National Energy Board
Office national de l'énergie

LETTER DECISION

File OF-Tolls-Group1-T211-2017-01 01
5 July 2017

To: All Parties to Hearing Order RH-002-2017

TransCanada PipeLines Limited (TransCanada) Application for Approval of Herbert Long Term Fixed Price (Herbert LTFP) Service
RH-002-2017 Reasons for Decision

1. Background

On 30 November 2016, the National Energy Board (Board) received TransCanada's Notice of Intent to File an Application for the Herbert LTFP service. On 20 December 2016, the Board established a modified version of the Streamlined Regulatory Process set out in Appendix IV of its RH-003-2011 Decision, including written evidence and information requests, as well as oral argument. The Board granted Intervenor standing to all seven parties that submitted Applications to Participate.

On 4 January 2017, TransCanada filed, under Parts I and IV of the *National Energy Board Act* (NEB Act), an application for approval of a new long-term fixed price service to Herbert, Saskatchewan (Application). TransCanada negotiated the Herbert LTFP service with TransGas Limited (TransGas) to serve a gas-fired power plant to be constructed near Swift Current, Saskatchewan (Power Plant). The Application requested an order of the Board:

- approving the proposed Herbert LTFP service and the related toll methodology;
- approving the Herbert LTFP Contract, Herbert LTFP Toll Schedule and other consequential amendments to the Canadian Mainline Gas Transportation Tariff (Tariff); and
- granting such further and other relief as TransCanada may request or the Board may consider appropriate.

The key terms and conditions of the Herbert LTFP service are:

- a contract quantity of 58 terajoules (TJ) per day;
- a receipt point of Empress and a delivery point of Herbert, with no diversion or alternate receipt point rights
- a negotiated fixed daily demand toll of $0.12 per gigajoule (GJ) per day;

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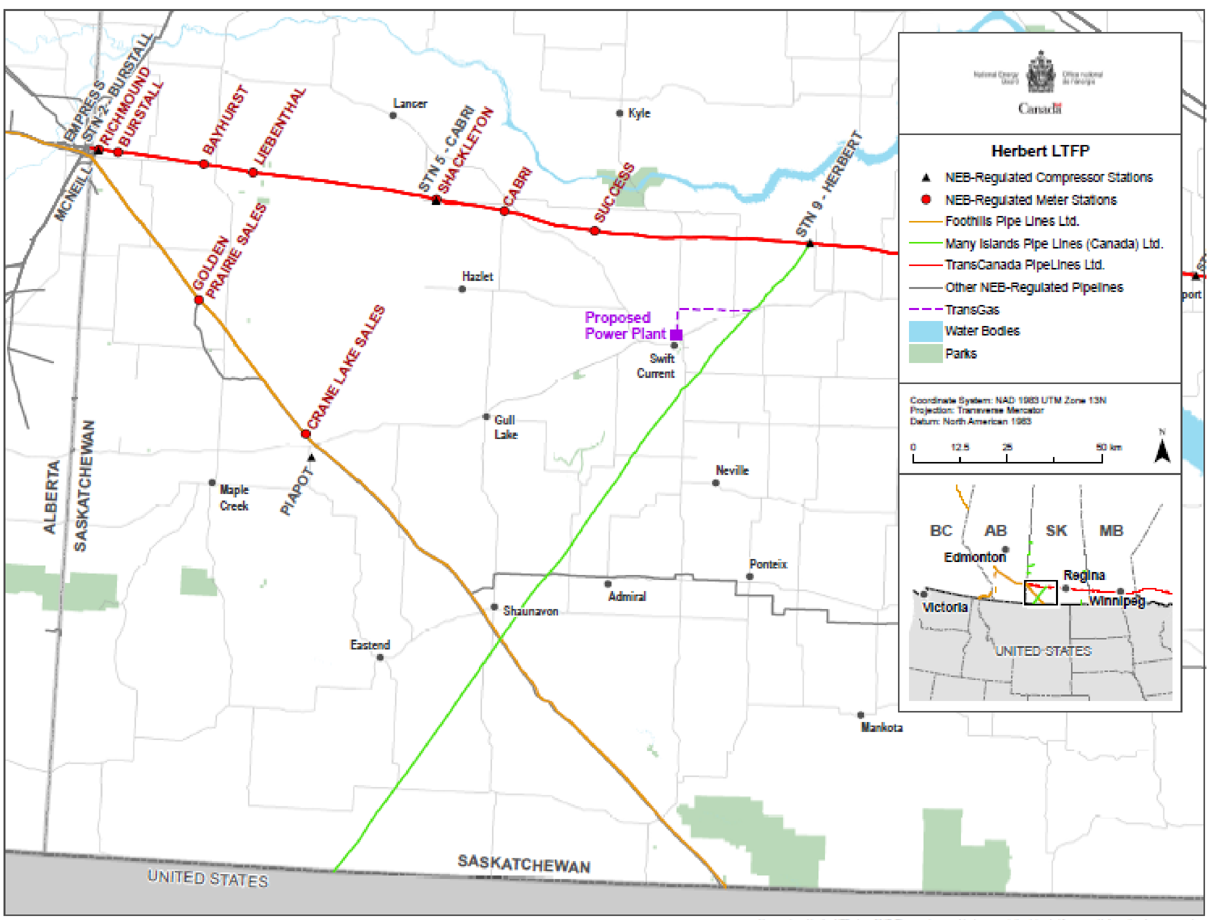
- an abandonment surcharge based on the applicable methodology for Firm Transportation (FT) service that reflects the distance between Empress and Herbert;
- a 10-year term with rights to convert to FT service at the end of the term;
- a conditional commitment for TransGas to maintain 80 TJ/day of FT service from Empress to the TransGas Saskatchewan Southern Delivery Area (SSDA) during the term, which is the current TransGas FT contract quantity; and
- termination and conversion conditions if the Power Plant does not operate or the 80 TJ/day of FT service is not maintained.

