Which Parties Should Share in Paying the Topgas Carrying Charges?

3.7.1 Views of Intervenors

TCPL proposed that incremental non-system gas sales be exempted from sharing in the payment of the Topgas carrying charges whereas any non-system sales that displaced TCPL sales be required to fully share. TCPL also advocated that export sales be exempted from sharing. SOQUIP agreed that incremental sales should be exempted, primarily because it believed that the marketing of gas in Quebec would be hindered if non-system sales to new markets were required to bear the Topgas carrying charges.

CPA and Dome Petroleum Limited (Dome) argued that the Topgas carrying charges were a cost of developing the TCPL system and, as such, should be recovered in TCPL's Canadian cost of service and that all gas flowing on the system, including gas from B.C. and Saskatchewan, should fully share in paying the Topgas carrying charges. The Independent Petroleum Association of Canada (IPAC) also argued that all new non-system sales in both domestic and export markets should fully share in the payment of the Topgas carrying charges although IPAC recommended that payment of the charges continue to be administered in Alberta. Both CPA and IPAC proposed that shippers selling gas under long-term T-Service and transportation contracts before 1 November 1985 should be exempted from sharing.

The government of B.C. maintained that B.C. producers received no benefits from the Topgas agreements and denied that there were any system benefits to B.C. gas producers attributable to TCPL's take-or-pay payments. In its view, it would therefore be unfair to require B.C. gas to share in the payment of the Topgas carrying charges.

The government of Saskatchewan and Ocelot Industries Ltd. made a similar argument with respect to Saskatchewan gas.

Finally, parties opposed to sharing maintained that the Topgas carrying charges should continue to be borne solely by TCPL system producers.

3.7.2 Board Views

The Board is of the view that any distinction between gas sales which capture a market previously served by TCPL system gas and a new market is inappropriate in a competitive market environment. Similarly, the Board is of the view that no distinction should be made between sales into the domestic market and sales into the export market.

The Board is of the view that, since the take-or-pay problem arose from the development of a gas supply located exclusively in Alberta, it would not be appropriate for Saskatchewan and B.C. gas to share in the payment of the Topgas carrying charges. The Board also notes that the APMC supported the sharing of the Topgas carrying charges, the BCPC opposed sharing by B.C. gas production and the Saskatchewan Department of Energy and Mines opposed sharing.

Finally, the Board is of the view that it would be unfair to make gas volumes moving under transportation contracts and long-term T-Service contracts, including the proportionately related T-AOI volumes, which existed before 1 November 1985 share in the payment of the Topgas carrying charges for the volumes specified in those contracts.

No parties objected to the grandfathering of these volumes. However, any additional sales volumes made by these shippers should be required to share in the payment of the Topgas carrying charges in accordance with the Board's decision.

3.8 Mechanisms for Implementing Sharing

Most parties supporting sharing of the Topgas carrying charges, including TCPL, proposed or accepted that the recovery of those charges, however shared, should continue to be administered by the Alberta authorities through the Alberta cost of service system or a similar mechanism. The major arguments presented in favour of retaining this collection mechanism were that take-or-pay costs were incurred as part of gas purchasing functions rather than gas transportation functions, the existing system administered by the APMC has been in place for some time and has worked well and, with the necessary modifications, the mechanism in place would provide the most convenient and expedient method of implementing sharing.

CPA and Dome argued that take-or-pay charges were incurred to maintain the financial and operational viability of TCPL's integrated pipeline system and should be considered to be system costs. Both parties recommended that the Topgas carrying charges be included in TCPL's cost of service and collected in tolls. TCPL indicated, in argument, that it considered the tolls mechanism as a valid alternative to its own proposal.

Some parties also recognized that, with appropriate legislative enactments, the Topgas carrying charges could be shared among all the pipeline system users through the imposition of a surcharge. The rationale for preferring a surcharge over collection in TCPL's Canadian cost of service is that the Topgas carrying charges relate to gas acquisition costs rather than transportation costs.

APMC stated that, if sharing could not be resolved by agreement among the parties, then the option of collecting the Topgas carrying charges in TCPL's tolls would be a viable alternative.

In the Board's view, the Alberta cost of service mechanism and the surcharge mechanism are the alternatives to be considered.

It is the Board's view that all contributions to the payment of the Topgas carrying charges should continue to be recovered in the Alberta cost of service. This recovery system has been implemented and administered by Alberta authorities. The continued application of the same mechanism, with appropriate modifications to give effect to the Board's recommendation with respect to sharing, as outlined in Section 3.6 of this Report, would be the most efficient and practicable way to proceed. In addition, the Board considers that the Topgas carrying charges relate more properly to gas acquisition than gas transportation functions. The Board therefore recommends to the parties to the Agreement that the necessary steps be taken to implement this solution.

In the event that the signatories to the Agreement were to prefer the surcharge mechanism, the Board would be ready to apply it, if so requested. In this case, the Board would recommend an amendment

to the NEB Act to provide for the application of a surcharge to all non-system gas moving on the TCPL system which is subject to the sharing of the Topgas carrying charges in accordance with the Board's recommendation. A majority of the parties at the hearing took the position that, without such an amendment, the Board would not have jurisdiction to apply the surcharge mechanism.

It should be noted that the Board's decisions with respect to freer access to TCPL's system and relief from double demand charges are not dependent upon any action which might be taken by the parties to the Agreement regarding the implementation of the sharing of the Topgas carrying charges.

