National Energy Board

Office national de l'énergie

File OF-Tolls-Group1-T211-2011-04-03
25 November 2013

To: Parties to Hearing Order RH-001-2013

Hearing Order RH-001-2013
TransCanada PipeLines Limited (TransCanada)
Application for Approval of Tariff Amendments

This letter provides the reasons for our decision in respect of TransCanada's 17 June 2013 Application for Approval of Tariff Amendments (Tariff Amendment Application). We released our decision on 10 October 2013 and indicated that our reasons for decision would follow.

1. Background

TransCanada filed the Tariff Amendment Application following the release of the National Energy Board's (Board) RH-003-2011 Decision. Most of the proposals made in the Tariff Amendment Application were first made in TransCanada's 1 May 2013 application to review and vary the RH-003-2011 Decision (Review Application).[1] The Board dismissed the Review Application, but in doing so deemed part of the Review Application requesting variances to the Canadian Mainline Gas Transportation Tariff (Tariff) as a separate application made under Part IV of the Act and directed TransCanada to re-file that part of the Review Application and to make any amendments to it as TransCanada saw fit.

In the Tariff Amendment Application, TransCanada requested Board approval to amend the Tariff:

- to modify provisions applicable to diversions and Alternate Receipt Points (ARPs);
- to eliminate the overrun feature of Storage Transportation Service (STS);
- to eliminate provisions that establish requirements for the timing and duration of open seasons for Short-Term Firm Transportation (STFT) service and Short-Term Short Notice (ST-SN) service; and
- to modify renewal provisions for Firm Transportation Service (FT), STS, Storage Transportation Service Linked, Firm Transportation Short-Notice service (FT-SN) and Short-Notice Balancing.[2]

[1] TransCanada did not propose Tariff amendments that would give it discretion to decline contract renewals in the Review Application.
[2] In this letter, "Firm Mainline Services" refers to any one or more of the following services: FT, STS, Storage Transportation Service Linked, FT-SN and Short-Notice Balancing.

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We heard the Tariff Amendment Application pursuant to the streamlined procedure set out in the RH-003-2011 Decision, and modified the streamlined procedure to allow for cross-examination. A number of parties participated in the hearing and opposed the Tariff Amendment Application in whole or in part. The oral portion of the hearing, consisting of cross-examination and reply argument, took place in Calgary, Alberta over nine days in September 2013.

2. Issues

2.1 Diversions and ARPs

Diversions and ARPs are features of FT, Non-Renewable Firm Transportation (FT-NR), Multi-Year Fixed Price (MFP) and FT-SN contracts. Diversions currently can be nominated to delivery points that are either upstream or downstream of the contracted delivery point, but not upstream of the contracted receipt point. ARPs currently can be nominated from receipt points that are downstream of the contracted receipt point, but not downstream of the contracted delivery point.

A shipper who has a contract for FT, FT-NR, MFP and FT-SN can use diversions and ARPs as part of its nominations for transportation on the same day. Diversions and ARPs have a service priority above Interruptible Transportation (IT) service and, in certain circumstances, are available at the same firm priority level as STFT service. Generally, only diversions and ARPs that result in a greater distance of haul are subject to a toll, which is based on the difference between the FT toll of the longer nominated path and toll of the contracted path.

Views of TransCanada

In the Tariff Amendment Application, TransCanada requested that the Board approve modifications to the Tariff that changes the methodology used to determine eligible diversions and ARPs (the Diversion Proposal). Under the Diversion Proposal, ARPs and diversions would be permitted within a shippers' primary contracted path. The primary contracted path would be the same path determined by the methodology used to determine tolls.[3] As a result of the Diversion Proposal, a shipper could access alternative points through diversions and ARPs only on the primary path that reflects the paid toll. The list of eligible ARP and diversion points for applicable contract paths will be posted on TransCanada's website, and updated infrequently, such as to reflect new receipt or delivery points or changes in system configuration.

TransCanada's made clear that its proposed Tariff amendments, including the Diversion Proposal, were required to enable it to effectively utilize the tools provided by the Board's RH-003-2011 Decision, and to meet the objectives of the RH-003-2011 Decision to maximize net revenues over the multi-year fixed toll period. TransCanada submitted that it remains short or in the hole with respect to the balance in the Long-Term Adjustment Account (LTAA) and that denial of approval of its proposed Tariff amendments, including the Diversion Proposal, will seriously undermine its ability to meet the objectives of the RH-003-2011 Decision.

