National Energy Board   Office national de l'énergie

LETTER DECISION

File OF-Tolls-Group1-T211-02 01
23 November 2017

To: All Parties to Hearing Order RH-003-2017

TransCanada PipeLines Limited (TransCanada)
Application for Approval of Dawn Long Term Fixed Price (Dawn LTFP) Service
RH-003-2017 Reasons for Decision

This letter provides the reasons for decision in respect of TransCanada's Dawn LTFP service application. The National Energy Board (Board) released its decision on 21 September 2017 and indicated that the reasons for decision would follow.

1. Background

On 29 March 2017, the Board received TransCanada's Notice of Intent to File an Application for an order approving a new long-term fixed price service from Empress, Alberta to Dawn, Ontario. On 24 April 2017, the Board established a modified version of the Streamlined Regulatory Process set out in Appendix IV of the RH-003-2011 Decision, including written evidence, information requests and oral argument. The Board granted standing to 21 Intervenors and 21 Commenters in the hearing.

On 26 April 2017, TransCanada filed, under Parts I and IV of the *National Energy Board Act* (NEB Act), an application for Dawn LTFP service, the tolling methodology for the service, the Dawn LTFP Contract and Toll Schedule and consequential amendments to the Canadian Mainline Gas Transportation Tariff (Application). TransCanada stated that it negotiated the Dawn LTFP service with western Canadian natural gas producers and subsequently offered it to all prospective shippers through an open season that closed on 9 March 2017. In total, 27 new long-haul contracts were executed with 23 parties for a total of 1.5 petajoules per day (PJ/d), with 1 November 2017 specified as the service commencement date for 90 per cent of the contract quantities. The remaining contract quantities have a commencement date in 2018 or 2019. TransCanada stated that the Dawn LTFP shippers are all producers in the Western Canada Sedimentary Basin (WCSB), none of which otherwise hold firm service contracts on the Mainline.

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TransCanada submitted that the Dawn LTFP service is a new competitive service offering that will generate approximately $422 million of annual Mainline revenue using existing Mainline infrastructure and additional Transportation by Others (TBO) capacity on existing pipeline systems. The net revenue associated with the service is expected to total approximately $2.0 billion over the term of the Dawn LTFP contracts.

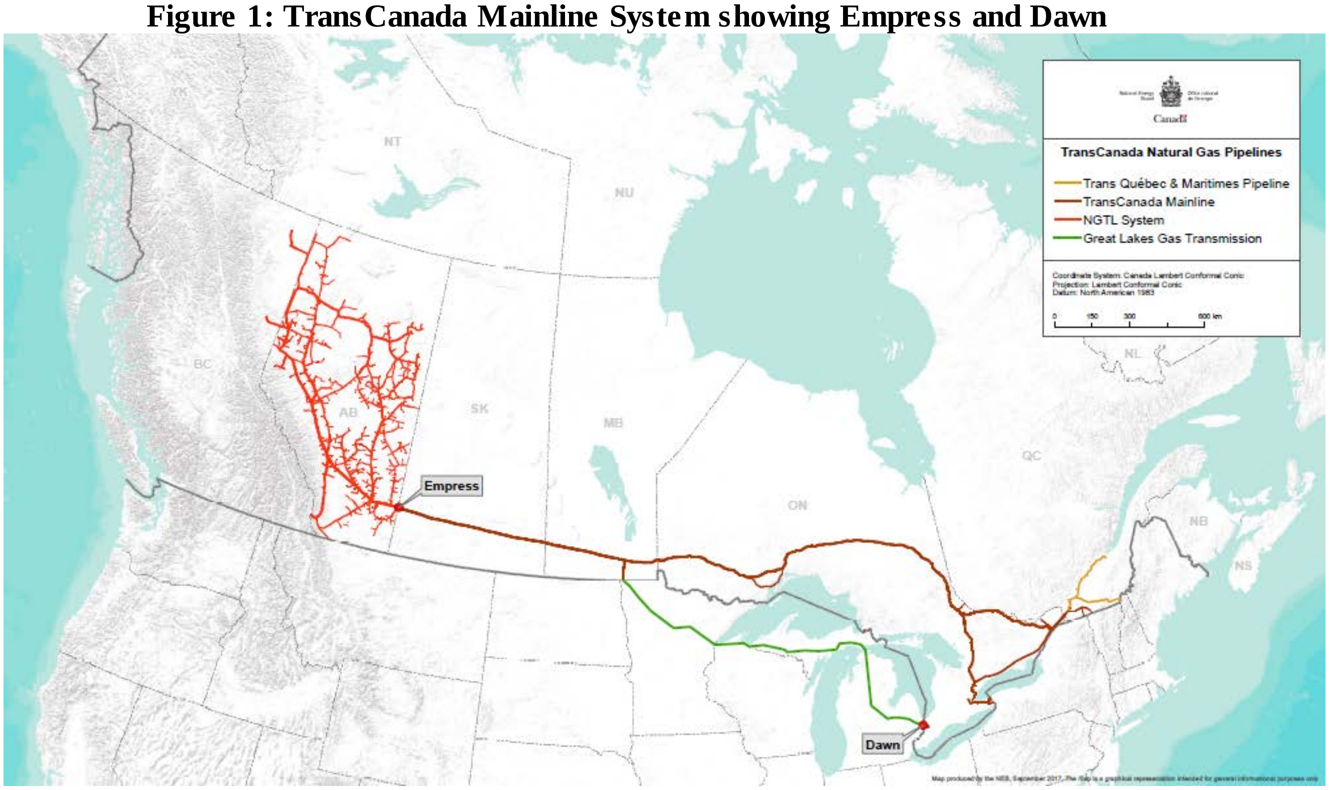
The key terms of Dawn LTFP service are:

- A 10-year contract term from the date of commencement, with the option to reduce the term of all or a portion of the contract quantity by one to five years;
- A fixed demand toll of $0.77 per gigajoule per day (GJ/d), inclusive of the applicable abandonment surcharge and delivery pressure toll, with a higher fixed Dawn LTFP toll applying in the final two years if the shipper elects to reduce its contract term;
- A receipt point of Empress and a delivery point of the Union Southwest Delivery Area (Union SWDA or Dawn), with no diversion or alternate receipt point rights but with the ability to nominate to select Secondary Delivery points on the Great Lakes Gas Transmission Company (GLGT) System on a reasonable efforts basis; and
- The service is not renewable but may be converted to Firm Transportation (FT) service at the end of the contract term, provided two years' notice is provided.

Oral argument took place in Calgary on 11 and 12 September 2017.

Figure 1 shows a map of the Mainline System with the receipt and delivery points associated with Dawn LTFP service.

Figure 1: TransCanada Mainline System showing Empress and Dawn



2. Issues

2.1 Need for Dawn LTFP Service

Views of TransCanada

TransCanada submitted that Mainline deliveries of WCSB gas into Dawn have decreased in recent years, as new facilities connecting alternative sources of supply to Dawn have been constructed. To capture market share at the Dawn hub, WCSB gas transported on the Mainline needs to be competitive in comparison to alternative sources of supply, including the growing Marcellus and Utica basins.

TransCanada stated that the existing suite of Mainline services is not sufficient to provide WCSB producers with a reasonable opportunity to compete with alternative supplies into Dawn. Currently, there are no Mainline FT service contracts from Empress to Dawn. Rather, parties that intend to serve the Dawn market have contracted for service from Empress to Emerson. Long-term, TransCanada stated that it does not expect this contracting to continue because of increased competition from Marcellus and Utica supplies and associated infrastructure such as the Nexus Gas Transmission Pipeline (Nexus), the Rover Pipeline (Rover) and the reversal of flows on Rockies Express.

Mindful of this competitive reality, producers and TransCanada discussed developing a new service that would be mutually beneficial by providing a more competitive alternative to transport WCSB gas into Dawn over the long-term and attracting contracts and generating revenues that would not otherwise occur on the Mainline.

In developing Dawn LTFP service, TransCanada submitted that it was mindful of the Board's expectation that TransCanada take an active role in successfully confronting the challenges facing the Mainline by meeting market forces with market solutions. Dawn LTFP service was created specifically to compete for business through a service tailored to market realities unique to the Empress to Dawn path, which links two of the largest hubs in North America.

In TransCanada's view, the market need for the service is demonstrated by the fact that 23 Dawn LTFP shippers executed 27 contracts for a total of 1.5 PJ/d of long-term Dawn LTFP contracts.

Views of Participants

Alberta Department of Energy (ADOE)

The ADOE strongly supported approval of the Application and urged the Board to approve it as filed prior to 1 November 2017. The ADOE submitted that Dawn LTFP service is a market response that has the potential to counterbalance the ongoing off-loading of TransCanada's long-haul capacity and provides Canadian natural gas producers with the ability to compete for market share at Dawn.

Birchcliff Energy Ltd. (Birchcliff), Canadian Natural Resources Limited (CNRL), Encana Corporation (Encana) and Tourmaline Oil Corp. (Tourmaline)

Birchcliff, CNRL, Encana and Tourmaline fully supported approval of the Application as filed. Each of these companies has contracted for Dawn LTFP service, and they indicated that such an approval is very important to them. In their view, Dawn LTFP service will provide WCSB producers with competitive access to the Dawn hub in order to sell their gas.

Canadian Association of Petroleum Producers (CAPP)

CAPP supported the Application and the Dawn LTFP service as filed. CAPP stated that in order to incent long-term contracting between Nova Inventory Transfer (NIT) and Dawn, a new service, including the negotiated rate, is required. CAPP submitted that the Dawn LTFP service provides long-term stability and certainty with respect to shippers' access to the Dawn hub at a competitive toll for the 2017 to 2029 period.

