



LETTER DECISION

File OF-Tolls-Group1-T211-2011-04 06
29 October 2013

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Dear Ms. Ciccaglione, Mr. Coulbeck, Mr. Wolnik and Mr. Miller:

York Energy Centre LP and Goreway Station Partnership Application dated 3 September 2013 for Review and Variance/Complaint made in regard to the Board's RH-003-2011 Decision (Review Application)

On 3 September 2013, York Energy Centre LP (York) and Goreway Station Partnership (Goreway) filed the Review Application with the National Energy Board (Board). York and Goreway requested that the Board:

- Review and then vary the RH-003-2011 Decision (the Decision) to reduce the multi-year firm transportation short-notice (FT-SN) tolls from Union Parkway Belt to Schomberg #2 Central Delivery Area (CDA) and to Goreway CDA to a level not greater than the 2010 tolls;¹
- In the alternative, make an order reducing York's and Goreway's tolls to a level not greater than the 2010 tolls; and
- Make York's and Goreway's tolls interim pending disposition of the Review Application.

¹ In this letter decision FT-SN tolls for York's contract from Union Parkway Belt to Schomberg #2 CDA, and Goreway's contract from Union Parkway Belt to Goreway CDA, will be referred to as "York's and Goreway's tolls".

York and Goreway framed the Review Application as an application made pursuant to sections 12(1)(b), 20, 21(1), 59 and 62 of the *National Energy Board Act* (the Act) and section 44 of the *National Energy Board Rules of Practice and Procedure, 1995* (Rules) to review and vary the Decision, and alternatively, as a complaint made pursuant to sections 12(1)(b), 20, 59, 62, 65 and 66 of the Act.

York and Goreway submitted that the tolls for their contracted paths have increased since 2009. They indicated that the Decision tolls are 21 per cent higher for York and 37 per cent higher for Goreway than the 2011 Final and 2012 Interim Tolls whereas the Empress to Dawn toll increased only 4 per cent over the final approved 2010 tolls. They submitted that the increases exacerbate an already unacceptable situation under which toll levels have increased precipitously since 2009 and in York and Goreway's opinion constitute rate shock. York and Goreway submitted that, since 2009, the implied and actual tolls for York and Goreway have increased 100 per cent and 154 per cent respectively and cannot be considered just and reasonable.

York and Goreway referred to the Decision, which indicated that tolls cannot continue to increase in response to throughput declines, and noted that they continue to face toll increases for eastern short-haul service. York and Goreway pointed out that they have been adamant and consistent in their opposition to increasing Mainline tolls.

York and Goreway submitted an analysis that indicated that under the Decision, tolls for paths over 170 km were reduced, while tolls for paths less than 170 km increased, when compared to the 2011 Final and 2012 Interim Tolls.

York and Goreway submitted that they satisfy the requirements of section 44(2)(b) of the Rules necessary to trigger a review of the Decision because:

1. The magnitude of York's and Goreway's toll increases is a new fact that was not known to the Board when the Decision was rendered; and
2. The Review Application raises a doubt as to the correctness of the Decision insofar as the Board increased York's and Goreway's tolls without knowing the magnitude of the increase and without having used informed judgment.

York and Goreway submitted that to exercise informed judgment, the Board must address its mind to the potential toll levels or range of toll levels that would result from any tolls decision it makes to consider and determine whether all the resulting tolls are just and reasonable, having regard to all proper considerations the Board believes are applicable in the circumstances of a particular case.

York and Goreway submitted that it is not clear from the Decision that the Board knew the magnitude of the increases to tolls for short distance paths. It submitted that the Board did not have TransCanada's tolling model from which it could have reasonably estimated the potential tolls that would result from the Decision. Further, they submitted that the exercise of the Board's discretion must involve informed judgment whereby the Board has a reasonable appreciation of what toll levels result from a tolls decision.

Finally, York and Goreway submitted that the actual tolls constitute new evidence that has arisen since the close of the original proceeding. They suggested that the new evidence raises the question that, if the Board had before it information showing the magnitude of the increases for the most affected short-haul tolls, would it have made adjustments to the Decision to lessen the toll impacts? York and Goreway believe that the toll increases must be an unintended consequence of the Decision, because the tolls impose too many of the costs of underutilization due to competition on remaining shippers during the time period in which tolls are fixed which they submitted is not consistent with the Board's objective.