On 12 May 2017, oral argument was completed and the hearing record for this proceeding was closed.

On 15 June 2017, the Board released its letter decision with reasons to follow. The Board approved the Application as filed. In this letter, the Board provides the reasons that support the 15 June 2017 decision.

Figure 1 shows a map of the relevant facilities in Saskatchewan.

Figure 1: Map of Relevant Facilities



2. Position of Parties

Views of TransCanada

TransCanada submitted that it negotiated the Herbert LTFP service with TransGas to attract incremental load and associated revenues to TransCanada's Mainline pipeline system (Mainline) that would otherwise not be realized with the existing Mainline services offered. The service is designed to attract incremental load associated with the Power Plant while ensuring that TransGas' existing load on the Mainline is retained.

TransCanada submitted that Herbert LTFP service will commence once the Power Plant begins commissioning, which is expected to be between 1 November 2018 and 30 June 2019. The Power Plant is targeted to be fully in-service in the fourth quarter of 2019.

Competitive Alternative Available to TransGas

TransCanada stated that, to serve the new Power Plant load, TransGas was considering transportation on the Foothills Pipe Lines Ltd. (Foothills) Saskatchewan system from McNeil to a new delivery interconnection at Shaunavon, Saskatchewan, from which gas would be transported on existing and new facilities owned by Many Islands Pipelines (Canada) Limited (MIPL) to the Power Plant (Shaunavon Option). TransGas cited lower tolls on the Foothills system as the reason for pursuing service via Foothills instead of FT service on the Mainline.

Contracting for FT service on the Mainline was rejected early on by TransGas as this alternative would have resulted in an FT toll from Empress to the TransGas SSDA of $0.33/GJ/day and a total transportation cost, including abandonment and fuel charges, of approximately $0.38/GJ/day. TransCanada submitted that absent the proposed Herbert LTFP service, TransGas advised that it would opt for the Shaunavon Option. For comparison purposes, TransCanada approximated the Foothills toll by using the toll from McNeill to Monchy of $0.07/GJ/day, which corresponds to a total transportation cost of approximately $0.10/GJ/day, including abandonment and fuel charges.

In order to attract the new load to the Mainline and maintain existing load, TransCanada sought to develop a competitive service offering as an alternative to the Shaunavon Option that would meet the needs of TransGas for the Power Plant (Herbert Option).

TransCanada submitted that it believes the Shaunavon Option to be a credible alternative to the Mainline for the following reasons:

- it is physically feasible and its tolling would not require the development of a new service;
- TransGas was initially pursuing the Shaunavon Option and did not consider the Mainline to be an option;

- TransGas continued to pursue the Shaunavon Option, even after the start of discussions between TransGas and TransCanada at the request of TransGas (through MIPL), Foothills has completed some work in relation to the Shaunavon Option; and
- upon reaching the Memorandum of Understanding, TransGas informed TransCanada it requested that Foothills conclude the steps it was taking on the Shaunavon Option to preserve that alternative so that it could be pursued again if Herbert LTFP service is not approved.

TransGas would also require transportation on MIPL in order to serve the Power Plant under both the Shaunavon Option and the Herbert Option. TransCanada submitted that the cost to transport 58 TJ/d on MIPL to the Power Plant is identical between the Shaunavon Option and the Herbert Option, with the exception of the estimated $1.5 million cost associated with a new 1.2 kilometer (km) lateral required to connect the MIPL Shaunavon Pipeline to the Foothills system under the Shaunavon Option. Each option would also require a new delivery meter station to be installed by either the Mainline or Foothills at a cost of approximately $2.3 million.

TransCanada submitted that it understands TransGas considered factors other than the toll level when comparing the Shaunavon and Herbert options, including the additional facilities required on the MIPL system, toll certainty, land matters and reliability considerations.