Chapter 4
Additional Restrictions to Access to the TCPL System

4.1 Term of T-Service Contract

Section 1.1(d) of the T-Service Toll Schedules states that long-term firm T-Service is available to any shipper which has executed a T-Service contract with TCPL for a minimum term of 15 years. During the hearing, certain parties argued that the 15-year minimum term could be a barrier to direct purchases as a single industrial user may not want to take on the obligation of a 15-year contract.

TCPL, on the other hand, argued that this minimum term is not a provision which restricts access to the system, particularly since TCPL now makes available SCD and STT services. TCPL argued that these short-term services provide all the flexibility that T-Service customers need without violating the Board's longstanding policy relating to the justification of facilities. The present SCD and STT Toll Schedules prevent the construction of redundant facilities by allowing TCPL, upon receiving a request for a new long-term firm service, to give the SCD and STT shippers notice of its new requirement and request that they elect either to terminate their short-term service or extend the term of their short-term service to 15 years.

Polysar Limited (Polysar) argued that this minimum term should be eliminated or significantly reduced because it is more appropriately a facilities issue than a tariff concern. Polysar submitted that TCPL's real concern is to prevent the underutilization of facilities. Therefore, if spare capacity exists on the TCPL system, there should be no concern with allocating T-Service without a minimum term.

While the Board recognizes that the 15-year minimum term could, in certain circumstances, prove to be a barrier to direct purchases, it is the Board's view that its decision to provide distributors with CD relief will help to avoid the situation of TCPL having to notify a shipper to either terminate its short-term service or extend the term of its short-term service to 15 years because available capacity will be allocated to users based on operational and/or contracted volumes rather than strictly on contracted volumes.

Having considered all the evidence, the Board has decided that there is no need at this time to remove the 15-year minimum term.

4.2 Conversion of CD Contracts to T-Service Contracts

During the hearing GMi and the Procureur général du Québec (Québec) proposed that all CD contracts be converted to T-Service contracts. Several other distributors supported this concept of self-displacement.

GMi argued that the separation of the sales function from the transportation function would help create greater flexibility in order to respond to the marketplace as well as a greater opportunity for gas-to-gas competition. Also, GMi argued that its proposal would not end the contractual arrangements between

itself and TCPL. Rather, if TCPL were competitive as to price and other conditions, GMi would continue to purchase its gas supply from TCPL.

Most distributors argued that they should be able to displace their own CD with direct purchase gas in order to secure gas at the lowest possible price for their residential and commercial customers. Distributors further argued that the intent of the Agreement is that all users of gas should benefit from lower prices; not only large industrial end-users.

TCPL agreed that the intent of the Agreement is to benefit all segments of the market. However, TCPL argued that the intent of the Agreement is also that all existing contracts continue to be binding on parties after 1 November 1986. Paragraph 13 of the Agreement provides for renegotiation of prices in the existing contracts after 1 November 1986 and failing successful renegotiation, Paragraph 14 mandates arbitration as a resolution. TCPL argued that this process of renegotiation and, if necessary, arbitration will achieve market-related pricing for other sectors of the market.

In the Board's view, the concept of self-displacement is not within the intent of the Agreement. The Board does not consider it appropriate to order tariff changes which would accommodate self-displacement.

The Board does not agree with GMi's and Québec proposals.

4.3 Short-Term T-Toll Schedules (STT)

The Board reviewed certain sections of TCPL's toll schedules questioned by intervenors, to determine if any unnecessarily restricted access of direct sales shippers to the system.

Section 1

Apart from the displacement proviso commented on elsewhere, the Board found the availability conditions listed to be satisfactory for short-term firm service.

Subsection 2.9

The Board reviewed the terms and conditions whereby TCPL may reduce the Contract Demand of STT service. Although the issue did not appear to be of immediate concern, the Board recommends that this subsection be included for review at the next TCPL tolls hearing.

4.4 AOI and T-AOI Toll Schedules

4.4.1 Effect of Displacement Sales on Availability of Overrun Services

An application by Union, dated 12 March 1986, for interim relief was argued orally by Union and interested parties before the Board on 16 April 1986. The application requested an order of the Board amending TCPL's AOI and T-AOI Toll Schedules in order to permit a party access to AOI and T-AOI services notwithstanding that that party is not taking its full firm contracted volumes, provided that the reason the full volumes are not being taken is a displacement direct purchase authorized by the Board. The entitlement of that party to the overrun services would be calculated with reference to the reduced take under the firm contracts and not with reference to the full contract volume. The Board denied the

application. In its decision the Board expressed its view that in the interim period, that is, until the release of this present decision, new sales to distributors should not be allowed for transportation on TCPL'S system until full volumes under existing firm contracts between those distributors and TCPL were taken. (See Appendix VI)

Given the Board's decision on the double demand charge issue, as outlined in section 2.2 of this report, the Board reaffirms its decision on the Union application until 1 November 1986. However, TCPL is instructed to file for the Board's approval, revisions to its AOI and T-AOI Toll Schedules reflecting that, effective 1 November 1986, a shipper may access AOI and T-AOI services once he has shipped the full operating demand volume specified in TCPL's toll schedules.