Centra Gas Manitoba Inc. (Centra)

Centra stated that it would support the proposed Dawn LTFP service if conditions were included to allow diversions to Emerson 2, and to offset the 2018 to 2020 revenue requirements with the Dawn LTFP net revenues. Centra indicated it had concerns with the Dawn LTFP service; however, it submitted that it recognized the importance and benefit of TransCanada attracting and retaining load on the Mainline under the appropriate circumstances and conditions.

Enbridge Gas Distribution Inc. (EGDI)

EGDI opposed the Dawn LTFP service and the Application. In EGDI's view, while it supports the Board's previous direction to TransCanada to pursue market solutions to ensure the economic viability of the Mainline, the services must be designed and implemented in accordance with NEB Act requirements.

Société en commandite Gaz Métro (Gaz Métro)

Gaz Métro submitted that it is generally in favour of a new service that will bring higher volumes to Dawn and attract new volumes on the Mainline. However, Gaz Métro emphasized the importance for the Board to ensure that TransCanada makes decisions that are advantageous for the Mainline and benefit existing shippers. Gaz Métro identified several concerns with the Application, and stated that it would like to ensure that any new service benefits the Mainline, and at minimum, that existing shippers are not harmed.

Industrial Gas Users Association (IGUA)

IGUA generally supported the proposed Dawn LTFP service. It submitted that a prompt disposition regarding the service is paramount to IGUA members to ensure access to competitive supply at Dawn and to avoid market disturbance and uncertainty while transitioning into the winter season. However, IGUA expressed concern with certain aspects of the service as filed and proposed changes to the service (see Section 2.3).

Union Gas Limited (Union)

Union opposed the Dawn LTFP service and requested that the Application not be approved as filed. In Union's view, the proposed Dawn LTFP service is unduly discriminatory, unjust and unreasonable. Union questioned whether such a new service is truly required, given that the Mainline has exceeded its forecast of volumes and revenues since the RH-001-2014 Decision, an indication that existing Mainline services are capable of contributing to the ongoing viability of the Mainline. In Union's view, this is particularly so as TransCanada can alter the exercise of its existing pricing discretion to increase the flow of WCSB volumes accessible via Emerson. Ms. Habib, who provided expert evidence on behalf on Union, submitted that TransCanada does not need the proposed Dawn LTFP service to compete, as there are historical flows and revenues on the Empress to Emerson path which were realized without incremental TBO on GLGT.

Utilities Kingston

Utilities Kingston supported the approval of Dawn LTFP service, as it recognized the benefits to producers, shippers and natural gas customers in Eastern Canada. However, Utilities Kingston identified concerns with some aspects of the Application involving the optimization of the benefits to the Mainline.

Letters of Comment

The Board received 12 letters of comment in support of the Application from the following Dawn LTFP shippers: Advantage Oil & Gas Ltd., Bonavista Energy Corporation, Canadian International Oil Operating Corp., Crew Energy Inc., Ember Resources Inc., Kelt Exploration Ltd., NuVista Energy Ltd., Painted Pony Petroleum Ltd., Progress Energy Canada Ltd., Seven Generations Energy Ltd., Shell Canada Energy, and TAQA North. The Minister of Natural Gas Development for the Province of British Columbia also filed a letter of comment in support of the Application. These comments generally emphasized the importance of competitively priced Mainline transportation service in order to access the Dawn market. Alberta Northeast Gas Limited (ANE) also filed a letter of comment, explaining that it takes no position on Dawn LTFP service. However, ANE raised several concerns with the Application, including the potential for harm to existing shippers in the form of higher tolls.

TransCanada's Reply

In response to Union's assertion that Dawn LTFP is not needed because TransCanada could enhance utilization of the Mainline through pricing discretion, TransCanada submitted that it does not expect it would be able to attract comparable quantities to those resulting from Dawn LTFP service consistently or over the long term through the use of pricing discretion. Relying on pricing discretion would therefore reduce billing determinants, reduce certainty and stability, and reduce Mainline revenues, all of which would be detrimental to the Mainline and its shippers.

In TransCanada's view, the parties opposed to the Application ignore the market reality for which Dawn LTFP service was developed.

2.2 Benefits of Dawn LTFP Service

Views of TransCanada

TransCanada estimated the net revenue associated with Dawn LTFP service to be approximately $2 billion over the term of the service, which will reduce the share of the revenue requirement to be recovered from other Mainline shippers. The estimated net revenue is comprised of $4.2 billion of gross revenue, less $1.6 billion of incremental costs (TBO, compressor overhaul, carbon levy and fuel tax costs), $381 million of abandonment funding costs, and $230 million of displaced FT contracts.

According to TransCanada, the benefits of the net revenue to Mainline shippers include lower tolls, long-term toll certainty, enhanced stability, and support to the long-term viability of the Mainline.

TransCanada submitted that annual net revenues represent approximately 7.3 per cent, 16.5 per cent and 18.6 per cent of the forecasted revenue requirements for 2018, 2019 and 2020, respectively, and that tolls would be directionally reduced. In the event that all shippers elect to reduce their contract term to the minimum five years, TransCanada submitted that the benefits would still be approximately $1.1 billion.

TransCanada submitted that, in addition to attracting incremental long-haul contracts and associated net revenues to the Mainline, there are benefits to Canadian producers by providing a reasonable opportunity to supply historical markets and benefits to Eastern market participants by increasing supply and liquidity at Dawn.

Views of Participants

CAPP

CAPP submitted that Dawn LTFP service provides benefits of increased supply and liquidity at the Dawn market, and economic market access for WCSB natural gas producers.

IGUA

IGUA stated that long-term access to 1.5 PJ/d of WCSB volumes is expected to substantially improve liquidity at Dawn and bring new supply options to the market.

Centra

Centra submitted that the biggest winners of the Dawn LTFP service, in addition to WCSB producers, are TransCanada affiliates, NOVA Gas Transmission Ltd. (NGTL) and GLGT, who have secured new firm contracts and significant toll revenue totaling approximately $200 million annually.

Centra further submitted that other TransCanada affiliates that could have been harmed by Dawn LTFP service have been kept whole. Dawn LTFP service allows for secondary deliveries to five points on GLGT. Two of these five GLGT points are interconnects that serve TransCanada affiliates: ANR Storage Company at Deward and ANR Pipeline Company at Farwell. Centra asserted that the five secondary delivery exceptions on GLGT benefit the United States (U.S.) market by ensuring that WCSB production volumes are available to American end-use markets, but bypass the Manitoba Delivery Area (MDA) and Emerson. In Centra's view, American end-use markets and customers are sheltered and placed ahead of Canadian natural gas consumers in Manitoba.

Centra stated that TransCanada has assumed a highly optimistic scenario for its Dawn LTFP case, in which the displacement of FT service from Empress to Emerson drops dramatically after 2018 and becomes zero by 2021. This is fundamental to TransCanada's optimistic net revenue assumptions starting in 2019. In Centra's view, a more realistic scenario is that, in the absence of Dawn LTFP service, Empress to Emerson FT contracts would continue at the level assumed for 2018, which would provide a revenue requirement reduction and directional toll benefit of seven per cent.

Centra submitted that another realistic scenario is that Empress to Emerson FT contracting would increase above the 2018 levels because GLGT would respond to emerging competition with aggressive discounting, thereby incenting FT contracting on both the Mainline to Emerson 2 and GLGT. The potential toll reduction could be significantly less than seven per cent or could even result in higher Mainline tolls than without Dawn LTFP service.

Union

Union identified the GLGT TBO, Great Lakes Pipeline Canada Ltd. (GLC) TBO, Union TBO, compressor overhaul costs, carbon levy costs and fuel taxes as incremental costs associated with the Dawn LTFP service that are subject to a high degree of forecast risk. In Union's view, it is clear that these costs are subject to estimation risk and uncertainty, which could erode the net revenue benefit to existing Mainline shippers.

The ICF Report commissioned by Union concludes that the incremental revenue from the proposed Dawn LTFP service will be significantly offset by declines in revenue from other TransCanada services. ICF expects that about 45 per cent of the Dawn LTFP service volumes would be transported on the Mainline using existing Mainline services, which puts the losses in Mainline revenue near the incremental revenues from the service.

Union stated that TransCanada has not proposed that it or Dawn LTFP shippers be allocated any risk under the proposed Dawn LTFP service. Union submitted that TransCanada and the Western Canadian producers claim the Dawn LTFP toll is market-based, yet there is no market risk borne by the negotiating parties. It is non-Dawn LTFP shippers who are at risk of future cost variation.

Union submitted that at a minimum, the Board should require TransCanada to propose an appropriate mechanism for risk sharing when filing for approval of its segmentation proposal and tolls for 2020 and beyond. Union argued that if the Board agrees that assurances of net benefits to all shippers is an important factor in the public interest which supports its decision to approve the new service, the Board must say so and attach a related condition to any approval.

TransCanada's Reply

In response to Union's concern regarding the uncertainty of forecasted costs, TransCanada submitted that it has carefully managed cost variability. The greatest cost is the GLGT TBO, at $1 billion for the term, which has been capped a rate of $8.89 US/Dekatherms/month, and has a step-down provision for the contracted amount to ensure GLGT capacity can be adjusted if warranted. All other costs account for approximately $545 million, and in light of the certainty achieved through the fixed GLGT TBO toll and the ability to adjust contract amounts, TransCanada does not expect variability in costs to result in material changes to the net benefit.