Impacts to Tolls and Existing Services

TransCanada estimated that Herbert LTFP service would contribute approximately $2.5 million in annual demand revenue and that the 10-year average annual cost of service would increase by approximately $0.3 million due to the $2.3 million capital addition for the proposed meter station at Herbert. The expected incremental net revenues are therefore $2.2 million per year. TransCanada argued that all net revenue generated by Herbert LTFP will be incremental to what the Mainline would otherwise collect.

Implementation of Herbert LTFP service would also provide greater assurance that existing firm billing determinants for FT service are maintained, in light of TransGas' conditional commitment to hold a minimum level of FT service during the term of the Herbert LTFP Contract.

TransCanada submitted that no other impacts to existing Mainline services are expected as a result of the proposed Herbert LTFP service. TransCanada argued that there is no evidence to suggest that any existing Mainline shippers will be negatively affected by this service. To the contrary, the incremental revenue generated from Herbert LTFP will be reflected in the calculation of tolls in subsequent tolls applications, to the benefit of other Mainline shippers. TransCanada argued that the evidence is clear that this service will provide a benefit to the Mainline and its shippers that would not otherwise occur.

Use of Herbert LTFP

TransCanada submitted that Herbert LTFP service has been designed to meet the needs of TransGas in serving the Power Plant, while also including provisions that will prevent the use of Herbert LTFP service to serve loads in Saskatchewan that may otherwise be served by FT service. TransCanada recognized that gas delivered at Herbert could flow to both the Power Plant and other TransGas markets connected to the MIPL Shaunavon Pipeline. Commercially, however, TransCanada negotiated commitments and provisions to mitigate the risk that the Herbert LTFP Contract will be used to serve loads other than the Power Plant, including that:

- The Power Plant has a peak demand of 58 TJ/d, and TransGas confirmed that it will operate at a very high load factor as a base load facility.
- Herbert LTFP service will not be provided unless and until the Power Plant commences commissioning.
- The Herbert LTFP Contract can be terminated if TransGas does not hold 80 TJ/d of FT delivery capacity to the TransGas SSDA. This quantity of 80 TJ/d reflects the current needs of TransGas for Mainline firm transportation service without the Power Plant and it also corresponds to the high-end of historical contracts held by TransGas to the SSDA. This commitment is conditional on FT tolls to the TransGas SSDA not increasing by more than 25 per cent over any two-year period during the contract term.
- TransCanada can convert the Herbert LTFP service to FT for the remaining term if the Power Plant ceases to operate for five consecutive months.
- Herbert LTFP can only be nominated for delivery to Herbert, as there are no alternative receipt point or diversion rights.

Just and Reasonable Tolls and No Unjust Discrimination

TransCanada stated that the proposed toll for Herbert LTFP service is just and reasonable and the service and its tolling would not be unjustly discriminatory. The toll for Herbert LTFP service was not derived based on system average costs like other Mainline firm services. Rather, in light of the alternatives available to TransGas to serve the Power Plant, a negotiated service offering was required to attract the incremental load and associated net revenues for the benefit of the Mainline over the long term that would not otherwise be realized. TransCanada submitted that the Board previously held the view that TransCanada should seek the higher of incremental costs or fair market value in all non-Tariff transactions from parties wishing to contract with it, and defined fair market value as whatever a competitive market is willing to pay.

TransCanada submitted that the attributes of Herbert LTFP service are more restrictive than FT service. For example, Herbert LTFP service does not allow for alternate receipt point and diversion rights. As such, TransCanada submitted that the gas flowing under Herbert LTFP service would not be traffic of the same description as gas flowing under FT service.

In TransCanada’s view, there is no unjust discrimination in making Herbert LTFP service available only to TransGas because the alternatives available to TransGas to serve the Power Plant in these unique circumstances give rise to the need for this competitive service offering.

TransCanada stated that the tolling and service structure were negotiated between arm’s-length entities. Therefore, in TransCanada’s view, the toll represents a fair assessment of the market value of the proposed service, which exceeds the incremental costs of providing the service.

TransCanada submitted that Herbert LTFP service has been tailored to the market reality of TransGas and the proposed Power Plant. TransCanada asserted that this approach is consistent with the Board's expectations that TransCanada take an active role by meeting market forces with market solutions and compete for business with services tailored to the market realities of the Mainline's many diverse paths. TransCanada stated that the Board has recently encouraged TransCanada to continue to identify and propose new and innovative service and pricing proposals to manage the ongoing issues facing the Mainline.

Views of Participants

Centra Gas Manitoba Inc. (Centra)

Centra supported the approval of the Application because, in Centra's view, it would have a minimal effect on the Mainline and is not expected to have negative impacts on Mainline shippers, markets, or operations. Centra noted that its support is provided without prejudice to any future position it may advance to the Board with respect to long-term negotiated services on the Mainline, at-risk models or tolling methodologies for the Mainline post-2020, and how market-based services such as the Herbert LTFP service and related revenues and risks may be allocated within such at-risk models.