4.4.2 Prorating of Overrun Entitlement Between AOI and T-AOI

An application by GMi, dated 22 January 1986, was argued orally by GMi and interested parties before the Board on 5 February 1986. The application, as amended during oral argument, requested an order of the Board suspending, on an interim basis, section 2.8 of TCPL's T-AOI toll schedules and amending, on an interim basis, subsection XIII(g) of the General Terms and Conditions of TCPL's tariff. The effect of the order requested would be that a shipper's overrun entitlement would no longer be prorated between AOI and T-AOI service. Accordingly, the shipper could, at his discretion, take all his overrun entitlement from a gas source other than TCPL.

The Board granted GMi's application and on 7 February 1986 issued Order No. TGI-3-86 (See Appendix V) confirming its decision.

The Board has decided to approve the application on a final basis. Given the Board's decision on the sharing of Topgas carrying charges, as outlined in Sections 3.7 and 3.8 of this report, paragraph 3 of Order No. TGI-3-86 does not come into effect since the sharing of the Topgas carrying charges will not be provided for in an Order of the Board.

Accordingly, the tolls set out in section 3.1 of TCPL's T-AOI toll schedules are reaffirmed as final tolls and no billing adjustments are required.

4.4.3 Other Restrictions

T-AOI Toll Schedules

Apart from the displacement proviso contained in subsection 1.1, the T-AOI Toll Schedules were considered satisfactory, with the following exceptions.

Subsection 1.1 Para (a)

The Board is of the opinion that short-term firm service contracts should also be eligible for T-AOI service. Thus, paragraph (a) is to be amended to read as follows:

> "(a) which has a contract or contracts with TransCanada for the purchase of services under TransCanada's CD, SCD, T, STT, SGS, and/or ACQ Toll Schedules, and"

Subsection 2.1

The Board determined that the reference to gas sales contracts was ambiguous and inappropriate in this section. Thus, subsection 2.1 is to be amended to read as follows:

> "Subject to subsection 2.6, transportation for Shipper hereunder shall be subject to curtailment or interruption at any time when, in TransCanada's sole judgement, there is insufficient capacity available on TransCanada's transmission system for transportation for Shipper hereunder. It is understood that TransCanada shall not construct additional facilities for the purpose of providing the service hereunder. "

The Board believes that subsection 2.1 of the IT Toll Schedules should be amended similarly.

Chapter 5
Disposition

The foregoing together with Order No. TG-1-86 constitute our Reasons for Decision and our Decision on this matter.

L.M. Thur
Presiding Member

R. Jenkins
Member

R.B. Horner, Q.C.
Member

Ottawa, Canada
May 1986

Appendix I
Order No. TG-1-86

ORDER NO. TG-1-86

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

IN THE MATTER OF a hearing held pursuant to Subsections 17(l), 20(3) and Part IV of the *National Energy Board Act;* and

IN THE MATTER OF a request made in Paragraph 7 of the Agreement on Natural Gas Markets and Prices (Agreement) dated 31 October 1985 entered into between the federal government and the governments of the Provinces of British Columbia, Alberta, and Saskatchewan.

BEFORE:

L.M. Thur
Presiding Member

J.R. Jenkins
Member

Thursday, the 29th
day of May, 1986

R.B. Horner, Q.C.
Member

WHEREAS a public hearing was held, pursuant to Subsection 20(3) and Part IV of the *National Energy Board Act,* to respond to the governments' request in Paragraph 7 of the Agreement;

AND WHEREAS the hearing was also held pursuant to Subsection 17(l) of the Act, to review those aspects of the Board's Reasons for Decision, dated September 1985, approving new tolls for TransCanada PipeLines Limited, which are related to the concerns expressed in Paragraph 7 of the Agreement, namely the availability of transportation service and the possibility of double demand charges resulting from volumes being displaced;

AND WHEREAS the Board has heard the evidence and submissions of all interested parties at the public hearing held pursuant to RH-5-85, as amended, which commenced in Ottawa on 13 January 1986;

AND WHEREAS the Board's decisions are set out in its Reasons for Decision dated May 1986 and in this Order;

IT IS ORDERED THAT:

1. TransCanada shall remove the wording of the displacement proviso from Section 1.1 of its T, STT, IT, and T-AOI Toll Schedules.

2. TransCanada shall amend Section 1.1(a) of the T-AOI Toll Schedules to read as follows:

"which has a contract or contracts with TransCanada for the purchase of services under TransCanada's CD, SCD, T, STT, SGS, and/or ACQ Toll Schedules; and"

3. TransCanada shall revoke Section 2.1 of the T-AOI Toll Schedules and replace it with the following:

   "Subject to subsection 2.6, transportation for Shipper hereunder shall be subject to curtailment or interruption at any time when, in TransCanada's sole judgement, there is insufficient capacity available on TransCanada's transmission system for transportation for Shipper hereunder. It is understood that TransCanada shall not construct additional facilities for the purpose of providing the service hereunder. "

4. TransCanada shall amend its CD Toll Schedules to incorporate a list of the operating demand volumes applicable to each distributor; this amendment, which shall come into effect- on 1 November 1986, is to be submitted to the Board by 15 October for its approval.