TransCanada also submitted that costs could be lower than forecasted, which would provide additional benefits to Mainline shippers. For example, TransCanada assumed an exchange rate of $1=$0.75 US in the Application, and the exchange rate is now approximately $1=$0.80 US, which has increased the net benefit by $66 million over the Dawn LTFP service term.

Regarding Centra's statement that GLGT would be incented to discount aggressively in the absence of Dawn LTFP service, TransCanada stated that this outcome is not realistic given that GLGT would have to provide virtually free transportation to achieve a comparable outcome to Dawn LTFP when combined with Mainline FT service.

TransCanada submitted that Union's ICF Report overstates the level of gas available for export and anticipated Mainline flows absent Dawn LTFP service, which underpin Union's assertion that TransCanada has underestimated the displacement impact. Even assuming ICF's unreasonable level of displacement, net benefits in excess of $600 million would be expected.

TransCanada is of the view that it would be unreasonable to bear all of the risk in the variability of costs while all of the benefits are allocated to Mainline shippers. In any event, in TransCanada's view, the allocation of costs and revenues is not germane to the consideration of Dawn LTFP service. Mr. Reed, who provided expert evidence on behalf of TransCanada, stated that there is no basis for the assertions that non-Dawn LTFP shippers will solely bear the risk of future uncertainty and that TransCanada will be exempt from any risk.

2.3 Concerns with Dawn LTFP Service Attributes

Views of TransCanada

TransCanada submitted that Dawn LTFP service is different and more restrictive compared to other services on the Mainline. Key service attributes of Dawn LTFP service are described in Section 1 of this Decision. TransCanada submitted that the Dawn LTFP tariff provisions reflect the unique characteristics of the service and market circumstances for which it was designed.

Mr. Reed submitted that there is no unjust discrimination between Dawn LTFP shippers and existing FT shippers. In his view, Dawn LTFP service will be offered under significantly different circumstances than FT service, has limited flexibility, is non-renewable, and has significantly longer contract term requirements. Mr. Reed submitted that Dawn LTFP service and FT service are not traffic of the same description over the same route.

TransCanada submitted that Dawn LTFP service does not provide diversion or alternate receipt point rights, as these features would make it possible for shippers to serve other markets along the Mainline that could otherwise be served using FT service, which would negatively impact Mainline revenues.

Views of Participants

IGUA

IGUA submitted that Dawn LTFP service, which does not include FT service attributes such as diversion rights, will affect secondary market dynamics and result in Emerson 2 no longer being a material transaction point. IGUA expressed concern that limiting available secondary market options creates a risk that concentrated market power will be exercised by TransCanada, particularly at Emerson, and that absence of diversion rights will leave the market with no ability to manage load variation other than sourcing Interruptible Transportation (IT) or Short Term Firm Transportation (STFT) service from TransCanada.

In order to add market liquidity and increase operating efficiency at Parkway, IGUA requested that Emerson and Parkway be added as secondary delivery points for the Dawn LTFP service. In addition, adding Parkway as a secondary receipt point for Dawn LTFP would reduce or remove transportation bottlenecks between Parkway and Maple (Station 130) and the Barrie line. IGUA also requested that the Dawn LTFP service be amended to include diversion rights to Dawn LTFP shippers.

Finally, IGUA requested that revenues from marketing available TBO capacity that is not required until the full implementation of allocated capacity of the service (November 2019) be included in forecasted discretionary miscellaneous revenues. IGUA submitted that there is a potential revenue of approximately $40 million for the unallocated capacity until the full Dawn LTFP volume of 1.5 PJ/d is fully implemented.

Centra

Centra submitted that it will be negatively impacted if the Application is approved because the Dawn LTFP service is proposed to have no Mainline diversions. Dawn LTFP service would displace Empress to Emerson Mainline FT service contracts and will therefore reduce liquidity at Emerson. Any supply that would be available at Emerson via Mainline IT or sporadic GLGT volumes would be subject to supply and price risk and would only be available at a higher price than without Dawn LTFP service.

The reduced liquidity at Emerson would make holding Centra's 70 terajoules per day (TJ/d) Emerson 2 to MDA FT service contract less viable and effectively force Centra to acquire long-haul Empress to MDA FT service. Centra estimated that under various toll reduction scenarios, Centra's annual costs would increase by approximately $10.8 to $17.6 million per year.

Centra submitted it would support the Dawn LTFP service subject to a condition that the service allows in-path diversions to Emerson 2. In Centra's view, this condition is required to adequately mitigate Manitoba natural gas ratepayers' exposure to reduced liquidity at Emerson and increased transportation costs.

Centra argued that the extension of in-path diversion rights to Emerson 2 would not fully mitigate negative impacts of the Dawn LTFP service. Primarily, adding Emerson 2 as an in-path diversion would not address the erosion of the secondary market. Secondly, displaced Empress to Emerson 2 contracts would deliver gas to Emerson 2 on a firm basis, while diversions have priority below FT service. Lastly, Centra would have to pay Dawn commodity prices for Dawn LTFP volumes diverted to Emerson 2, whereas historically, Centra has paid Emerson 2 commodity prices that were discounted to the Dawn prices.

Centra submitted that any GLGT volumes delivered to Emerson 2 would only be available at Dawn-area prices, plus approximately $0.63/GJ in transportation costs if sourced from GLGT, plus additional transportation charges from Dawn to St. Clair if supply was sourced from Dawn. Centra also submitted that the Dawn LTFP service will erode the secondary market on the Mainline and the necessary check and balance on Mainline pricing discretion.

Union

Union submitted that Dawn LTFP service is unduly discriminatory because it includes attributes that are not available to Mainline FT shippers. These include the ability to reduce contract term, secondary delivery points, conversion rights to FT service, and the ability to terminate the Dawn LTFP contract in the event the NGTL system was to expand eastward. Union argued that these additional service attributes enhance the value of the Dawn LTFP service relative to FT service, while the proposed Dawn LTFP toll is at a discount relative to FT service.

Union submitted that approval of the Dawn LTFP service should be subject to granting all Mainline shippers access to the secondary delivery points, or alternatively, eliminate secondary delivery points for Dawn LTFP shippers. Union also requested eliminating the right to convert to FT service at the end of the term for Dawn LTFP shippers, and eliminating the right to alter or terminate the Dawn LTFP contracts if the NGTL system expands eastward before December 2020.

TransCanada's Reply

TransCanada submitted that the Dawn LTFP service was developed specifically for the Dawn market, which faces unique competitive pressures. The service was negotiated as a package, and any change to the service would risk upsetting the balance that was achieved through the negotiations and would likely result in an unacceptable approval of the service, jeopardizing the benefits.

Further, TransCanada argued that a different toll for a different service under different circumstances does not result in unjust discrimination. The relevant consideration is whether parties are being treated differently who are similarly situated.

In response to Centra's submissions on increased supply and price risk at Emerson, TransCanada argued that Centra did not allege that the Dawn LTFP service would preclude Emerson 2 to MDA contracting, rather that the option would become less viable. TransCanada emphasized that it expects FT contracts to Emerson to decline with or without the Dawn LTFP service. The decline was reflected in the RH-001-2014 Compliance Filing, but delays in the in-service dates of competing infrastructure have temporarily increased demand for contracts to Emerson 2. In TransCanada's view, this temporary increase is not expected to continue following the completion of competing infrastructure.

TransCanada rejected IGUA's and Centra's proposal to add Emerson 2 as a secondary delivery location to the Dawn LTFP service, because this would result in a greater amount of Emerson FT contracts being displaced (e.g. Emerson 1 contracts). TransCanada also rejected IGUA's proposal to add Parkway as a secondary delivery point, since doing so would not increase the efficiency of the physical flow of gas in the Eastern Triangle. Rather, adding Parkway as a secondary delivery location would make it possible for Dawn LTFP shippers to serve other markets along the Mainline that could otherwise be served using FT service.

TransCanada submitted that IGUA wrongly suggests that FT contracts to Emerson 2 are an important source of diversions to markets along the Northern Route. To illustrate, TransCanada submitted that since April 2015, less than 3.25 per cent of diversions to MDA, Western Delivery Area and Northern Delivery Area markets came from FT contracts to Emerson 2. Rather, 93 per cent of diversions from contracts with a primary delivery point at Emerson 1 or 2 were diverted to the other Emerson location, and only seven per cent were diverted to other Mainline locations. TransCanada argued that the reduction in FT contracts to Emerson 2, which is expected to occur with or without the implementation of Dawn LTFP service, is not expected to have a material impact on diversions available to other Mainline markets and parties will still be able to rely on the secondary market to meet non-firm requirements. TransCanada emphasized that to the extent IGUA members have firm requirements, they should contract for firm service at available recourse FT rates.

In response to Centra's submissions on Emerson liquidity, TransCanada submitted that Centra's assessment did not take into account quantities of gas for sale at or near Emerson through IT and flexibility features available with Viking Gas Transmission (Viking) and GLGT FT service. Moreover, TransCanada emphasized that Centra's contracts at Emerson 2 have alternative receipt point rights to source gas at Emerson 1. TransCanada submitted that the market will function and Centra will continue to be able to acquire supply at Emerson. While supply off GLGT and Viking may become more expensive than supply options at Emerson today, TransCanada emphasized that it is not the job of the Board to shield parties from market prices, and that if Centra experiences commodity cost increases, this will be because of the proper functioning of the market.