[3] The current methodology used to determine all FT tolls is the shortest distance path from the applicable receipt point to the delivery point or load centre of the Distributor Delivery Area (DDA) using both the Mainline system as well as the Mainline's Transportation By Others arrangements on other pipelines.

TransCanada explained that the Diversion Proposal enhances the ability of the Mainline to generate revenues in two ways. First, it enhances TransCanada's ability to generate discretionary revenues because shippers wanting to access paths outside their contract path may purchase discretionary service from TransCanada. Second, FT revenues may increase because shippers will be encouraged to contract for the path over which they require firm service and, assuming the out-of-path diversion or ARP is longer than the contracted path, the corresponding FT toll will be higher. Using historical data,[4] TransCanada estimated that its revenue would increase $30 million to $40 million annually if the Diversion Proposal were adopted.

TransCanada contended that if the Diversion Proposal is not approved, shippers would have a significant incentive to contract for FT on short paths and change their receipt and/or delivery points outside of the contracted path (the short-path strategy). TransCanada stated that this short-path strategy allows shippers to circumvent the applicable IT and STFT pricing regime on the longer path and noted that, by accessing out-of-path diversions and ARPs, shippers receive a higher priority and possibly a lower toll than the toll they would be required to pay for IT service on that path. TransCanada contended that, in essence, these shippers have a valuable option for free, that is, the option for high priority, out-of-path service.

All else equal, TransCanada anticipated the Diversion Proposal would enhance the functioning of the secondary market[5] by aligning contracting incentives, and removing shippers' ability to implement the short-path strategy to the detriment of other shippers and TransCanada. TransCanada indicated that it seeks to maximize revenues from short-term services to provide a larger credit to the revenue requirement, reduce the Toll Stabilization Adjustment account (TSA) balance, and keep its future tolls as competitive as possible. In TransCanada's view, the Diversion Proposal enhances its ability to sell STFT and IT services in the secondary market by removing shippers' ability to circumvent the implementation of pricing flexibility for discretionary services.

TransCanada observed that the Diversion Proposal may or may not affect the liquidity in the secondary market. It submitted that the impact on liquidity will depend on a number of factors, including: (i) the paths for which shippers subscribe relative to the paths that are desired by others for STFT and/or IT, (ii) the periods for which those paths are desired and (iii) the amount of that contracted capacity to be sold by shippers in the secondary market. TransCanada suggested that the Diversion Proposal may increase liquidity if shippers lengthen their contract path and if shippers increase the use of within-path diversions and ARPs.

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[4] TransCanada emphasized that historical information may not necessarily be representative of how shippers may use out-of-path diversions and ARPs in the future. TransCanada explained that the expected increase in use of downstream diversions in future periods under the RH-003-2011 Decision, the revenue benefits of eliminating out-of-path diversions and ARPs could well exceed the $30 million to $40 million range.

[5] TransCanada defined the primary market as the market for the sale of non-discretionary services such as FT by TransCanada or other pipelines, and the secondary market as including TransCanada's and other pipelines' sale of discretionary services and shippers' sales of their unutilized capacity.

TransCanada stated that it does not believe that the Diversion Proposal would reduce the market constraints on its pricing of discretionary services. TransCanada stated the constraint on its pricing of discretionary services would continue because shippers would still have the ability to resell their capacity in the secondary market and to use in-path diversions and ARPs.

TransCanada suggested that if the Board were of the view that increased transparency in the secondary market would benefit customers, then all parties, not just TransCanada, should be subject to the same conditions and reporting requirements, such as posting prices for secondary market transactions.

TransCanada evaluated various alternatives to the Diversion Proposal canvassed by Board counsel and was of the view that some of the alternatives could be workable. TransCanada specifically suggested that the alternative scenario allowing shippers access to one liquid out-of-path point could be workable and feasible if it was modified to allow Ontario and Quebec shippers with out-of-path access to the Dawn hub, while shippers in Saskatchewan and Manitoba would have out-of-path access to the Emerson export point. Compared to the Diversion Proposal, this alternative scenario expands shippers' rights to use out-of-path diversions, and addresses shippers' concerns about having access to liquid pricing points and out-of-path storage, which helps mitigate Unutilized Demand Charges (UDCs).