Enbridge Gas Distribution Inc. (EGDI)

EGDI stated that it cannot support the Application and submitted that the Board should dismiss it in its entirety. EGDI submitted that the criteria that the Board should consider in determining whether the Herbert LTFP service is in the public interest are: (1) whether, as a negotiated service, the proposed service will be used for its intended purpose; and (2) whether the Herbert LTFP service will provide a material benefit to the Mainline and its shippers.

On the first criterion, EGDI argued that it is questionable whether the Herbert LTFP service will be used in a manner consistent with its intended purpose – that is, to serve the Power Plant – without undermining FT service to the TransGas SSDA. According to EGDI, this makes it arguable whether the service is in the public interest.

With respect to the second criterion, EGDI submitted that the $2.2 million in annual revenue that the Herbert LTFP service will provide to the Mainline and its shippers appears to be the primary benefit, if not the only benefit, that TransCanada has identified. EGDI argued that the $2.2 million in annual revenue is not material as it represents only 0.12 per cent of the current Mainline $2.1 billion revenue requirement.

EGDI questioned whether the Shaunavon Option was a competitive threat given TransGas' evidence that it was not a bypass of the Mainline and that it may proceed with the Shaunavon Option in the future even if the Power Plant load is being met by Herbert LTFP service. Similarly, given the terms and conditions upon which TransGas is obligated to maintain its current FT contract volumes, EGDI stated that it is too uncertain whether the Herbert LTFP service will result in the retention of those existing volumes.

EGDI stated that it took no position on whether the Herbert LTFP service toll is unjustly discriminatory or whether the proposed fair market value toll methodology is just and reasonable, but it did take the position that the proposed toll of $0.12 per GJ per day is not just and reasonable. EGDI indicated that its position was based on its view that the protective measures to ensure that the gas delivered using the Herbert LTFP service is not used for servicing existing or new load on the TransGas system are inadequate, and that TransGas intends at times to use unutilized Herbert LTFP service volumes to serve loads other than the Power Plant to defray its Herbert LTFP demand charges. EGDI submitted that this results in existing Mainline FT shippers, like EGDI, being asked to subsidize, through the Mainline cost of service, the flexibility afforded to TransGas to serve these other non-Power Plant loads. For these reasons, EDGI submitted that the proposed LTFP toll is not just and reasonable.

Société en commandite Gaz Métro (Gaz Métro)

Gaz Métro requested that the Application be rejected because of four main reasons. First, Gaz Métro argued that the Application is based on an erroneous characterization of the Herbert Option and service and of the alleged financial benefits for all shippers. Gaz Métro argued that the Herbert LTFP is in all respects identical to FT service, and that the contribution to the revenue requirement is practically nil.

Second, the Application should be rejected because it makes unjust discriminations among Mainline shippers. In Gaz Métro's view, Herbert LTFP traffic is of the same description as FT service, is carried over the same route, and under circumstances and conditions that are not fundamentally different from other customers. Gaz Métro argued that Herbert LTFP service and FT service have the same essential features and are substitutable. Gaz Métro also argued that TransGas is not the only TransCanada customer that can opt for alternate transmission services to the Mainline, and that none of these customers were offered specific agreements like the one TransCanada entered into with TransGas. In Gaz Métro's view, this represents preferential and discriminatory treatment.

Gaz Métro also argued that the Application opens the door to unjust discrimination where captive shippers cannot negotiate tolls or conditions of service. This two-track tolling regime would be a form of firm service deregulation and captive shippers would assume significant risk of unjust discrimination.

The third reason that the Application should be rejected, in Gaz Métro's view, is that it seeks the approval of unjust and unreasonable tolls for a firm service. Gaz Métro argued that TransCanada has not demonstrated the justness and reasonableness of the $0.12/GJ/d tolls by reference to the well-established principles of cost-causation, economic efficiency or equity. In Gaz Métro's view, the Board is faced with a factual void that prevents it from concluding that the toll is just and reasonable under the circumstances. Gaz Métro asserted that it would be unreasonable to conclude that the companies affected by the Shaunavon and Herbert Options acted at arm's length, due to MIPL and Foothills being affiliated companies of TransGas and TransCanada, respectively. Gaz Métro also argued that the RH-003-2011 Reasons for Decision cannot be used in support of the proposed Herbert LTFP service pricing.

Gaz Métro's fourth reason that the Board should reject the Application is because it would bring about a major change in the regulatory regime for firm service that would be contrary to the public interest and incompatible with the current regulatory framework. In Gaz Métro's view, the Application fragments the regulation of firm service and is a form of deregulation. Private negotiations to set tolls and conditions for access, with the absence of facts to determine whether the results are just and reasonable, is a de facto form of unlawful delegation of authority. Gaz Métro argued that devaluing FT service is in direct contradiction to the direction given by the Board in recent years. As well, this sudden change in direction, which comes without warning and upsets the established balance, is prejudicial.