TransCanada rejected IGUA's submission that granting diversion rights to Dawn LTFP shippers is required to curb TransCanada's market power. TransCanada emphasized that it is the ability to purchase the cost-based recourse FT service that provides an implicit cap for discretionary services and implementation of the Dawn LTFP service will not remove the availability of FT as a recourse service at any location on the Mainline. Furthermore, extending diversion rights to Dawn LTFP shippers would make it possible for Dawn LTFP shippers to serve other markets along the Mainline that could otherwise be served using FT service.

TransCanada rejected Union's proposal that secondary delivery point features of Dawn LTFP service be extended to all Mainline shippers. TransCanada submitted it is not proposing changes to existing services, and that the Dawn LTFP Application is not the appropriate forum to seek such changes. TransCanada also rejected Union's alternate proposal to eliminate secondary delivery points as a feature of Dawn LTFP service, because elimination of this feature would materially change the Dawn LTFP service.

TransCanada submitted that it is reasonable to provide FT conversion rights to allow Dawn LTFP shippers to maintain service beyond the initial contract term. TransCanada added that there is no reasonable basis to discourage the exercise of this conversion option, as it would result in the payment of the applicable FT toll and associated increased revenues for the Mainline.

TransCanada did not support IGUA's position that available TBO capacity should be credited as estimated discretionary miscellaneous revenue. In TransCanada's view, the Dawn LTFP Application is not an appropriate forum to engage in a forecast of such revenues. Rather, this forecast will take place in the 2018 to 2020 toll review application.

2.4 Proposed Dawn LTFP Service Toll

Views of TransCanada

The Dawn LTFP service is subject to a negotiated fixed demand toll of $0.77/GJ/d, inclusive of any applicable delivery pressure toll and abandonment surcharge, for the 10-year term. TransCanada stated that the tolling and service structure were negotiated between TransCanada and numerous non-affiliated parties on an arm's length basis. Therefore, in TransCanada's view, the toll represents a fair assessment of the market value of the proposed service.

TransCanada contrasted the results of the 2016 and 2017 Open Seasons, which in its view further demonstrates that a $0.77/GJ/d toll represents fair market value. The fact that there was insufficient shipper interest at $0.80/GJ/d or $0.82/GJ/d in the 2016 Open Season, but sufficient interest was achieved at $0.77/GJ/d in the 2017 Open Season, demonstrates that the toll has been maximized for the service.

Mr. Reed recognized that the Dawn LTFP toll was not specifically established on the basis of cost causation. However, in his view, Dawn LTFP service is consistent with the cost-based/user-pay principle since the toll is greater than the variable cost of providing the service, and contributes significantly to the fixed cost recovery of the Mainline.

Mr. Reed stated that Dawn LTFP service is consistent with the promotion of economic efficiency. The provision of Dawn LTFP service is consistent with productive efficiency by minimizing the total cost to shippers of providing service on the Mainline. In addition, Dawn LTFP service is also consistent with allocative efficiency in that those shippers most valuing the service will have access to the service.

In TransCanada's view, the proposed tolling methodology for Dawn LTFP service is just and reasonable and the service and its tolling will not be unjustly discriminatory. TransCanada submitted that Dawn LTFP service is not traffic of the same description as gas transported under FT service or any other Mainline service. Dawn LTFP and the tolls for the service are also not offered under substantially similar circumstances and conditions under which other Mainline services are offered.

Views of Participants

EGDI

In EGDI's view, FT shippers will subsidize the cost of providing Dawn LTFP service. EGDI submitted that although the Dawn LTFP service revenues are forecast to exceed the incremental cost of providing the service, they are not sufficient to recover all of the Mainline costs associated with providing the service. The capital costs for the Mainline facilities used in providing Dawn LTFP service, with the exception of costs for compressor overhauls, are not included in the Dawn LTFP service toll. The Dawn LTFP service demand toll is $0.6671/GJ/d while the cost of service based FT demand toll on the same path is currently $1.6541/GJ/d.

Union

Union stated that the proposed Dawn LTFP service will be subsidized by existing Mainline shippers, as its toll of $0.77/GJ/d is not sufficient to cover its fully allocated costs.

Ms. Habib submitted that the proposed toll cannot be determined to be consistent with the Board's cost-based/user principle. In her view, it is just and prudent that the toll recover the long-run incremental cost, which would include long-term capital additions as well as the operating costs.

Ms. Habib submitted that she cannot conclude that the proposed Dawn LTFP toll is consistent with the principle of economic efficiency. Two things would need to be satisfied; first, that the value of service is appropriately priced and, second, that existing firm shippers benefit to the full extent of the revenue generated, neither of which are satisfied in this case.

Ms. Habib stated that the onus is on TransCanada to demonstrate the validity of the proposed toll level of $0.77/GJ/d as a true market-based toll, not just for today but over the term of the proposed Dawn LTFP contracts. There is uncertainty as to what the basis differential would look like between Dawn and NIT and the implication that this may have on potential Mainline revenue generated.

TransCanada's Reply

Mr. Reed disagreed with the characterization that Dawn LTFP service would represent cross-subsidization, and thus be inconsistent with the cost-based/user-pay principle. First, in his view, there is no requirement that the tolls to attract additional contracts to the system be tolled on a fully-allocated cost basis. Second, existing shippers are not "left to pay and make up the difference" between incremental cost and fully allocated cost, but rather there is a significant net system benefit being provided as a result of Dawn LTFP service.

TransCanada submitted that Ms. Habib's and Union's position wrongly presumes that basis differentials are the only determinant of market value, a position that was rejected by the Board in the RH-003-2011 Decision. TransCanada also responded that Union's own evidence suggests gas transported under Dawn LTFP service will have a comparable landed cost to Dawn-sourced supply through Nexus and Rover, supporting the conclusion that the proposed toll level is required for the service to be competitive relative to the alternatives that supply the Dawn hub.

2.5 Proposed Flow Split

TransCanada submitted that there are two options to facilitate the receipt of gas at Empress for delivery to Dawn: the Northern Route and the Southern Route. The Northern Route consists of transport on the Prairies Line and the Northern Ontario Line from Empress to North Bay Junction (NBJ), the Barrie Line from NBJ to Parkway, and TBO capacity from Parkway to Dawn on the Union Gas system. The Southern Route consists of transport on the Prairies Line and the Emerson Extension from Empress to Emerson 2, and TBO capacity on GLGT and GLC from Emerson 2 to Dawn. TransCanada stated it had assessed the two options guided by several objectives, which is working within existing capacity constraints, contractual flexibility for TBO capacity, cost minimization and operational flexibility.

TransCanada stated it had considered the ability of the Northern Route to meet the Dawn LTFP service on a firm basis. TransCanada advised that existing obligations on the Barrie Line limited available capacity for Dawn LTFP service on the Northern Route to approximately 750 TJ/d. Specifically, TransCanada advised that summer capacity constraints on the Barrie Line limited southbound capacity for Dawn LTFP to 784 TJ/d. TransCanada stated it had assessed other flow split combinations and concluded that contracting for 750 TJ/d on the Southern Route and 750 TJ/d on the Northern Route was optimal, because it resulted in the lowest 10-year average annual delivery cost and provided the greatest term and operational flexibility.

TransCanada advised that the constraint along the Barrie Line was the result of the compressor station 119 capability limitation, which could not be restored prior to 1 November 2017. TransCanada further advised that removing the Barrie Line constraint would increase the available capacity of the Northern Route to approximately 1,100 TJ/d and would cost approximately $4 million. The earliest the capacity could be restored would be November 2018.

TransCanada advised it intends to structure its GLGT, GLC and Union TBO to provide the ability to reduce contract quantities. The flexibility will permit TransCanada to align TBO arrangements with Dawn LTFP contract quantities should Dawn LTFP shippers exercise their term reduction rights. Shorter TBO terms also provide flexibility should capacities and TBO rates for Northern and Southern Routes change over time.

Views of Participants

ANE

ANE submitted that the cost of relieving the potential constraint along the Northern Route is less than the cost of utilizing the Southern Route. ANE stated that not undertaking a low cost investment to relieve the Barrie Line constraint incurs incremental TBO costs on GLGT and renders a significant portion of existing Mainline facilities underutilized.

EGDI

EGDI submitted that the uncertainty of long-haul contracting on the Mainline and the transfer of Mainline facilities to the Energy East project[1] brings into question TransCanada's proposed flow split and TBO commitments on GLGT. EGDI emphasized that without the transfer of Mainline facilities to Energy East, a 1,000 TJ/d allocation to the Northern Route and a 500 TJ/d allocation to the Southern Route is forecast to be more economic, assuming the negotiated GLGT TBO rate is maintained.

Furthermore, if the transfer of Mainline facilities to Energy East does not occur or is delayed, or if the Eastern local distribution companies terminate some or all of their long-haul FT contracts, additional Mainline capacity will be made available. Higher utilization of the Northern Route than currently proposed could reduce the incremental cost of implementing the Dawn LTFP service.

EGDI submitted that in the event the Application is approved, the Board should direct TransCanada to specifically address the prudency of TBO contracts and other incremental costs associated with implementing and offering the Dawn LTFP service in each subsequent toll application during the term of the Dawn LTFP service.