Views of Intervenors

Association of Power Producers of Ontario (APPrO)

APPrO explained that Ontario's gas fired power generators would be very much, and materially detrimentally, affected by the Diversion Proposal. APPrO described how some of Ontario's gas fired power generators that are captive to TransCanada's Mainline are "peaking" facilities with a relatively low load profile, and that this profile increases their reliance on diversions to manage UDCs. APPrO stated that the "in path" diversion locations in the Diversion Proposal provide far less liquidity and value than the status quo.

APPrO argued that the Diversion Proposal is out of proportion with TransCanada's stated concerns, and inflicts significant collateral damage to shippers at large who contract for firm transportation for the path upon which they intend to ship. APPrO suggested that that because the Mainline operates as an "integrated system," it is contradictory and unjustifiable to preclude all shippers from accessing diversions to all Mainline facilities. APPrO illustrated how the Diversion Proposal results in shipper constraints that seem illogical in light of the integrated nature of the Mainline system and the significant contribution to TransCanada's facilities costs that most firm shippers are making. APPrO also explained that the Diversion Proposal's attempt to eliminate the short-path strategy, while perhaps eliminating some isolated occurrences, is overbroad, inequitable, unsupported by TransCanada's tolling rationale and discriminatory against some shippers.

Canadian Association of Petroleum Producers (CAPP)

CAPP supported maintaining the status quo on diversions and ARPs. CAPP referred to evidence showing that, since the issuance of the RH-003-2011 Decision, shippers are signing up for more firm service, including shippers with low load factors, which results in a need for shippers to have a reasonable means to mitigate UDCs. Without the ability to reasonably mitigate UDCs, CAPP suggested that this would increase the economic hurdle for all shippers in signing up for firm service.

CAPP explained that diversions and ARPs contribute to a robust secondary market. CAPP contended that evidence on TransCanada's current use of its pricing discretion has resulted in TransCanada effectively not offering short-term services on occasion. CAPP expressed concern that the Diversion Proposal would further reduce competition for short-term services, which is not aligned with the intention of the pricing discretion conferred on TransCanada in the RH-003-2011 Decision. CAPP further emphasized that maintaining the current policy on diversions and ARPs is necessary to support the new business model articulated in the RH-003-2011 Decision.

CAPP also argued that TransCanada has not shown that any increase in Mainline revenues as a result of the Diversion Proposal will be of greater benefit than the financial loss due to increased UDCs of some shippers. Rather, the opposite would occur, such that that the Diversion Proposal will harm shippers through unmitigated UDCs well in excess of the claimed gains of TransCanada.

Alberta Northeast Gas, Limited (ANE)

ANE expressed concern that the Diversion Proposal was inconsistent with the RH-003-2011 record because in that proceeding TransCanada had implied that out-of-path diversions and ARPs would remain in effect upon the elimination of the Risk Alleviation Mechanism (RAM). In ANE's view, nothing has changed since the Board's review in that proceeding and no experience is available to evaluate this issue now that RAM has been eliminated. Furthermore, ANE indicated that the Diversion Proposal could devalue FT service, making it less attractive to the market and thus reducing the likelihood of increasing FT contract levels.

ANE suggested that the determination of the appropriate level of FT flexibility is a matter of what is fair and reasonable between shippers and the Mainline. While RAM offered shippers far too much flexibility, the Diversion Proposal offers too little. ANE suggested that at least a few years of experience may be required to gain a reasonable understanding of the implications of the new RH-003-2011 framework.

BP Canada Energy Group ULC (BP)

BP submitted that the Diversion Proposal is inconsistent with the findings of the Board in the RH-003-2011 Decision and should be denied. BP submitted that the Diversion Proposal introduces an artificial determination of what is “in-path.” As a result, BP argued that diversions would be severely proscribed and effectively half of the Mainline’s delivery points would be unavailable for diversions, depending on the artificial path designated by TransCanada.

BP submitted that TransCanada put forward no evidence that the short-path strategy was actually taking place in material amounts since the RH-003-2011 Decision was implemented on 1 July 2013. BP contended that if the Diversion Proposal were implemented the harm that would occur to the secondary market would outweigh any benefit that may accrue to TransCanada in terms of incremental additional revenue. BP pointed out that TransCanada may not receive higher revenues if the Diversion Proposal were implemented. It pointed out that the market may not respond to the premiums TransCanada charges for discretionary services and therefore transactions may not happen.