The Application, in Gaz Métro's opinion, also violates the principle of equity and violates the rights of shippers to be treated in accordance with the NEB Act, as a result of the absence of any regulatory framework, conditions or criteria. Gaz Métro argued that the change in regulatory regime resulting from the Application is contrary to the concept of stability required during this unique transition period, and under the circumstances, is not in the public interest. In Gaz Métro's view, the decision to allow such a change in the regulatory regime for FT service should be taken only after a more thorough analysis of the issues at stake, in the context of a generic proceeding.

Gaz Métro argued that the Federal Energy Regulatory Commission (FERC) allows selective discounts under certain circumstances, as long as they are within a price range, the upper limit of which matches tolls otherwise chargeable under tariffs, while the lower limit equals the average variable cost of the system for the relevant period. In Gaz Métro's view, TransCanada omitted consideration of any notion of floor prices or a requirement for a range of negotiable discounts.

Gaz Métro argued that the FERC framework highlights the deficiencies in the Application with respect to selective discounting or market-based pricing. It highlights the importance of generic hearings at which all interested parties can make representations on an appropriate framework.

Union Gas Limited (Union)

Union argued that the Application should be denied. Union submitted the Herbert LTFP service is unfair, unjust and unjustly discriminatory and that TransCanada failed to justify that the service should be permitted as an exception to the framework established in the RH-001-2014 Decision. A firm shipper to the Herbert delivery point would be required to pay almost triple the Herbert LTFP toll level in order to help defray the costs of TransCanada's excess capacity. Moreover, the Herbert LTFP service should not be permitted to circumvent the Tariff, the Transportation Access Procedures, and the New Capacity and Existing Capacity Open Season requirements.

Union stated that the Herbert LTFP Application is a bypass competitive rate application and that it is premised on the belief that that the Board would approve a bypass of the TransCanada Mainline by Foothills. Union emphasized that there would be no competitive alternative to TransGas unless the Board approved a Foothills bypass. However, Union said that such potential bypasses should not be assumed. If a Foothills bypass materialized, Union stated it would expect TransCanada to oppose it, as would Union, because the public interest favours defraying Mainline costs and ensuring Mainline viability.

Given existing constraints on the eastern portion of the TransGas system, Union submitted that TransGas may not be able to utilize Foothills' Shaunavon Option and that the negotiated volume of 80 TJ/d is therefore an unlikely candidate to leave the TransCanada Mainline system. Union argued that TransCanada's references to load retention benefits associated with TransGas committing to maintain 80 TJ/d of FT service during the term of the Herbert LTFP should therefore be disregarded.

In the event that the Board approved the Application, Union submitted that several revisions to the service should be made. Primarily, Union argued that the Herbert LTFP toll and service should only be approved until 31 December 2020. To ensure fairness and avoid unjust discrimination in the post-segmentation period, Union argued that the Herbert LTFP, like all other Mainline tolls, should be subject to the toll re-set and re-evaluation approved by the Board in principle in RH-001-2014 proceeding. Given the lack of information on the post-2020 toll design, Union argued that TransCanada failed to discharge its onus to demonstrate how post-2020 Herbert LTFP tolls would not be unjustly discriminatory.

Secondly, Union did not support TransCanada's position that the negotiated provisions of the Herbert LTFP service are sufficient to mitigate the risk that Herbert LTFP volumes will be used to serve loads other than the Power Plant. To mitigate this risk more effectively, Union submitted that the Board should limit the contract quantity of the Herbert LTFP service to 50 TJ/d and that the Herbert LTFP service should come into effect only after the Power Plant commences full operations, not during the commissioning phase.

Thirdly, Union submitted that revenues generated from the Herbert LTFP service during the fixed-toll period should be directed to reduce the 2018 to 2020 tolls.

Fourthly, Union submitted that any conversion to FT service should be subject to the Tariff and Transportation Access Procedures. In Union's view, a minimum 15-year term should be imposed, with the first 10 years under the terms proposed in the Application. Should the Board vary the 15-year minimum contract term for new capacity, Union submitted that the Board, as a matter of policy, should give consideration to whether similar relief to non-LTFP firm shippers should be afforded.

TransGas

In its evidence, TransGas confirmed, accepted and adopted the statements made by TransCanada in this proceeding as they relate to TransGas.