Gaz Métro

Gaz Métro submitted that the cost of removing the Barrie Line constraint was less than the costs associated with GLGT and GLC TBOs and removing this constraint would increase utilization on the Northern Route. In Gaz Métro's view, this option would maximize Mainline use to the benefit of existing shippers. Gaz Métro advised it was prepared to participate in temporary measures proposed by IGUA to reduce capacity to be contracted with GLGT pending completion work at compressor station 119. Gaz Métro emphasized that in the event of a reduction in the term of Dawn LTFP contracts, TransCanada should prioritize reducing capacity on the Southern Route insofar as it is the costliest, in order to maximize use of the Northern Route, in line with its role as trustee of the Mainline.

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[1] At the time of the hearing, TransCanada had not yet decided to cancel the Energy East project.

IGUA

IGUA submitted that the appropriate flow split for the Dawn LTFP service should be 400 TJ/d on the Southern Route and 1,100 TJ/d on the Northern Route. Increasing the use of the Northern Route to 1,100 TJ/d would result in a savings of GLGT TBO cost of approximately $47.2 million per year (based on the negotiated GLGT TBO tolls). In IGUA's view, TransCanada's proposed flow split would reduce Mainline benefits. Allocating volumes to the Southern Route should only be utilized if the Mainline does not have sufficient capacity to provide for the service or no other commercial solution can be implemented.

IGUA proposed that the Dawn LTFP service be amended to incorporate possible commercial solutions aimed at increasing the use of the Northern Route. In IGUA's view, such interim market solutions would provide the required capacity that can flow Dawn LTFP volumes over the Northern Route until compressor station 119 is back in service, thus reducing the GLGT TBO.

Union

Union submitted that the equal flow split over the Northern and Southern Route is not the lowest cost option over the 2017 to 2020 period and is not the best option for existing shippers. Union proposed that TransCanada flow 1,000 TJ/d over the Northern Route and 500 TJ/d over the Southern Route starting November 2018 in order to maximize the use of existing assets and maximize net benefits to the Mainline and its shippers. Union argued that current capacity limitations should not detract from pursuing higher Northern Route flows for November 2018. Union emphasized that it is unnecessary and imprudent to incur in excess of $1 billion of incremental affiliate TBO costs when the utilization of existing capacity can be maximized at a lesser cost. Union argued that contracting incremental GJ/day on the Southern Route appears to be imprudent, because each incremental GJ/day on the Southern Route is a marginal loss in net revenues.

Union submitted that the $20 million cost difference between its proposal and TransCanada's proposal is immaterial when foreign currency risk is considered and that selection of the proposed path based purely on its estimated negligible lower cost over the entire term cannot be heavily relied upon. Moreover, Union emphasized that only a three year TBO period has been committed to by TransCanada, and therefore it is appropriate that the incremental costs over this three year period be relied upon in evaluating the economics of TransCanada's proposed flow split.

Union submitted that over the 2017 to 2020 time period, Union's proposed flow split results in savings of $30.8 million compared to the cost of TransCanada's proposed flow split. Moreover, Union submitted that excluding fuel cost, its proposed flow split is the least cost option over the 2017 to 2020 period, resulting in $86.4 million in savings, and $143.2 million in savings over the entire term. Union argued that Mainline shippers should not be required to absorb higher costs payable to a TransCanada affiliate when a more economic means is available.

TransCanada's Reply

TransCanada stated that it provided evidence on the expected flow split and TBO contracting to demonstrate the net benefits associated with the Dawn LTFP service. Approval of recovery of TBO costs associated with Dawn LTFP service was not sought in the Application. In TransCanada's view, prudence of TBO contracting decisions is a matter for future toll applications when TransCanada applies to recover such costs. Notwithstanding this, TransCanada provided responses to intervenors' comments.

TransCanada submitted that EGDI's and Union's conclusions that 1,000 TJ/d on the Northern Route and 500 TJ/d on the Southern Route results in lower costs ignores the fact that this flow split is not feasible for 1 November 2017, when 90 per cent of Dawn LTFP contracts commence, wrongly presumes the same negotiated rate for GLGT TBO, and suggests that TransCanada could ignore contractual commitments to transfer Mainline assets to the Energy East project.

In response to Union's submission that the economic analysis of the flow split should be limited to the first three years of Dawn LTFP, TransCanada emphasized that it had committed to a 10-year term on GLGT, has secured a rate that is below GLGT's current and filed recourse rates, and secured contractual step-down rights after three years to adjust TBO requirements as necessary.

TransCanada disagreed with Union's submission that the $20 million difference between flow split options is insignificant. TransCanada reiterated that the $20 million value underestimates the difference between flow-split scenarios, because it assumes that the negotiated GLGT TBO rate would continue to apply in Union's scenario. In response to Union's submission on foreign currency risk, TransCanada submitted that since the filing of the Application, the $20 million difference between various scenarios has increased.

TransCanada rejected IGUA's position that serving Dawn LTFP service to a greater extent on the Northern Route was more economical and argued that it would not be possible to address the types of fundamental changes to existing services proposed by IGUA while still maintaining a 1 November 2017 commencement date.

In response to EGDI's submission that the Board should direct TransCanada to address prudence of TBO contracts in each subsequent Mainline toll application, TransCanada stated that such direction was unnecessary. TransCanada stated it will continue to address the basis of any contracting decision in future toll applications where it seeks to include recovery of such costs and that there was no reason to impose unique filling requirements on Dawn LTFP service.

2.6 Allocation of Costs, Revenues and Risks

Views of TransCanada

In TransCanada's view, it is reasonable for the Board to consider and approve the service now, and address matters of allocation of costs and revenues in subsequent tolls applications.

Mr. Reed submitted that it is reasonable to evaluate how the costs and revenues associated with Dawn LTFP service are treated for tolling purposes when other significant tolling issues are addressed, such as segmentation. The impact of Dawn LTFP can be considered with the other elements of the toll setting process that will be determined at that time.

Views of Participants

Centra

Drazen Consulting Group, Inc., who filed expert evidence on behalf of Centra, stated that it is important to know how the revenues and costs will be allocated in order to see how individual shippers like Centra are affected.

EGDI

EGDI submitted that although TransCanada has estimated that there will be a net revenue benefit of $2,011 million, it is uncertain which Mainline shippers will benefit, and if so, how much they will benefit, if at all. This brings into question whether the Dawn LTFP service toll is just and reasonable since shippers in the Eastern Triangle could be allocated more incremental costs than revenues from a service they are not contracting for.

Union

In Union's view, the allocation of costs and revenues needs to be addressed in this proceeding. Union stated that the allocation of costs and revenues must be considered in determining whether the proposed Dawn LTFP service is in the public interest. Without understanding the allocation of costs and revenues, including net revenues that provide benefits to existing shippers, it is difficult to determine just how unbalanced TransCanada's Dawn LTFP service proposal may be.

Union argued that the Board should impose as a condition of approval, a direction that the benefits derived from the new service be shared proportionately and equitably amongst those bearing the costs and risk associated with the facilities and the services actually used to furnish the new service, and who bear any new burdens.

TransCanada's Reply

TransCanada replied that Dawn LTFP service is about attracting and creating a net revenue pie that the Mainline would not realize absent this service. How exactly this net revenue pie will be sliced or allocated amongst shippers is a subject for future tolls applications, and does not need to be decided to conclude the net revenue pie is beneficial overall to the Mainline.

2.7 Post-2020 Segmentation

Views of Participants

EGDI

EGDI asserted that Dawn LTFP service should only be approved until 2020 given the uncertainties that are affecting the ability to forecast the impacts and benefits. This will ensure that the Board and Mainline shippers will be able to assess the toll impacts and benefits from Dawn LTFP service in the context of the forthcoming fundamental changes to the Mainline toll and service design.

EGDI submitted that if implemented, Dawn LTFP service will use all three segments of the Mainline, yet it is unclear whether the service will be consistent with the segmentation of the Mainline and any new suite of services designed to function on a segmented Mainline. Additionally, the term appears to insulate Dawn LTFP shippers from the uncertainty in Mainline service design and it is unclear whether or not other Mainline shippers will be similarly insulated.

In EGDI's view, this inconsistency with other segmented services could erode the benefits of standardization and simplification of segmenting the tolling and service designs. In this way, the Dawn LTFP service could hamper transition to a fully segmented Mainline and therefore impact the service model that is ultimately implemented.

The uncertainty related to long-haul contracting post-2020 and the uncertainty in Mainline capacity associated with the transfer of facilities to the Energy East project have significant implications as to how the Dawn LTFP service should be implemented post-2020. In particular, it has implications in respect of what allocation of Mainline and TBO capacity should be used between the Northern and Southern Routes.

EGDI argued that by proposing a fixed toll for the 10-year service, TransCanada is asking this Board to bind future Board panels and fetter discretion in respect of Part IV applications related to the Mainline. Fettering the Board's discretion would occur immediately, on the 2018 to 2020 toll review.

Union

Union also asserted that Dawn LTFP service should not be approved beyond 2020. In Union's view, Dawn LTFP service should be fully reviewed as part of the Mainline segmentation proceeding, and be evaluated alongside all other Mainline services, to ensure balance is achieved between the interests of TransCanada and all Mainline shippers.

Union submitted that the proposed Dawn LTFP service will transcend the pre- and post-segmentation period, but will be immune to any impacts associated with potentially fundamentally different segmented services and tolling frameworks post-2020. Union submitted that this benefit is not available to any existing Mainline shipper. As well, since the post-2020 framework is unknown, it is impossible to evaluate whether the service is in the overall public interest and that its tolls are just and reasonable and not unduly discriminatory over for the entirety of the proposed term.