Decision

The Board has decided to dismiss the Review Application in its entirety. The Review Application does not raise a doubt as to the correctness of the Decision; substantiate any ground that could support a complaint; or provide any ground capable of fixing York's and Goreway's tolls at 2010 levels.

In the Decision, the Board approved TransCanada's proposed changes to how costs are allocated on the Mainline. Although the Board was not aware of the precise magnitude of the increase, it expected that York's and Goreway's tolls would increase from 2011 Final tolls. Evidence before the Board indicated that, if the cost allocation changes were approved, shorter haul shippers would pay a greater share of costs driving their tolls higher. However, decisions on other variables would drive tolls lower. The Board was aware that there would be an inflection point where tolls for longer paths would decline and the tolls for shorter paths – such as those used by York and Goreway – would increase.²

Notwithstanding York and Goreway's opposition in the RH-003-2011 proceeding,³ the Board found it appropriate for shippers of shorter distances, such as York and Goreway, to bear a greater proportion of Mainline costs, and to pay higher tolls that flow from that finding, than they had before the Decision was issued. Moreover, the Board expressly found that the Decision tolls were just and reasonable because they would reflect the approved cost allocation methodology and assign the recovery of costs appropriately across the Mainline.

Lowering York's and Goreway's tolls in a manner suggested in the Review Application would be contrary to the approved method of cost allocation and would inappropriately assign costs across the Mainline. The Review Application says nothing about how system-wide tolls could remain just and reasonable if the approved cost allocation were not followed.

Nothing in the Review Application raises a doubt as to the correctness of the Board's finding in respect of Mainline cost allocation. Rather, the Review Application suggests that the tolls that result from this finding should be varied, or changed because the Board did not know the precise amount that York's and Goreway's tolls would increase.

² Decision at page 90.

³ Decision at pages 94 and 95.

In most contested toll proceedings, as in the RH-003-2011 proceeding, the Board considers and makes findings on diverse proposals that may have many variables that affect tolls on each path of a pipeline. For example, findings may be required on, among other things, the cost of capital, depreciation rates, cost allocation, and allowable costs.⁴ The precise tolls that are charged by a company flow from these findings. Calculating tolls for every path⁵ based on every possible combination and permutation of variables would require an inordinate amount of effort, with very little gained in terms of information that is of material assistance to the Board.⁶ After a decision is issued, the company typically makes a compliance filing, detailing tolls for every path calculated pursuant to the Board's decision.⁷

Based on the foregoing, the Board is of the view that the precise toll levels arising from the Decision are not a new fact capable of raising a doubt as to the correctness of the Decision or a ground that is capable of supporting a complaint.



L. Mercier
Presiding Member



R.R. George
Member



J. Gauthier
Member

cc. Mr. Bernard Pelletier, TransCanada PipeLines Limited, Facsimile 403-920-2347
Ms. M. Catherine Davis, TransCanada PipeLines Limited, Facsimile 403-920-2347
Mr. C. Kemm Yates, Blake, Cassels & Graydon, Facsimile 403-663-2297
RH-003-2011 Interested Parties

⁴ This list is not intended to be anywhere near representative of the number of variables that the Board considered in the RH-003-2011 proceeding. For example, in that proceeding the Board considered the following variables, amongst many others: disallowance of costs, securitization, the length of the economic planning horizons for each Mainline segment, the transfer of accumulated depreciation, the extension of the Alberta System, the elimination of toll zones, the calculation of balancing fees and the elimination of the commodity toll.

⁵ For example, the Mainline has tolls for approximately 1600 paths.

⁶ See Ex. A16-1, Ruling #3, dated 24 February 2012, p. 1.

⁷ It is noteworthy that TransCanada made a compliance filing that set out the tolls that it would charge pursuant to the Decision. York and Goreway commented on the compliance filing. York and Goreway's comments in response to the compliance filing were similar to the comments made in the Review Application. The Board reviewed the compliance tolls, including York's and Goreway's tolls, and found them consistent with the Decision.