TransGas requested that the Application be approved as filed. Absent the Herbert Option, TransGas stated that it would not have considered the Mainline to be a preferable alternative for incremental load requirements and, moreover, would have had no obligation to maintain its historical levels of Mainline FT service should a more attractive alternative present itself. The effect of the Herbert LTFP service is that TransCanada is not only able to attract 58 TJ/d of incremental load that would have otherwise gone to a competing pipeline system, but also to insulate the Mainline against the risk of loss of firm contracts relative to current TransGas loads for the term of the Herbert LTFP service.

TransGas submitted that it is ready, willing and able to proceed with the Shaunavon Option on short notice. TransGas stated that aside from a new 1.2 km MIPL lateral, an associated Foothills meter station and a new compressor station, the necessary infrastructure and approvals are in place to support the Shaunavon Option. Land acquisition for the new right-of-way for the MIPL lateral and Foothills meter station is underway, with contracts with one landowner remaining to be finalized.

In TransGas' view, the evidence filed by TransCanada shows that the Herbert LTFP service, if approved, would benefit all parties, including existing Mainline shippers, which would be disadvantaged if TransGas proceeded with the Shaunavon Option.

TransGas asserted that it cannot compromise the operation of its system to ensure, for example, that gas volumes delivered off the Mainline at Herbert perfectly align with volumes received at the Power Plant. Should the Board find that it is in the public interest to constrain or modify the use of Herbert LTFP service, TransGas stated that it would opt for the Shaunavon Option for incremental load requirements. It would also then be open to TransGas to consider whether there might be other more attractive service offerings relative to firm transportation of existing load currently on the Mainline.

TransGas submitted that a condition on Herbert LTFP service that purported to impose restrictions on TransGas operations would be unacceptable to TransGas. Not only would such a condition effectively constrain the operations of TransGas, a provincially-regulated utility, but would require TransGas to implement a form of service that is unworkable under its current integrated business model.

TransCanada Reply

In response to comments from some interveners that the Board should develop criteria or a framework for evaluating load retention or load attraction services, TransCanada argued that the key consideration for the Board is whether the service will provide a benefit to the Mainline and its shippers relative to what would occur otherwise. In TransCanada's view, it would be impractical and contrary to regulatory efficiency to develop prescriptive criteria for future services. Moreover, such criteria would constrain TransCanada's flexibility and would fetter the Board's discretion in future proceedings, particularly given the lack of evidence from interveners on potential proposals.

In response to comments that the Herbert LTFP proposal is contrary to the cost causation principle, TransCanada argued that in present circumstances of the Mainline, where there is existing capacity and the pipeline is competing against a viable alternative, the cost causation principle has less relevance compared to other circumstances, such as pipeline expansions. In the case of the Herbert LTFP, the service is designed to attract load that would not otherwise flow on the Mainline, and therefore the cost causation principle needs to focus on the incremental benefits associated with the service. The 58 TJ/d of incremental growth will drive new meter station costs, but those costs will be exceeded by the incremental revenues. In this context, TransCanada submitted that Herbert LTFP is consistent with cost causation.

In response to comments that TransGas' commitment to retain 80 TJ/d should be disregarded, TransCanada noted that there is no assurance that TransGas' FT contracts will be renewed in the medium to long term. TransGas may not have alternatives to the Mainline right now, but it could

contract for service on other pipelines to transport that 80 TJ/d in the future absent the Herbert LTFP condition.
TransCanada disagreed with EGDI's position that volumes and revenues generated by the Herbert LTFP are not material from the perspective of the overall Mainline revenue requirement. TransCanada argued that while Herbert LTFP may not be the silver bullet for all competitive pressures affecting the Mainline, to suggest that TransCanada should not even try to attract this type of load is inconsistent with the Board's direction to TransCanada provided in the RH-003-2011 and RH-001-2016 Reasons for Decisions.

In response to comments from EGDI that TransCanada focused only on existing FT requirements and that it failed to account for future growth, TransCanada argued that successfully competing with the Herbert LTFP service would make it more likely that TransGas' future loads will be served off the Mainline.

TransCanada did not agree with Gaz Métro's position that TransCanada was seeking to 'deregulate' the Herbert LTFP service. TransCanada noted that the Board's approval is required before any new service can be implemented. Moreover, TransCanada submitted that the FERC precedent cited by Gaz Métro is not comparable to its Application, as the pipeline company is not required to come back to the FERC for approval of a discounted offering.

TransCanada disagreed with Gaz Métro's characterization that Herbert LTFP and FT services are 'substitutable'. Primarily, it is often the case that there are different mainline services available at the same mainline location. Secondly, it is the customer who decides whether one service is substitutable for another, and in TransCanada's view, TransGas has been clear that FT would not be acceptable and the alternative to Herbert LTFP would be service through Foothills.

TransCanada disagreed with Gaz Métro's characterization of TransCanada's position that, because Herbert LTFP service was negotiated, that means it is just and reasonable. TransCanada reiterated its position that if a service is negotiated between arm's length parties, then it reflects the fair market value of the service. TransCanada argued that it relied on the entire body of evidence throughout the proceeding, not simply the evidence on fair market value, to support its position that the Herbert LTFP service is just and reasonable. TransCanada emphasized that the Herbert LTFP negotiations were between TransCanada and TransGas, who are arm's length entities, and that Foothills was not involved in negotiations.