5. TransCanada shall revoke Section 2.1 of the IT Toll Schedules and replace it with the following:

   "Subject to subsection 2.7, transportation for Shipper hereunder shall be subject to curtailment or Interruption at any time when, in TransCanada's sole judgement, there is insufficient capacity available on TransCanada's transmission system for transportation for Shipper hereunder. It is understood that TransCanada shall not construct additional facilities for the purpose of providing the service hereunder. "

6. TransCanada shall amend its AOI and T-AOI Toll Schedules to reflect that, effective 1 November 1986, a Buyer and/or a Shipper may access AOI and T-AOI services once it has taken the full operating demand volume that is approved by the Board for inclusion in TransCanada's CD Toll Schedules.

7. Section 2.8 of the T-AOI Toll Schedules is suspended on a final basis.

8. TransCanada shall revoke subsection XIII (g) of the general terms and conditions of its tariff and replace it with the following:

   "(g) an AOI and/or T-AOI Toll Schedule. If both AOI and T-AOI are nominated, daily deliveries will be on a prorata basis with respect to the daily nominations".

9. TransCanada shall calculate, in consultation with direct purchasers and distributors, the appropriate disposition of the balances at 30 June 1986 of the revenues deferred under the various orders issued by the Board pursuant to subsection 59(2) of the NEB Act and shall make a submission to the Board by 31 July 1986 requesting approval of the refunds.

10. TransCanada shall calculate, in consultation with ICG Utilities (Manitoba) Ltd., and Simplot Chemical Company Ltd. the appropriate disposition of the balance at 30 June 1986 of the

revenues deferred under Board. Order TGI-13-85 and shall make a submission to the Board by 31 July 1986 requesting approval of the refund.

11. TransCanada shall forthwith file with the Board and serve upon all parties to the hearing new tariffs conforming with the decisions outlined in the Reasons for Decision dated May 1986 and in this Order.

12. Those provisions of TransCanada's tariffs and tolls or any portion thereof that are contrary to any provisions of the National Energy Board Act, to the Reasons for Decision dated May 1986, or to any order of the Board including this Order, are hereby disallowed.

NATIONAL ENERGY BOARD

J.S. Klenavic
Secretary

Appendix II
Agreement on Natural Gas Markets and Prices

**AGREEMENT AMONG THE GOVERNMENTS
OF CANADA, ALBERTA, BRITISH COLUMBIA AND SASKATCHEWAN
ON NATURAL GAS MARKETS AND PRICES**

INTENT

1. In the Western Accord of March 28, 1985 on Energy Pricing and Taxation, the governments of Canada, Alberta, British Columbia and Saskatchewan agreed that a more flexible and market-oriented pricing regime was required for the domestic pricing of natural gas. The present Agreement is 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. This will have favourable effects on investment, employment and trade and will provide energy security for all Canadians.

PRINCIPLES

2. Effective November 1, 1986, the prices of all natural gas 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 while at the same time assuring that the reasonably foreseeable requirements of gas for use in Canada are protected.

3. The twelve month period commencing November 1, 1985 is the transition to a fully market sensitive pricing regime. While prices will continue to be prescribed by governments, immediate steps will be taken to enable gas consumers to enter into supply arrangements with gas producers at negotiated prices (direct sales), which prices will then promptly be endorsed by governments in the context of the administered system. After this transition period, purchase and sale of natural gas will be freely negotiated, and prices will no longer be prescribed.

4. It is the intention of the parties to the Agreement to foster a competitive market for natural gas in Canada, consistent with the regulated character of the transmission and distribution sectors of the gas industry. In this regard the governments commit, without qualification, that once the transition to the new marketing and pricing system is completed, the system will stay in place for the foreseeable future.

DOMESTIC NATURAL GAS SALES

A. Direct Sales and Competitive Market Programs

5. Effective November 1, 1985, consumers may purchase natural gas from producers at negotiated prices, either directly or under buy-sell arrangements with distributors, provided distributor contract carriage arrangements are available in respect of such purchases. This

provision is in no sense intended to interfere with provincial jurisdiction in regard to regulation of gas distribution utilities.

6. For the period November 1, 1985 to October 31, 1986 consumers who seek release from existing contractual arrangements with distributors shall be eligible to purchase natural gas from producers at negotiated prices, as described in paragraph 5 above, only where the producers supplying the gas under the existing contractual arrangements have agreed to such release.

7. To enable the market-responsive pricing system to operate within the intent of this Agreement, the governments request the National Energy Board to review the following concerns:

   i) whether inappropriate duplication of demand charges will result from possible displacement of one volume of gas by another; and

   ii) whether the policy regarding the availability of T-Service, as outlined in the Board's latest TransCanada PipeLines toll decision is still appropriate, taking into account, among other things, interested parties' views on the fair and equitable sharing of take-or-pay charges.

8. Effective November 1, 1985, competitive marketing programs (CMP) to meet special market requirements may be negotiated between distributors, shippers and the producers who are providing the natural gas volumes associated with such programs.

9. A consumer purchasing natural gas under a direct sale or a competitive marketing program must waive eligibility for payments under the Natural Gas Market Incentive Program (NGMIP), for those volumes taken under the direct sale or CMP.

B. New Sales to Distributors

10. Effective November 1, 1985, a distributor may under new or renegotiated contracts, purchase natural gas from shippers or directly from producers at negotiated prices. Notwithstanding such an arrangement, prior to November 1, 1986, the distributor shall take the full volumes of gas committed under existing contracts before accepting the delivery of any volumes of gas under a new contract.