TransCanada's Reply

TransCanada replied that EGDI and Union's proposals to limit approval of Dawn LTFP to 2020 should be rejected, because:

- Any change to the service would risk upsetting the balance that was achieved through negotiations, and would jeopardize all of the benefits;
- Competing pipelines (such as Nexus and Rover) are offering certainty of service through long term contracts;
- The revenues associated with the 1.5 PJ/d would be lost post-2020;
- There is no certainty that the current market opportunity would exist if implementation is delayed to 2021; and
- It would significantly hamper TransCanada's ability to respond to the competitive realities it faces now.

TransCanada argued that the Board is clearly able to approve a service with a long-term fixed toll. TransCanada provided examples of the Board approving such services: the 10-year toll for Herbert LTFP service; multi-year tolls in RH-003-2011 and RH-001-2014; and multi-year fixed price service in RH-003-2011. The Board also used term-differentiated tolls as an example of a new and innovative service proposal in RH-003-2011.

TransCanada argued that it is not asking the Board to fetter its discretion in regard to the toll levels for other services, or for the allocation of costs, revenues, or risks associated with Dawn LTFP. These are all matters that future Board panels will rule on.

2.8 2018 to 2020 Dawn LTFP Revenues

Views of TransCanada

TransCanada stated that the treatment of all revenues and costs associated with the implementation of Dawn LTFP service for the 2018 to 2020 period will be addressed in the upcoming 2018 to 2020 tolls application.

Views of Participants

Centra

Centra stated that the Board should include a condition that the Mainline's 2018 to 2020 revenue requirement be offset by the full amount of annual Dawn LTFP net revenue for the corresponding years, such that existing Mainline shippers will commence to realize the benefits at the earliest date possible.

Union

Union stated that it is logical that given the upcoming toll review, the full net revenue of the proposed Dawn LTFP service should be used to offset the Mainline revenue requirement for the 2018 to 2020 period and should not be allocated to the Long-Term Adjustment Account for disposition at some point post-2020. The Board could direct TransCanada in this proceeding to include the full net revenue of the proposed Dawn LTFP service over the 2018 to 2020 period to lower Mainline tolls for existing shippers in order that shippers commence realizing benefits as early as possible.

TransCanada's Reply

TransCanada submitted that if the service is approved in sufficient time, Dawn LTFP net revenues would be reflected in the 2018 to 2020 toll review.

2.9 Proposed Abandonment Surcharge

Views of TransCanada

TransCanada proposed that the Dawn LTFP abandonment surcharge be set to the amount applicable to FT service between Empress and Emerson 2. TransCanada further submitted that this amount would be tracked separately for the purpose of invoicing and setting aside into the Mainline Abandonment Trust. TransCanada noted that there is currently no basis defined for the Dawn LTFP abandonment surcharge and justified its proposal through two reasons:

- Transportation to Dawn would more likely occur on a segmented basis where Mainline service would be used between Empress and Emerson 2 and supplemented by non-Mainline transportation from Emerson 2 to Dawn; and
- Relative to their respective total transportation costs, the abandonment surcharge for FT service between Empress and Emerson 2 is proportionally equal to the abandonment surcharge for FT service between Empress and Union SWDA.

Further, TransCanada submitted that Dawn LTFP service would generate an abandonment contribution equal to 28 per cent of the 2017 Annual Contribution Amount and could result in a decrease of approximately 21 per cent to the level of abandonment surcharges for all Mainline transportation services for 2017.

Views of Participants

EGDI

EGDI was the only Intervenor that raised concerns specific to TransCanada's proposed abandonment surcharge. EGDI submitted that the Dawn LTFP abandonment surcharge is *prima facie* unjustly discriminatory, since all Mainline transportation services on the Empress to Union SWDA path pay the same abandonment surcharge and the Dawn LTFP service abandonment surcharge will have a different and lesser abandonment surcharge. EGDI suggested that the surcharge should be calculated in a manner that is fully consistent with the MH-001-2013 Decision, which would be initially be set at $0.1757/GJ/d, which is the surcharge on the Empress to Union SWDA path. This would result in an increased total Dawn LTFP toll of $0.8761/GJ/d, which would change over time as the firm abandonment surcharges are adjusted.

TransCanada's Reply

TransCanada disagreed with EGDI and submitted that its abandonment surcharge methodology is not unjustly discriminatory. TransCanada stated the abandonment surcharge will continue to follow the methodology approved in MH-001-2013, except that the distance will reflect the Empress to Emerson 2 distance of haul.

TransCanada argued that the MH-001-2013 Decision was intended to apply in general and did not contemplate services like Dawn LTFP service. Further, TransCanada stated that the Board is not bound by the MH-001-2013 Decision and is free to establish different abandonment surcharge treatments for new services.

TransCanada submitted that, should the Board accept EGDI's proposal, modification to the service increases the toll level and removes the certainty of a fixed toll, both fundamental aspects of Dawn LTFP service. The proposal would jeopardize all of the benefits of Dawn LTFP service, including the estimated incremental contribution in excess of $380 million to the Abandonment Trust from Dawn LTFP shippers over the term of the Dawn LTFP contracts.

2.10 2017 Open Season

Views of TransCanada

TransCanada stated that Dawn LTFP service was offered to all prospective shippers through an open season held from 22 February 2017 to 9 March 2017 (2017 Open Season). TransCanada explained that all bids received in the 2017 Open Season were accepted, which resulted in 23 shippers executing 27 Dawn LTFP service contracts.

Views of Participants

EGDI

EGDI argued that the 2017 Open Season was fundamentally flawed, contrary to the tenets of open access, and offended natural justice due to the forced regulatory support and non-opposition clauses included as conditions:

- to not oppose the ongoing applicability of pricing discretion for IT and STFT until the end of their respective Dawn LTFP service terms; and
- to support TransCanada in any regulatory proceeding required to implement or continue Dawn LTFP service.

EGDI argued that, as these shippers were not permitted to meaningfully participate in the proceeding, the Board does not have an adequate record before it to fully assess the Application. The Board therefore cannot conclude the Application is in the public interest and the associated tolls and abandonment surcharge are just and reasonable and not unjustly discriminatory.

EGDI requested that the Board require TransCanada to hold a new open season for the Dawn LTFP service to provide shippers, who would have bid for the service except for these forced regulatory support requirements, the opportunity to do so. This new open season should not include the requirements to support TransCanada in any regulatory proceeding required to implement or continue the Dawn LTFP service and not oppose pricing discretion for IT service and STFT service. EGDI argued that these requirements should be struck from the existing Dawn LTFP service contracts. EGDI submitted that the Board has previously disallowed forced regulatory support clauses in the Trans Mountain Expansion open season and referred to two Board letters.[2]

Union

Union argued that had captive shippers been permitted to participate in consultations to design the new service, they might have been able to secure attractive features worthy of bidding into an open season. In Union's view, the point is the process leading up to the open season was not inclusive; it was flawed, which directly affects the legitimacy of the open season itself.

CAPP

CAPP argued that there has been no suggestion from Union or EGDI that they had any interest in bidding in this open season or contributing in any way by whatever means to the formation of this service. In CAPP's view, the critical thing is that this is a negotiated service. It is the negotiation of the service that led to the open season. In the absence of a successful negotiation around the service, there would have been no open season. The open season is what did make it, ultimately, a fully-inclusive process for anyone who had a desire to access western Canadian gas.

TransCanada's Reply

TransCanada replied that it would be unreasonable and extremely detrimental to the Mainline and its shippers if the Board required TransCanada to conduct a further open season at this stage. TransCanada argued that this flawed 2017 Open Season argument should not be accepted for the following reasons:

- The 2017 Open Season fully complied with the Board's expectations regarding open access, that shippers are entitled to know the conditions of access to a pipeline system in advance of contract negotiations.

[2] Board Letters dated 13 February 2012 and 17 August 2012.

- The cited Trans Mountain case involved a new capacity open season for a common carrier oil pipeline, which was the only way for the shippers to acquire access. In contrast, the open season for Dawn LTFP service was for a new customized service utilizing existing capacity on a contract carrier pipeline.

- Dawn LTFP shippers have gone out of their way to advocate for the service's approval.

- If any party wanted Dawn LTFP service but was unwilling to agree to the terms in the bid form, they would have been free to submit a complaint to the Board just like Suncor did in the Trans Mountain case.

- Regulatory support commitments are not contained in the Dawn LTFP contracts, but rather the bid form, which TransCanada is not seeking Board approval for. The Board previously acknowledged that it has no jurisdiction to enforce these types of contractual commitments in its RH-001-2014 Decision.

- A similar commitment was agreed to in the Mainline Settlement Agreement.

In TransCanada's view, if any party actually had concerns with the open season, they should not have waited until final argument in this proceeding to raise these concerns. TransCanada also submitted that there is no basis to suggest that this proceeding has violated the requirements of natural justice.

3. Views of the Board

Need for Dawn LTFP Service

The Board finds that a competitive Mainline service offering is required to attract long-term, long-haul contracts from WCSB producers seeking access to the Dawn hub. Current FT service tolls to Dawn are economically prohibitive for producers, and producers will not contract for services when it is not economic to do so. This conclusion is supported by the evidence that there are currently no Empress to Dawn FT contracts in place, and that Dawn LTFP shippers do not currently hold any firm service on the Mainline.