BP evaluated various alternatives to the Diversion Proposal suggested by Board counsel and noted that there is no evidence to support the need to alter the existing Tariff provisions. It submitted that the best approach is to retain the RH-003-2011 structure. BP pointed out that neither the Board nor TransCanada should dictate market outcomes, such as setting out a liquid point where out-of-path diversions would be permitted, but should instead facilitate informed choice by buyers and sellers.

Overall, BP argued that the Diversion Proposal impairs shippers’ ability to mitigate UDCs, unduly hinders competition on the system and erodes the value of the FT service. The end result would shift risk from TransCanada to its shippers, which BP submitted is contrary to the RH-003-2011 Decision. BP concluded that there is a lack of evidence on the current record that would justify the drastic action of altering fundamental terms of FT service, interfering in the secondary market, and limiting shippers’ ability to mitigate UDCs. BP argued it would be more appropriate to deny the applied-for changes to diversions and to observe what happens in the market, and allow parties to have the certainty they need in order to meet their business needs while parties gets used to the new regime created by RH-003-2011.

Centra Gas Manitoba, Inc. (Centra)

Centra stated that out-of-path diversions are a basic reasonable means to mitigate UDCs. Centra explained that out-of-path diversions do not provide guaranteed access to a path. Centra further indicated that it experiences challenges executing diversions because, due to the nature of its load profile, it is unable to commit to a diversion transaction day-ahead at the timely nomination cycle or even same-day at the intra-day 1 nomination cycle. Instead, it often needs to wait until the intra-day 2 nomination cycle when Centra indicated the market for diversions can be very limited. With respect to the Diversion Proposal, Centra stated that there are limited or no

opportunities to mitigate UDCs within-path on either its Empress to Manitoba Delivery Area or Empress to South Saskatchewan Delivery Area transportation paths.

Centra was of the view that the RH-003-2011 Decision did not suggest that FT shippers should no longer have access to basic UDC mitigation tools. Centra stated it values a robust and competitive secondary market, with numerous participants even though it is a long-term and captive shipper on the Mainline and therefore has a strong interest in minimizing its exposure to future cost deferrals. Overall, Centra's position is that the RH-003-2011 Decision appears to be working as envisioned and that it should be given time to continue to work. Centra did not support the alternate scenarios canvassed by Board counsel during the hearing.

Market Areas Shippers (MAS)[6]

MAS opposed the Diversion Proposal. MAS submitted that the RH-003-2011 Decision struck an appropriate balance between the Mainline and shippers. MAS were of the view that TransCanada's discretionary pricing tools currently are serving their desired purpose, based on the level of recent FT contracting and IT bid floors set by TransCanada.

MAS expressed concern that the Diversion Proposal will have a negative impact on all shippers, particularly captive shippers, who contract to meet peak demand and therefore have a need to mitigate UDCs because they have excess capacity during non-peak periods. MAS noted that the recent increase in firm contracting amplifies this concern. MAS explained that the Diversion Proposal would significantly limit the market's opportunity to mitigate UDCs. It noted that under the Diversion Proposal the most liquid and transparent trading points are excluded as diversion points for nearly all FT contracts.

MAS recognized TransCanada's concerns about the short-path strategy and suggested that the Tariff could be adjusted to address this concern. MAS recommended that the Board direct TransCanada to consult with the marketplace and develop more appropriate solutions for FT contracting on very short paths. For example, MAS proposed that any paths that are less than 24 kilometres in length would not be permitted diversion and ARP rights outside of the contracted path.

MAS contended that the Diversion Proposal will enable TransCanada to exert undue market power in the secondary market and reduce liquidity in the natural gas commodity market. MAS noted that the Diversion Proposal will reduce the transaction depth in the secondary market which in turn will limit the effectiveness of the secondary market to provide a restraint on TransCanada's ability to exercise its market power.

[6] MAS consist of: Enbridge Gas Distribution Inc. (Enbridge), Société en commandite Gaz Métro Limitée (Gaz Métro), Union Gas Limited (Union) and Industrial Gas Users Association (IGUA).

Tenaska Marketing Canada, a division of TMV Corp. (Tenaska)

Tenaska objected to the Diversion Proposal. Tenaska submitted that the Diversion Proposal would make diversions essentially useless for mitigating UDCs for the vast majority of FT shippers. Tenaska submitted that in-path diversions are invariably inferior to out-of-path diversions for UDC mitigation, because the market value of transportation to upstream points was almost always less than the value of longer paths to downstream points. Furthermore, Tenaska noted, that under the Diversion Proposal, local distribution company (LDC) shippers would not have access to markets where their capacity might have value, such as at Emerson or Dawn.