C. Existing Sales to Distributors

11. The price of gas delivered under existing shipper-distributor contracts shall remain at $2.79804 per gigajoule at the Alberta border for the period November 1, 1985 to October 31, 1986.

12. The National Energy Board has approved for implementation November 1, 1985, an increase in TransCanada PipeLines' (TCPL) transportation tolls. In order to maintain the Alberta Border Price and the Toronto Wholesale Price at their current levels, and to allow TCPL to recover its approved costs for the transportation of natural gas consumed in domestic markets, the Government of Canada agrees to pay an amount equal to the value of revenues foregone over the period November 1, 1985 to October 31, 1986. These payments will be made under

a Transportation Assistance Program financed by an extension of the Market Development Incentive Program (MDIP) to October 31, 1986.

13. Prior to November 1, 1986, negotiations shall commence between distributors, shippers and the producers supplying the gas in question respecting the price to be paid for natural gas delivered under existing contracts. Prices resulting from such negotiations shall come into effect November 1, 1986 and as agreed thereafter. Where contract renegotiation between buyers and sellers, whether of price or volume, takes place in good faith and on a voluntary basis, governments will not obstruct the resulting commercial transactions.

14. In the absence of an Agreement between a shipper and a distributor, or a producer and a shipper, on the price to be paid for gas under existing contracts on November 1, 1986, and thereafter, the price shall be determined through arbitration.

15. With respect to gas produced in Alberta, the Government of Alberta intends to amend the *Arbitration Act.* The amendment would enable pricing disputes between producers and purchasers to be arbitrated under the act or under alternative arrangements established by contract between the parties. The amendments will ensure that the arbitration of pricing disputes is done in an impartial and equitable manner consistent with the policy of implementing a more market-responsive domestic gas pricing system. Specifically, the Government of Alberta commits to amend Section 17 of the Act to permit the arbitrator to take into account all relevant factors required to arrive at a fair decision on the price of the natural gas in question.

EXPORT NATURAL GAS SALES

16. The governments anticipate that reviews of surplus tests underway or shortly to be initiated by the National Energy Board and by the appropriate provincial authorities will result in significantly freer access to domestic and export markets and thus will contribute to the achievement of the market-oriented pricing system contemplated in this Agreement.

17. Effective November 1, 1985, the Government of Canada will take appropriate steps to amend its existing policy on short term export sales of natural gas. Specifically:

    i) the "incrementality test" shall be eliminated;

    ii) the "competing fuels test" shall be eliminated; and

    iii) the National Energy Board VI Regulations, Section 8 shall be amended to allow the export of natural gas by order without volume limitation for terms not exceeding 24 months.

18. Effective November 1, 1985, the Government of Canada will amend its policy in regard to the conditions exporters of natural gas must meet for gas exported under licence. To obtain approval, all licence holders must demonstrate that their negotiated contractual arrangements meet the following criteria:

i) the price of exported gas must recover its appropriate share of costs incurred;

ii) the price of exported natural gas shall not be less than the price charged to Canadians for similar types of service in the area or zone adjacent to the export point;

iii) export contracts must contain provisions which permit adjustments to reflect changing market conditions over the life of the contract;

iv) exporters must demonstrate that export arrangements provide reasonable assurance that volumes contracted will be taken; and

v) exporters must demonstrate that producers supplying gas for an export project endorse the terms of the export arrangement and any subsequent revisions thereof.

19. The Government of Alberta agrees that the export flowback system shall continue in its current form, subject to the actions contemplated in paragraph 12, until November 1, 1986, at which time the system will be eliminated.

NATURAL GAS IMPORTS

20. There is provision for the import of natural gas in the *National Energy Board Act* and Regulations.

GENERAL APPLICATION

21. The Government of Canada has broad responsibilities to ensure that trade among provinces and between Canada and its foreign trading partners is conducted in a manner which will provide benefits for all Canadians. Nothing in this Agreement shall limit Canada's power or its ability to meet its responsibilities in relation to interprovincial and international trade.

22. The governments of Alberta, British Columbia and Saskatchewan have broad responsibilities with respect to the development of their natural resources. Nothing in this Agreement shall limit the producing provinces' powers or their ability to meet their responsibilities in relation to their ownership and management of their natural resources.

23. The producing provinces shall retain their right to condition the removal of natural gas from the province to protect provincial public interest. Notwithstanding this basic right of ownership, the producing provinces do not intend to use this right to frustrate the intent of this Agreement. Specifically:

i) Alberta and British Columbia will initiate a review of their respective surplus tests to ensure that the tests will contribute to the achievement of the market-oriented pricing system contemplated in this Agreement.

ii) Alberta will review the wording of the *Gas Resources Preservation Act,* specifically Section 5(3) (c), and as necessary, intends to amend the legislation to ensure that it does not require new sales to be incremental to existing sales prior to November 1, 1986.

iii) Saskatchewan, in order to decrease its reliance on extraprovincial sources of gas, will permit limited quantities of its gas for sale outside the province and for direct sale within the province, as a market incentive to stimulate exploration of conventional resources. So long as Saskatchewan is reliant on extraprovincial gas, the price of gas sold outside the province shall be not less than the price at which gas may be purchased in Saskatchewan.