The Board notes that there are Empress to Emerson 2 FT contracts that, in combination with GLGT service, ultimately serve the Dawn market. These contracts are largely held by marketers, are entered into depending on market conditions and have short-term durations. In fact, the majority of these contracts have terms that expire in 2017, but may be subject to renewals. The Board is of the view that increased competition from the Utica and Marcellus production areas and the approximate 2.5 PJ/d of additional pipeline capacity coming into the Dawn market through the Nexus and Rover pipeline projects will likely largely displace Mainline and GLGT contracts between Empress and Dawn. The Board was not persuaded by Union's position that TransCanada does not need the Dawn LTFP service to compete, because of historical flows and revenues on the Empress to Emerson path. In the Board's view, significant competitive forces should be responded to in a proactive manner.

The Board was also not persuaded by Union's assertion that Dawn LTFP service is not needed because TransCanada can incent WCSB volumes using its IT pricing discretion. In the Board's view, known long-term firm contracts provide significant benefits for the Mainline relative to discretionary services, including toll certainty and stability. As well, Dawn LTFP shippers sought to establish toll certainty for themselves, which would not be achieved through a reliance on IT service. The Board is of the view that discretionary services are not a substitute for firm services.

In previous decisions, the Board has provided TransCanada with tools to meet competition with the expectation that TransCanada should meet market forces with market solutions.[3] While the Mainline has returned to relative financial health in recent years, the trend of declining long-haul contracting is clear, and ongoing issues that necessitate proactive solutions remain. The Board is of the view that Dawn LTFP service is an innovative service that uses underutilized capacity to attract long-term, long-haul contracts from Empress to Dawn, for the benefit of the Mainline and its shippers.

For these reasons and the reasons that follow, the Board has concluded that Dawn LTFP is an appropriate competitive response and has approved the service and tolling methodology as applied for.

Benefits and Impacts of Dawn LTFP Service

The Board finds that Dawn LTFP will provide substantial benefits to the Mainline and its shippers. The estimated $2 billion of total net revenue associated with Dawn LTFP service will significantly reduce the share of the revenue requirement to be recovered from other shippers during its term. For example, TransCanada estimated the reduction to forecasted revenue requirements for 2018, 2019 and 2020 to be 7.3 per cent, 16.5 per cent and 18.6 per cent, respectively, and that tolls would be directionally reduced.

The Board heard concern from several Intervenors that costs associated with providing Dawn LTFP service may be higher than forecasted by TransCanada, which would negatively impact the forecasted net revenues. The Board finds that TransCanada has structured its GLGT TBO, the largest cost involved, in a manner that minimizes this risk. In the event Dawn LTFP shippers decide to reduce contract durations or volumes, TransCanada has the ability to similarly reduce its GLGT TBO quantity. The Board considered that even if all Dawn LTFP shippers reduce their contract terms to the minimum of five years, substantial net benefits, estimated at $1.1 billion, would still occur. The Board notes that the GLGT TBO rate is capped for the 10-year term at $8.89 US/Dth/month, providing additional cost certainty. While other costs may be subject to uncertainty, the Board notes that TransCanada will have an opportunity to increase net revenues relative to current forecasts as it reassesses its TBO arrangements over time.

The Board also heard concern from Intervenors that TransCanada has underestimated the cost of displaced revenues. Since the cost of displaced revenues requires forecasting potential future contracting behaviour, it is inherently difficult to estimate with precision. However, the Board generally agrees with TransCanada that absent Dawn LTFP service, Empress to Emerson FT

[3] See the RH-003-2011 Reasons for Decision, March 2013, page 3.

contracts will be displaced as additional supply comes to Dawn through the Nexus and Rover pipelines. The Board also notes that even with Intervenor forecasts on Empress to Emerson FT contracts in the absence of Dawn LTFP, there would still be significant net revenues resulting from Dawn LTFP service.

It is a key consideration for the Board that Dawn LTFP service provides a benefit to the Mainline. While the Board recognizes the inherent estimation risk to forecasted costs, the Board concludes that this risk has largely been mitigated by TransCanada, such that there is reasonable certainty that a significant net revenue benefit will occur. However, to allow the Board and shippers to track the net revenue benefit of Dawn LTFP service, the Board has decided to require TransCanada to separately track and report annually the actual costs and revenues related to Dawn LTFP service. TransCanada is directed to consult with its shipper group to determine an appropriate format for this reporting, which may be filed as part of its quarterly surveillance reports submitted to the Board.

Several Intervenors indicated the importance of addressing the allocation of costs, revenues and risks in order to understand the actual benefits accruing to shippers from Dawn LTFP service. In the Board's view, matters of allocation are more appropriately addressed on a system-wide basis, in consideration of all Mainline costs and revenues. Future toll proceedings will require the allocation of Dawn LTFP related costs and revenues to result in just and reasonable tolls, and tolls and services that are not unjustly discriminatory. The Board expects that the benefits derived from Dawn LTFP service will be shared in a fair manner amongst Mainline segments and users.

As well, the Board agrees with TransCanada that the merits of IGUA's proposal to include unallocated TBO capacity revenues in the discretionary miscellaneous revenues forecast are more appropriate for evaluation during the 2018 to 2020 tolls application.

The Board considered the impacts of Dawn LTFP service on the Emerson market. The Board heard concerns from Centra and IGUA regarding a reduction of liquidity at Emerson, higher commodity price and supply risk and the harm caused to Centra in the form of potentially higher costs. The Board is of the view that with the implementation of the Dawn LTFP service, supply at Emerson will continue to be available, but commodity pricing may change relative to a scenario without Dawn LTFP service. For the reasons discussed by Centra, the Board agrees that Dawn LTFP's displacement of Empress to Emerson 2 FT service contracts is likely to result in higher commodity prices at Emerson 2.

However, the Board also notes that TransCanada's RH-001-2014 Compliance Filing submitted in March 2015 forecast a decrease of Empress to Emerson billing determinants. Delays in the in-service dates of competing infrastructure projects resulted in higher than forecasted contracts to Emerson, and in the Board's view, this largely contributed to acceptable levels of liquidity at Emerson since 2015. The short-term nature of these contracts demonstrates to the Board that concerns related to liquidity at Emerson are not recent and that the likelihood of lower throughputs on this path were known in advance.

In any case, the Board is not persuaded that Centra will be unable to acquire supply at Emerson at any price. In determining Part IV matters, the Board is required to set tolls that are just and reasonable and not unjustly discriminatory. In the present case, higher commodity prices at Emerson were not a determining factor for the Board given the benefits of the service to the Mainline and its shippers as a whole. The Board notes that commodity prices are an outcome of several factors, transportation costs being only one factor amongst many.

The Board also notes other benefits of Dawn LTFP service, including providing WCSB producers with economical access to Northeastern U.S. and Eastern Canadian markets and the opportunity to maintain and grow natural gas production in Western Canada.

Requirements of the NEB Act

Part IV of the NEB Act prescribes the Board's mandate for traffic, tolls and tariff matters. Under Section 62, all tolls must 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.

To determine whether tolls are just and reasonable and not unjustly discriminatory, the Board has historically relied on fundamental tolling principles,[4] including the principles of cost-based/user-pay tolls, no acquired rights, and economic efficiency.

Just and Reasonable Tolls

The Board finds the Dawn LTFP toll to be just and reasonable. In making its determination, the Board considered its established tolling principles in the context of the competitive circumstances facing WCSB producers and the Dawn market. The $0.77/GJ/d Dawn LTFP toll is a negotiated rate, and not determined on a cost-of-service basis. While the cost-based/user-pay principle is an important principle that helps guide the Board under Part IV of the NEB Act, the competitive circumstances involving the Dawn hub justify the negotiated approach. Producers require an economic toll to access Dawn. By offering the negotiated toll, significant volumes will be attracted and net revenues, estimated at $2 billion, will be generated that would otherwise not occur. The Board is of the view that, while the Dawn LTFP toll represents a departure from the cost-based/user-pay principle, economic efficiency will be promoted by Dawn LTFP service through increased system utilization and the net lowering of existing Mainline tolls.

The Board recognizes that the Dawn LTFP toll does not recover the entire cost of providing service. However, the Board was not persuaded by the argument that Dawn LTFP service must be denied because FT shippers would be subsidizing the service. Without this competitive service offering, the Mainline would lose out on an estimated $2 billion of net revenues, to the detriment of existing shippers. Clearly, an estimated $2 billion contribution towards the recovery of existing Mainline costs is a better scenario than foregoing that contribution altogether.

[4] A summary is found in the RH-1-2007 Reasons for Decision dated July 2007, Chapter 3, Pages 21-23.

The Board also considered that Dawn LTFP was negotiated between arm's length entities. In the Board's view, this represents fair market value of the service in this circumstance. The Board is not of the view that the toll must be determined on basis differentials. Rather, the Dawn LTFP toll may be set at a market-determined level that reflects the value of that service to shippers.

No Unjust Discrimination

The Board finds that the Dawn LTFP toll and service are not unjustly discriminatory. In the Board's view, the circumstances under which Dawn LTFP service are provided are not substantially similar as other services. Unique competitive pressures exist at the Dawn hub that warrant a different toll and a different service in order to attract incremental volumes and revenues to the Mainline.

The Board also concludes that Dawn LTFP service is different traffic than that of other services, such as FT service. Differing service attributes include the 10-year term, the lack of alternate receipt point and diversion rights on the Canadian Mainline, and the lack of renewal rights.

Accordingly, the Board finds that Dawn LTFP service can be charged at a different rate than other services, such as FT service, without offending the prohibition against unjust discrimination set out in section 67 of the NEB Act.

As well, the Board is of the view that the fact that Dawn LTFP service has differing attributes than FT service does not mean it is unjustly discriminatory. Dawn LTFP service is a distinct service from other services, including FT service, and has been designed to respond to a specific competitive circumstance.