Tenaska argued that TransCanada's submission that FT shippers could mitigate UDCs by contracting for IT or STFT service to transport gas to alternative markets is not feasible. Tenaska pointed out that under this approach TransCanada could prevent shippers from mitigating UDCs by pricing the necessary IT at a level that would make the transaction uneconomic.

Tenaska contended that eliminating out-of-path flexibility is fundamentally inconsistent with the Board's RH-003-2011 Decision. Tenaska argued that in the RH-003-2011 Decision, the Board indicated that it based its decision to deregulate IT and STFT pricing in part on its belief that TransCanada's prices will be constrained by competition from FT shippers selling capacity in the secondary market. Eliminating out-of-path diversions, in Tenaska's view, would reduce the amount of competition and this, in Tenaska's view, was ultimately the purpose of TransCanada's Diversion Proposal. Furthermore, Tenaska argued that TransCanada witnesses provided no quantitative evidence to underpin its conclusion that in-path diversions will be sufficiently effective to discipline TransCanada's pricing behaviour for IT and STFT services.

Tenaska proposed that the Board expand, rather than reduce the flexibility that FT shippers have to compete in the secondary market with TransCanada's IT and STFT services (the Tenaska Proposal). The Tenaska Proposal would require TransCanada to provide FT shippers with flexibility to nominate any available alternate path on the Mainline using alternate receipt and delivery points. Tenaska submitted that the Tenaska Proposal would give Mainline FT shippers the same receipt and delivery point flexibility available to firm shippers on United States (U.S.) pipelines. According to Tenaska, the commercial effect of the Tenaska Proposal would be to enable all FT shippers on the Mainline to compete with each other and with the pipeline's IT service on all paths.

In argument, Tenaska contended that out-of-path diversions were part of the RH-003-2011 model and were part of what made the RH-003-2011 tolls and tariff just and reasonable. Tenaska submitted that the Board's direction to TransCanada in the RH-003-2011 Decision to maximize revenues was not intended as an invitation to TransCanada to ask the Board for Tariff adjustments that will benefit the pipeline at the expense of shippers and the rest of the natural gas industry.

Tenaska noted that diversions are not 'near-firm' and, at certain times of the year, there is often zero diversion capacity available to some export points. Moreover, Tenaska pointed out that TransCanada has tools that enable it to compete with FT shippers and that TransCanada has in fact competed with FT shippers since the RH-003-2011 Decision was issued. Overall, Tenaska submitted that receipt and delivery point flexibility, including the Mainline's out-of-path downstream diversions, have been an integral part of open-access transportation services in Canada and the U.S. for 20 years. Receipt and delivery point flexibility is an essential element of the modern concept of gas transportation, and it is fundamental to the operation of gas commodity markets across the North American pipeline grid.

Tenaska submitted that none of the alternatives to the Diversion Proposal canvassed by Board counsel should be accepted because all would reduce competition and impair shippers' abilities to mitigate UDCs. Tenaska also submitted that some of the alternative scenarios could be discriminatory to some shippers.

Union

Union, on behalf of MAS, argued that the RH-003-2011 model appeared to be working due to evidence of new FT contracting and renewals that became available in the course of the proceeding. Union noted that this new evidence showed that TransCanada's fears of massive shortfalls were groundless. Union also noted while the TSA did not yet show a surplus, the analysis is of an inherently conservative nature. Union stated that it is premature to conclude that TransCanada has been denied a reasonable opportunity to recover its costs such that the Diversion Proposal is required to enable TransCanada to enhance its competitive position.

TransCanada's Reply

TransCanada contended that the principal mechanism used to mitigate the exercise of its market power is shippers' recourse to FT service. TransCanada observed that one of the market's reactions to its pricing of IT and STFT has been to shift to FT and FT-NR contracts, and this recourse has proven to be a very effective alternative to the use of discretionary service.