24. Non-arm's-length sales of natural gas between producers and shippers, between producers and distributors, or between producers and consumers shall be subject to appropriate provincial legislation for purposes of determining and collecting royalty or mineral tax revenues payable to the respective provincial Crown.

25. In conjunction with the transition to a more flexible and market-oriented pricing regime for domestic natural gas sales, the governments agreed that an early and all-encompassing review of the role and operations of interprovincial and international pipelines engaged in the buying, selling and transmission of gas is in order. Towards this end, the parties agree that the review will be carried out by an impartial panel appointed by the Minister of Energy, Mines and Resources in consultation with the ministers representing the governments of Alberta, British Columbia and Saskatchewan. The review shall be completed no later than June 30, 1986 and a final report submitted to the Minister of Energy, Mines and Resources on or before July 31, 1986. The details of panel membership, mandate and reporting relationship will be made public separately.

CONSUMING PROVINCES

26. It is anticipated that the governments of the consuming provinces who are not signatories to this Agreement will make changes to ensure the effectiveness of the market-sensitive gas pricing regime, including legislative changes and the provision of direction to provincial agencies to provide consumers with alternative sources of supply through the availability of transportation services on distribution systems, and to provide distributors with greater flexibility in determining prices for gas sold by them.

MONITORING

27. To ensure that the intent and objectives of this Agreement are achieved, a senior official representing each of the parties to this Agreement shall be appointed to monitor the implementation of the provisions contained herein and, among other things, the degree to which regulatory processes have resulted in significantly freer market access. These officials shall report their findings on a quarterly basis to their respective ministers.

28. The parties to this Agreement intend to enact expeditiously the appropriate legislative and regulatory changes necessary to implement the market-oriented pricing policy contemplated herein.

Dated on this 31st day of October, 1985.

For the Government of Canada

Pat Carney
Minister of Energy Mines and Resources

For the Government of Alberta

John Zaozirny
Minister of Energy and Natural Resources

For the Government of British Columbia

Stephen Rogers
Minister of Energy, Mines and Petroleum Resources

For the Government of Saskatchewan

Paul Schoenhals
Minister of Energy and Mines

Appendix III
Order No. RH-5-85

File: 1562-TI-20
12 November 1985

Hearing Order RH-5-85
Directions on Procedure
TransCanada PipeLines Limited - Availability of Services

The National Energy Board will hold a public hearing, pursuant to subsection 20(3) and Part IV of the *National Energy Board Act* ("the Act"). to respond to the governments' request in paragraph 7 of the Agreement on Natural Gas Markets and Prices ("Agreement") dated 31 October 1985.

Paragraph 7 of the Agreement states:

> "To enable the market-responsive pricing system to operate within the intent-of this Agreement, the governments request the National Energy Board to review the following concerns:
>
> i) whether inappropriate duplication of demand charges will result from possible displacement of one volume of gas by another: and
>
> ii) whether the policy regarding the availability of T-Service, as outlined in the Board's latest TransCanada PipeLines toll decision is still appropriate. taking into account among other things. interested parties views on the fair and equitable sharing of take-or-pay charges."

This hearing will also be held pursuant to subsection 17(l) of the Act. to review those aspects of the Board's Reasons for Decision, dated September 1985, approving new tolls for TransCanada PipeLines Limited, which are related to the concerns expressed in paragraph 7 of the Agreement. namely, the availability of transportation service and the possibility of double demand charges resulting from volumes being displaced.

As part of its review the Board invites TransCanada PipeLines Limited ("TCPL") and interested parties to address the following matters:

(a) Under the assumption of removal of the displacement proviso from the Availability section of the transportation services toll schedules, what is the appropriate treatment for toll design purposes of (i) volumes of gas which displace those under contract and (ii) volumes of gas which are displaced?

(b) What factors should the Board consider in assessing whether transportation service volumes displace volumes under sales contract or are incremental volumes?

(c) What constitutes fair and equitable sharing of take-or-pay obligations for tariff purposes (excluding toll considerations) associated with volumes of gas under contract which have been displaced, and how would such sharing affect access to transportation service?

(d) Is it appropriate to include in the transportation tolls those costs relating to take-or-pay charges to the purchase and sale of gas under contract which has been displaced, and if so could this result in unjust discrimination?

(e) In the light of the Agreement. are there restrictions to access to services on the TCPL system, as reflected in sections 1.1 of the toll schedules, which may no longer be appropriate?

The Board directs as follows:

1. The hearing will be restricted to consideration of the matters referred to in this Order.

2. Submissions related to the subject matter of this hearing including written evidence from both TCPL and interested parties are required to be received by the Secretary by 11 December 1985 and served on all other parties by 18 December 1985.