In response to Union's argument that the Board would likely protect the Mainline from any bypass threat and would likely not approve the Shaunavon Option, TransCanada replied that protecting the Mainline or any other pipeline from the effects of competition has never been the Board's practice. TransCanada emphasized that the Shaunavon Option is a viable competitive option that continues to be advanced by TransGas as a contingency to Herbert LTFP. In addition, TransCanada noted that TransGas was not a party to the Settlement Agreement between TransCanada, EGDI, Gaz Métro and Union and therefore it did not have any restrictions on bypassing the Mainline.

In response to proposed conditions to the Herbert LTFP cited by Union, TransCanada argued that approving the Herbert LTFP to the end of 2020 would be unacceptable to TransGas and therefore such a condition would have the same result as denying the service entirely. Moreover, while precise cost and revenue allocation post-segmentation is unknown, allocation issues are not necessary to conclude that the Herbert LTFP service is in the public interest. TransCanada argued that the Board should approve the service now and decide allocation issues in a subsequent proceeding.

TransCanada submitted that to the extent Herbert LTFP service is approved sufficiently in advance of TransCanada's filing of the 2018-2020 tolls application, the costs and revenues associated with Herbert LTFP will be reflected in that application.

TransCanada did not support Union's position that the Board should limit the contract quantity of the Herbert LTFP service to 50 TJ/d. In TransCanada's view, reducing the quantity of Herbert LTFP could restrict TransGas' ability to meet its customers' requirements and would lead to TransGas pursuing the Shaunavon Option instead of Herbert LTFP. Similarly, TransCanada stated that imposing a condition that Herbert LTFP should not be available during the commissioning stage of the Power Plant would result in TransGas choosing the Shaunavon Option instead of Herbert LTFP.

Finally, TransCanada did not support Union's argument that the Board impose a 15-year term for the length of the Herbert LTFP. TransCanada argued that the 15-year term requirement in the Tariff relates to FT, not new services like Herbert LTFP. Terms of the Herbert LTFP service were negotiated and from TransCanada's perspective, a 10-year term is reasonable as it provides sufficient certainty that the service will generate substantial revenue that will more than offset the costs of providing the service. TransCanada also added that the Herbert LTFP proceeding is not the appropriate forum to consider Union's request that the Board should give consideration to vary the 15-year minimum contract term for non-Herbert LTFP shippers.

Views of the Board

Requirements of the NEB Act

Part IV of the NEB Act sets out the Board's mandate in respect of traffic, tolls and tariff matters. Section 62 provides that all tolls shall be just and reasonable and shall always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons at the same rate. Section 67 prohibits a company from making any unjust discrimination in tolls, service or facilities against any person or locality. Further, under section 63 of the NEB Act, the Board may determine as questions of fact whether or not traffic is or has been carried under substantially similar circumstances and conditions as referred to in section 62 or whether there is unjust discrimination within the meaning of section 67.

The Board has been given broad discretion to determine whether tolls and tariffs comply with these provisions of the NEB Act. For the reasons that follow, the Board has determined that the Herbert LTFP service and toll are not unjustly discriminatory and that the Herbert LTFP toll is just and reasonable.

No Unjust Discrimination

The Board finds that the Herbert LTFP toll and service are not unjustly discriminatory. The Board does not agree with the arguments of Gaz Métro and Union that Herbert LTFP service is traffic of the same description or that it is transported under substantially similar circumstances and conditions as FT service.

Herbert LTFP service has been designed to respond to a unique competitive alternative available to TransGas for serving the Power Plant, identified as the Shaunavon Option. That option involves significantly lower overall costs for TransGas compared to the option involving Mainline FT to the TransGas SSDA, it is physically feasible, and the infrastructure is largely in place. The Board also notes the ongoing work of TransGas to preserve the Shaunavon Option, including land acquisition for the MIPL lateral.

In the Board's view, the Shaunavon Option represents a credible alternative to the Mainline. The evidence is uncontroverted that, if Herbert LTFP is not approved as proposed in the Application, TransGas can reasonably be expected to pursue this non-Mainline alternative for the entire 58 TJ/d required for the Power Plant. As a result, the Board finds that Herbert LTFP service will not transport gas under substantially similar circumstances and conditions as other services offered on the Mainline, including FT service.

The Board also finds that Herbert LTFP service represents a different kind of traffic than that of FT service, including attributes such as the 10-year contract term and the lack of alternate receipt point and diversion rights. For these reasons, the Board accepts that Herbert LTFP can attract a different toll than FT service without offending the prohibition against unjust discrimination. The Board was not persuaded by Union's request to only approve the Herbert LTFP toll and service until 31 December 2020 on the basis of potential future unjust discrimination. Issues concerning post-2020 Mainline tolls, and the potential for unjust discrimination relating to those tolls, will be addressed at the time of the post-2020 tolls application.