With regard to the MH-001-2013 Decision, the Board remains of the view that distance is an important determinant of abandonment costs. The Board notes, however, that Dawn LTFP is a unique service designed to attract new volumes on the Mainline and was not contemplated during the MH-001-2013 proceeding. Therefore, in this specific circumstance, the Board is of the view that it is reasonable for the Dawn LTFP toll to include an abandonment surcharge proportionally similar to FT service from Empress to Emerson 2. The Board finds that the proposed Dawn LTFP abandonment surcharge does not constitute unjust discrimination given the unique circumstances that have resulted in Dawn LTFP service.

The Board notes that the estimated $380 million contribution to the abandonment trust generated by Dawn LTFP service will significantly reduce the abandonment surcharge for all other Mainline services. For example, had the abandonment contribution resulting from 1.5 PJ/d of annual Dawn LTFP service been accounted for in 2017, it would have decreased the 2017 abandonment surcharges by approximately 21 per cent.

Modifications to Dawn LTFP

The Board rejects the numerous changes to the Dawn LTFP service suggested by Intervenors. The Board reviewed the suggested changes in the context of Dawn LTFP service being a negotiated package between a group of producers and TransCanada. While the Board has the ability to modify terms of a service in any application, the Board is of the view that doing so to a negotiated package would undermine the negotiation that occurred. The Board has decided to treat the Dawn LTFP Application as a package deal and whether that package results in tolls that are just and reasonable and service and tolls that are not unjustly discriminatory. The specific issues which prompted the requests for service attribute changes do not warrant a rejection of the package as a whole. As well, since Dawn LTFP service is a unique service offered under different circumstances compared to other services, the Board finds that there is no unjust discrimination that results from the Dawn LTFP service.

IGUA requested that diversion rights be added as a feature of Dawn LTFP service. The Board is of the view that allowing diversion rights would significantly change the nature of the service. Dawn LTFP shippers could serve markets along the Mainline that would otherwise be served by FT service. The Board is of the view that this would negatively impact Mainline revenues. Requests by IGUA that additional Mainline Secondary Delivery Points be added to the Dawn LTFP service are rejected for the same reasons.

Union requested that Secondary Delivery Points from Dawn LTFP service be granted to all Mainline shippers, or alternatively be eliminated from Dawn LTFP service. The Board is of the view that Dawn LTFP service attributes do not need to be identical to FT service attributes. Dawn LTFP has been designed to reflect the needs of WCSB producers, and Secondary Delivery Points were requested from producers as part of their negotiations with TransCanada. For this reason, the Board rejects Union's proposal to eliminate Secondary Delivery Points from the Dawn LTFP service. In the event that Union seeks access to Secondary Delivery Points for FT service, the Board is of the view that this should be addressed outside of the Dawn LTFP proceeding.

EGDI proposed to change the abandonment surcharge for Dawn LTFP, such that the total Dawn LTFP toll would increase to $0.8761/GJ/d and become a variable toll. In the Board's view, this is a significant change to the negotiated terms, and would jeopardize the net benefits achieved through Dawn LTFP service. As previously discussed, the Board finds TransCanada's proposed abandonment surcharge methodology to be just and reasonable and not unjustly discriminatory. The Board rejects EGDI's proposal.

The Board rejects the proposals by Intervenors to approve Dawn LTFP service only to 2020. The future segmentation of the Mainline has been approved in principle and the RH-001-2014 Reasons for Decision allows for a transition towards a segmented tolling model. However, the RH-001-2014 Settlement applied to existing Mainline services. In the Board's view, there are no provisions in the RH-001-2014 Settlement that preclude new long-term fixed price services such as Dawn LTFP service. The manner in which Dawn LTFP fits into an unknown future segmentation model will be the subject of future toll proceedings.

The Board also finds that approval of Dawn LTFP service for a 10-year term does not bind future panels. At all times, tolls must be just and reasonable, and tolls and services must not be unjustly discriminatory. The determination of whether future unknown circumstances result in unjust tolls or unjust discrimination is appropriately addressed by future Board panels.

Prudence of TransCanada's Contracting Decisions

Consistent with Board direction in the RH-4-93 and RH-003-2011 Decisions, the Board does not require TransCanada to seek pre-approval before it enters into TBO agreements. Prudence reviews are appropriately undertaken when TBO costs are applied to be recovered from Mainline shippers in future toll applications.

The Board expects TransCanada to optimize net revenue benefits for the Mainline and its shippers over the term of Dawn LTFP, and this is largely affected by GLGT TBO costs. Future optimized flow-splits and TBO contract quantities will depend on a number of factors, including long-haul contracting decisions and available capacity over the Northern Route. In future toll applications, the Board may disallow any costs found to have been imprudently incurred.

In light of the significant volumes of Dawn LTFP service and the affiliate relationship with GLGT and GLC, the Board expects TransCanada to provide sufficient information in future toll applications for interested parties to assess the prudence of its TBO arrangements related to Dawn LTFP service. Since TransCanada has the best information that drives its decisions on TBO quantities, the Board finds it reasonable for TransCanada to share this information with interested parties in its toll applications. For these reasons, the Board has decided to require TransCanada to include, in all future toll proceedings seeking to recover TBO costs related to Dawn LTFP, disaggregated information to support the prudence of Dawn LTFP related TBO costs. This should include information on TBO contracts, TBO costs, as well as Dawn LTFP contract demand and available capacity on relevant Mainline segments. Further, this information should be supported by a detailed explanation, including any key assumptions, of TransCanada's assessment for determining its TBO contracts associated with Dawn LTFP service.

Treatment of 2018 to 2020 Dawn LTFP Revenues

The Board is of the view that forecasted Dawn LTFP net revenues for the 2018 to 2020 period should be applied against the revenue requirements in those years. In the Board's view, the expedient approval of the Application (with reasons to follow) has been issued in sufficient time for TransCanada to include these forecasts in its application for 2018 to 2020 tolls. This will allow other Mainline shippers to realize the benefits of Dawn LTFP service as soon as possible.

2017 Open Season

The Board disagrees with EGDI's argument that the 2017 Open Season was fundamentally flawed and contrary to the tenets of open access.

Regarding open access, the Board expects that shippers are entitled to know the conditions of access to a pipeline system in advance of contract negotiations. This knowledge allows market participants to make informed supply and market decisions ahead of contracting. In the Board's view, the 2017 Open Season that was conducted for Dawn LTFP service did comply with this expectation. While the terms and conditions of Dawn LTFP service were negotiated between TransCanada and WCSB producers, the Board agrees that all potentially interested parties were made fully aware of the terms of service and were given an opportunity to bid for it. Dawn LTFP service is a negotiated service, and accordingly the Board does not view a regulatory support commitment to be inappropriate in this circumstance. The Board logically expects parties that have reached a negotiated agreement to support the negotiated terms which they have collectively agreed to. The Board is of the view that the circumstances of this case are also very different than the circumstances that prevailed in the referred Trans Mountain common carrier oil pipeline case. The Board considered the fact that FT service is available to any shipper unwilling to agree to the negotiated Dawn LTFP terms.

The Board also rejects EGDI's request for a new open season for Dawn LTFP service. This request, which was made on the last day of argument, was not supported by any indication that EGDI intended to contract for the service. As well, had a party intended to contract for Dawn LTFP service but had concerns with the open season process, the Board would have expected that party to raise concerns much earlier than in final argument.

The Board also disagrees with Union's argument that the process leading up to the 2017 Open Season was flawed. Dawn LTFP service has been designed to respond to specific competitive pressures, and attempting to design Dawn LTFP service to meet the needs of all Mainline shippers would ultimately undermine the purpose of the service.

Finally, the Board finds that the requirements of natural justice were not violated in this proceeding. There are two basic requirements for natural justice. First, a party must have an adequate opportunity to be heard before a decision is made that may affect that party's interest, which includes a party's right to know of the case to be met and having the ability to respond to it. Second, the decision-maker must be an independent and unbiased decision-maker. No Intervenor has argued that the latter requirement was somehow breached. This leaves the Board to understand that some Intervenors are of the view that, somehow, they did not have a proper opportunity to be heard, or know of the case to be met and have the ability to respond to it. Intervenors have alleged an incomplete record to support this argument. The Board agrees with TransCanada that all interested parties have known about the key terms of Dawn LTFP service since the 2017 Open Season last spring. Moreover, all interested parties were able to read the notice of intent to file an Application and the Application itself, and were therefore able to know what relief was being requested. In this proceeding, Intervenors were given the right to ask questions, compel further answers, produce evidence and provide final oral argument. In the Board's view, Intervenors had ample procedural opportunities to understand the evidence, test it and rebut it, which demonstrates the fairness of this proceeding.

As a result, the Board agrees with TransCanada that there is no basis in this case to suggest that Intervenors did not know the case they needed to meet in this proceeding, or that this proceeding has violated the requirements of natural justice.

Decision

The Board approves the Dawn LTFP service Application as filed.

The Board directs TransCanada to separately track and report annually the actual costs and revenues related to Dawn LTFP service and to provide, in all future toll proceedings, disaggregated information to support the prudence of Dawn LTFP service-related TBO costs (as further instructed in these Reasons).

4. Disposition

The foregoing constitutes our Reasons for Decision in respect of the Application heard by the Board in the RH-003-2017 proceeding.

R.R. George
Presiding Member

L. Mercier
Member

J. Gauthier
Member

Calgary, Alberta
November 2017