3. The Secretary will issue a list of interested parties shortly after 11 December 1985.

4. The public hearing will commence in the Board's hearing room on Monday 13 January 1986 at 9:30 a.m.

5. The National Energy Board will serve a copy of these directions and the attached public notice on the parties listed in Appendix I and interested parties pursuant to Order RH-2-85. In addition. the Board will arrange to publish the notice in the following publications:

the "Herald"	in Calgary, Alberta
the "Journal"	in Edmonton, Alberta
"Le Franco-Albertain"	in Edmonton, Alberta
the "Leader-Post"	in Regina, Saskatchewan
"L'eau Vive"	in Regina, Saskatchewan
"The Free Press"	in Winnipeg, Manitoba
the "Globe and Mail"	in Toronto, Ontario
the "Star"	in Toronto, Ontario
"The Financial Post"	in Toronto, Ontario
the "Financial Times of Canada	in Toronto, Ontario
"The Citizen"	in Ottawa, Ontario
"Le Droit"	in Ottawa, Ontario
"The Gazette"	in Montreal, Quebéc
"Le Devoir"	in Montreal, Quebéc
"La Presse"	in Montreal, Quebéc
"Le Soleil"	in Quebéc City, Quebéc
"Journal de Québec"	in Quebéc City, Quebéc
the Canada Gazette	in Ottawa, Ontario

6. Where parties are directed by this order to file or serve documents on other parties. the following shall apply:

(1) For documents to be filed with the Board, provide 30 copies:

(2) For documents to be served on TCPL. provide 3 copies:

(3) For documents to be served on interested parties. provide 1 copy,

7. Parties filing letters of comment should serve 1 copy on TCPL and file 1 copy with the Board, which in turn will provide copies for all other parties. Letters of comment are to be received by the Board and TCPL.by 11 December 1985.

8. The procedures to be followed in this proceeding shall, unless the Board otherwise directs be governed by the Draft NEB Rules of Practice and Procedure dated is 18 February 1985.

9. All parties are asked to quote Order No. RH-5-85 when corresponding with the Board in this matter.

J.S. Klenavic
Secretary

RH-5-85
Mr. Geoff Ho
Barristers and Solicitor
Legal Services
Alberta Energy Natural Resources
Petroleum Plaza - South Tower
9915 - 108 Street
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APPENDIX 11 to
Order RH-5-85

NATIONAL ENERGY BOARD
NOTICE OF PUBLIC HEARING
TRANSCANADA PIPELINES LIMITED - AVAILABILITY OF SERVICES

The National Energy Board will hold a public hearing. pursuant to subsection 20(3) and Part IV of the National Energy Board Act. to respond to the request in paragraph 7 of the Agreement on Natural Gas Markets and Prices dated 31 October 1985 to examine:

(i) whether inappropriate duplication of demand charges will result from possible displacement of one volume of gas by another: and

ii) whether the policy regarding the availability of T-Service, as outlined in the Board's latest TransCanada PipeLines Limited toll decision is still appropriate, taking into account, among other things, interested parties views on the fair and equitable sharing of take-or-pay charges."

The hearing will also be held under subsection 17(l) of the NEB Act to review certain aspects of the Board's last TransCanada tolls decision. These issues are stated in the Board's hearing order. RH-5-85.

The hearing will be restricted to consideration of the matters specified in the hearing order.

The hearing will commence on Monday, 13 January 1986. at 9:30 a.m. in the Board's hearing room at 473 Albert Street in Ottawa.

Any party who wishes to participate in the proceedings must file a submission, incorporating any written evidence the party wishes to submit, commenting on any or all of the specified matters with the Secretary of the Board and serve a copy on TCPL at P.O. Box 54. Commerce Court West, Toronto, Ontario. M5L lC2. A copy of the submission is also to be served on all other interested parties to the proceedings.

Any party wishing only to send a letter of comment on the foregoing matters should write to the Secretary of the Board and send a copy to TCPL by 11 December 1985.

Submissions are to be received by the Secretary of the Board and TCPL no later than 11 December 1985 and by all other interested parties no later than is 18 December 1985. The secretary will issue a list of interested parties shortly after 11 December 1985.

Information on the procedures for this hearing (Hearing Order RH-5-85) is available in English and French and may be obtained by writing to the Secretary of the Board or telephoning the Board's Distribution Office at (613) 998-7204.

Please quote Order RH-5-85 when corresponding with the Board on this matter.

J.S. Klenavic

Secretary
National Energy Board
473 Albert Street
Ottawa, Ontario
KlA OE5

12 November 1985

Appendix IV
Order TGI-13-85

ORDER TGI-13-85

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

IN THE MATTER OF an application by Simplot Chemical Company Limited ("Simplot") for a stay of a portion of the TransCanada PipeLines Limited 1985 Tolls Decision of the Board and for an order pursuant to section 16.1 and Part IV of the National Energy Board Act ("the Act") directing TransCanada PipeLines Limited ("TransCanada") to record in a deferral account the demand revenues from the Simplot/TransCanada T-Service contract pending the final decision of the Board on the Review of the TransCanada 1985 Tolls Decision, filed with the Board, under File No. 1560-Tl-R20.

BEF0RE the Board on Friday, the 20th day of December 1985.

UPON an application by Simplot dated 2 December 1985 for a stay of part of the TransCanada 1985 Tolls Decision and for an interim order directing TransCanada to record in a deferral account the demand charge revenues under the Simplot/TransCanada T-Service contract;

AND UPON the Board having considered the application for stay and interim order and the comments of interested parties thereon;

AND UPON the Board considering that it would be appropriate to grant an interim order directing TransCanada to record in a deferral account an amount of revenue equal to the demand revenue received under the Simplot/TransCanada T-Service contract, pending the determination of the issues to be considered at the hearing to be held pursuant to Hearing order RH-5-85, as amended;

AND UPON the Board considering that it would not be appropriate to grant a stay of any portion of the TransCanada 1985 Tolls Decision.