Just and Reasonable Tolls

The Board finds that the Herbert LTFP toll is just and reasonable. The toll is at a market-negotiated level required to attract the incremental load associated with the Power Plant. The Board notes that the toll has been negotiated between two non-affiliated companies. In the Board's view, this represents a fair market value of the service in this circumstance.

In addition, the Herbert LTFP toll will benefit the Mainline and its shippers by attracting revenue in excess of the incremental costs required to provide the service. TransCanada estimated the annual incremental net revenues at $2.2 million for the 10-year term of the Herbert LTFP contract. The Board also considered the conditional commitment of TransGas to maintain at least 80 TJ/d of FT service to the TransGas SSDA. While the Board finds that Herbert LTFP would not definitively result in the retention of TransGas' FT contracts, the Board did consider that it would at least promote the retention of these contracts.

The Board's approval of the Herbert LTFP toll recognizes that in these circumstances, the incremental 58 TJ/d required for the Power Plant and the associated revenues would not be attracted to the Mainline without a competitive service offering by TransCanada. The Board concludes that the Mainline, and its shippers, will be better off in the scenario that Herbert LTFP service is approved and offered. TransCanada expects the incremental net revenues resulting from the service, estimated at $2.2 million per year for 10 years, to flow entirely to the account of shippers. The Board was not persuaded by the arguments made by EGDI and Gaz Métro, which were unsupported by evidence, regarding potential burdens or negative impacts. The Board also rejects the arguments of EGDI and Gaz Métro that the benefits associated with the Herbert LTFP service offering must be material. The Board is of the view that all benefits should be pursued and the sum of all such actions may prove to be material.

The Board recognizes the possibility that gas under Herbert LTFP service might serve loads other than the Power Plant when the Power Plant does not operate at peak capacity. However, Herbert LTFP has been designed to meet the peak needs of the Power Plant, which could be required on any given day and at short notice. The Board finds matching firm requirements with a firm contract level to be an appropriate approach. The Board also considers it appropriate to commence Herbert LTFP service during commissioning, when service is needed to meet the requirements of the Power Plant. Moreover, the Board is of the view that the negotiated safeguards between TransCanada and TransGas are reasonable in this circumstance. If the Power Plant is not used for five consecutive months, the Board notes that TransCanada can convert the Herbert LTFP service to FT the remainder of the Herbert LTFP term.

The Board finds the abandonment surcharge for Herbert LTFP, which reflects the distance between Empress and Herbert, to be just and reasonable. This approach is appropriate given that Herbert LTFP service is a point-to-point service. The Board notes that the abandonment surcharge has been calculated in accordance with the methodology approved in the MH-001-2013 Reasons for Decision.

Generic Hearing

The Board was not persuaded to act on the request for a generic hearing to establish criteria regarding competitive service offerings. Future new services, including other competitive service offerings, will require Board approval and will be assessed on their own merits and circumstances. At this time, the Board is not persuaded that a generic hearing is required.

Closing Comments

The Board has recently encouraged TransCanada to develop innovative service and pricing proposals to manage the ongoing issues facing the Mainline[1]. The Board has also emphasized the importance for TransCanada to respond to market forces with market solutions[2]. The context of responding to competition, for the benefit of the Mainline and its shippers, is an important consideration in the Board's approval of the Application, as outlined in these Reasons for Decision.

Competitive realities facing the Mainline should be responded to, otherwise the Mainline and its shippers face the potential alternative of further declining Mainline throughput and escalating tolls.

The Board finds that FT shippers, including those that are captive to the Mainline, will ultimately benefit from services designed to attract or retain loads, under the appropriate circumstances and conditions. In the circumstances of Herbert LTFP, the Board concludes that the service will benefit the Mainline and its shippers, that the service and toll are not unjustly discriminatory, and that the Herbert LTFP toll is just and reasonable.

The Board notes that this Decision is being released in sufficient time for TransCanada to include such revenues and billing determinants in the 2018 to 2020 tolls review application. The Board notes that TransCanada has been directed to file this application prior to the end of 2017.

Decision

The Board approves the Herbert LTFP Service application as filed.

[1] See the RH-001-2016 Reasons for Decision pg. 35 and the RH-003-2011 Reasons for Decision pg. 141

[2] See the RH-003-2011 Reasons for Decision pg. 3

3. Disposition

The foregoing constitutes our Reasons for Decision in respect of the Application heard by the Board in the RH-002-2017 proceeding.

R.R. George
Presiding Member

L. Mercier
Member

J. Gauthier
Member

Calgary, Alberta
June 2017