IT IS ORDERED THAT, pursuant to sections 16.1, 50, 51 and 53 of the Act:

1. Simplot's request for a stay of the TransCanada 1985 Tolls Decision is denied.

2. TransCanada shall record in a deferral account each month beginning 1 January 1986 for accounting and toll-making purposes an amount of revenue equal to the demand charge revenue received under the Simplot/TransCanada T-Service contract together with carrying charges calculated at a rate equal to one-twelfth of the authorized rate of return on rate base.

3. TransCanada also shall record in a separate deferral account each month beginning 1 January 1986 for accounting and toll-making purposes an amount of costs equal to the amount of revenue being deferred in accordance with paragraph 2 of this order including carrying charges.

4. The Board will consider the disposition of these deferral accounts and their balances as part of the Review of the TransCanada 1985 Tolls Decision scheduled to commence on 13 January 1986.

NATIONAL ENERGY BOARD

J.S. Klenavic
Secretary

Appendix V
Order No. TGI-3-86

ORDER NO. TGI-3-86

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

IN THE MATTER OF an application by Gaz Métropolitain Inc. ("GMi") pursuant to Section 16.1(2) of Part I and Sections 54 and 59(2) of Part IV of the Act for an interim order directing TransCanada PipeLines Ltd. ("TCPL") to suspend its T-AOI prorata provisions in order for TCPL to receive, transport and deliver to GMi gas offered by Canadian Natural Gas Clearing House, Consoligas Management Ltd., Northridge Petroleum Marketing Ltd. and Pan-Alberta Gas Ltd. for transmission by means of a pipeline owned and operated by TCPL filed pursuant to File No. 1537-Gl-l.

BEFORE the Board on Friday, 7 February 1986.

WHEREAS GMi has filed an application dated 22 January 1986, as amended in argument at a public hearing of the application held on 5 February 1986 at which all interested parties were heard, for an order of the Board suspending, on an interim basis, section 2.8 of TransCanada PipeLines Ltd.'s T-AOI toll schedules and amending, on an interim basis, subsection XIII(g) of the general terms and conditions of TCPL's tariff;

AND WHEREAS the Board, having received and heard the arguments of all interested parties on the application has decided to grant the application;

IT IS ORDERED THAT:

1. Pursuant to section 54 of the Act, section 2.8 of TCPL's T-AOI toll schedule is suspended.

2. Pursuant to section 53 of the Act, subsection XIII(g) of the general terms and conditions of TCPL's tariff is suspended and replaced with the following:

   "(g) an AOI and/or T-AOI schedule. If both AOI and T-AOI are nominated, daily deliveries will be on a prorata basis with respect to the daily nominations."

3. Following the decision of the Board in the proceedings being held pursuant to Hearing Order RH-5-85, and in the event that those proceedings result in the Board issuing an order requiring direct-sale shippers on the TransCanada system to bear applicable take-or-pay carrying charges on volumes shipped, the volumes of T-AOI transported under this Order which are in excess of volumes that would have been available to the shipper under the tariff terms in force prior to this Order shall also bear applicable take-or-pay carrying charges.

4. The applicable tolls set out in section 3.1 of TCPL's T-AOI toll schedules are hereby made interim.

5. Pursuant to subsection 16.1(2) of the Act, this Order shall come into effect on 7 February 1986 and remain in effect only until the final disposition of the matters being considered at the public hearing called pursuant to Order No. RH-5-85, as amended.

NATIONAL ENERGY BOARD

J.S. Klenavic
Secretary

Appendix VI
Descision on Union application of 12 March 1986

O U T G O I N G   T E L E G R A M -- T E L E G R A M M E A E X P E I

FILE - DOSSIER DATE TELEGRAM NO. WANG DOC. # SECURITY
NO. DE TELEGRAMME / NO. DOSSIER WANG SECURITY
N1562-Tl-20 86-04-22 LAW 2118J

TO A: Union
cc: All Interested Parties RH-5-85

INFORMATIONS:
RENSEIGNEMENTS:

REFERENCE - REFERENCE SUBJECT - OBJET: DECISION ON UNION APPLICATION

The Board has considered Union Gas Limited's ("Union") application for interim relief dated 12 March 1986, which was argued orally by Union and interested parties before the Board on 16 April 1986. The application requested an order of the Board which would have the effect of amending TransCanada PipeLines Ltd's AOI and T-AOI Toll Schedules in order to permit a party access to A01 and T-AOL service notwithstanding that that party is not taking his full firm contracted volumes, provided that the reason the full volumes are not being taken is a displacement direct purchase authorized by the Board. The entitlement of that party to overrun service would be calculated with reference to the reduced take under the firm contracts and not to the full contract entitlement. The Board has decided to deny the application.

The Board is of the view that, in this interim period until the final decision on the matters Considered in the hearing held pursuant to RH-5-85 is released, new sales to distributors should not be allowed for transportation on TransCanada's system until full volumes under existing firm contracts between distributors and TransCanada are taken. As all parties to that hearing are aware, the Board has begun its deliberative process on the issue of CD relief, one of the many issues examined in the hearing, and its decision on that question will be released in the near future.

The Board wishes to make it clear that its decision to deny Union's application in no way prejudices the possible granting, following disposition of the RH-5-85 proceedings, of CD relief to distributors in a situation of displacement caused by a direct sale even if full contracted firm volumes are taken.

SECRETARY
NATIONAL ENERGY BOARD
OTTAWA