TransCanada noted that its concern about the short-path strategy has increased since the issuance of the RH-003-2011 Decision. TransCanada noted that, historically, out-of-path diversions have been used on certain FT contracts almost every single day of the winter period; TransCanada expects this use to increase. TransCanada explained that retaining out-of-path access to alternative delivery and receipt points is inconsistent with the cost-based/user-pay principle, and has the potential to grow to the level of being a critical impediment to the effective use of its pricing discretion. TransCanada argued that there is no right to mitigation of demand charges, and that there is no reason why a shipper should have the right to reduce the effective amount they pay for contracted capacity through out-of-path diversions. TransCanada also suggested that intervenors misunderstand the Mainline's tolling methodology. In TransCanada's view, FT shippers pay for access between two points. This does not justify having access to a host of other

diversion points for the equivalent daily FT cost of the incremental transportation only on the days a shipper wants to use those diversion points.

TransCanada submitted that deferring changes to the diversions and ARPs for one year would invite shippers to use the short-path strategy to its fullest potential for the next year and potentially beyond, increasing the TSA balance by tens of millions of dollars. TransCanada suggested that consciously allowing shippers to circumvent the pricing discretion on paths which the shipper has not elected as its primary path is an attempt to unwind the RH-003-2011 Decision.

TransCanada addressed concerns expressed by shippers about the Diversion Proposal's impact on the secondary market and the removal of constraints on TransCanada's market power. TransCanada indicated that the Diversion Proposal will not distort the secondary market because of the existence of the recourse FT rate, which caps the exposure of any shipper to the tolls for discretionary service, and thereby prevents TransCanada from exploiting its market position for the sale of its existing services. TransCanada also noted that it is likely that the amount of capacity and number of transactions in the secondary market will increase since numerous parties are "firming up" their capacity that can then be resold by shippers in the secondary market to compete against TransCanada's service offerings.

Responding to developments since the issuance of the RH-003-2011 Decision, TransCanada noted that the results from the implementation of that decision are encouraging, but that one should not be unduly influenced by just two and a half months of experience in a 54 month program. TransCanada noted that the RH-003-2011 Decision places it at risk from a cost recovery perspective and re-iterated its evidence that denial of its proposed Tariff amendments will seriously undermine its ability to meet the objectives of the RH-003-2011 Decision to maximize revenues and minimize costs.

Views of the Board

We are not persuaded by TransCanada's submissions that the Diversion Proposal is required to enable TransCanada to effectively use the tools provided in the RH-003-2011 Decision or that it is required to meet the objectives in the Decision to maximize net revenues. Our view is influenced by evidence that became available after the Tariff Amendment Application was filed that demonstrates that the tools provided in the Decision have enabled TransCanada to approach the threshold for sharing in incentive revenues and possibly zero the balance in the TSA in 2013 or 2014.[7]

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[7] Union calculated that TransCanada must earn about $15 million in 2013 and $44 million in 2014, more than what TransCanada's current revenue calculations showed for these years to share in incentive revenues. In terms of zeroing the TSA, Union's calculations showed that TransCanada must earn about $53 million in additional revenue to zero the TSA balance in 2013. For 2014, TransCanada would be able to zero the balance in the TSA account if it earned additional revenues that amounted to the shortfall from 2013 plus $117 million. While these amounts may appear to be large, there is a substantial amount of conservatism embedded. In making its revenue calculations,

Moreover, while the Decision directs TransCanada to maximize net revenues over the fixed toll period and provides new tools to help do so, that direction was not unlimited. The ability of TransCanada to maximize net revenues was bounded in the Decision by, among other things, a multi-year fixed FT toll, a view that the secondary market could constrain TransCanada's ability to set the bid floor for IT and STFT pricing and a view that shippers, who may be incented to enter into contracts for firm transportation services at low load factors, would have a reasonable opportunity to mitigate UDCs.

With the incentive for TransCanada to maximize net revenues placed in its proper context, and with evidence demonstrating the effectiveness of the tools provided in the Decision thus far, we are not of the view that the Diversion Proposal is required to implement the Decision. Furthermore, we do not consider TransCanada's argument about remaining "short" or "in the hole" with regard to the LTAA to be relevant. The Decision expected TransCanada to have a certain LTAA balance at the end of 2017. To consider the LTAA balance in this proceeding, as a justification for changing Tariff provisions, is, in our view, inconsistent with the Decision. The Decision expressly contemplated and provided for the accumulation of an annual fixed amount in the LTAA and the slower return of capital to TransCanada through amortization of amounts therein.

We disagree with TransCanada's submission that the current impact of out-of-path diversions and ARPs is on par with the detrimental and distortionary impact of RAM. We observe that, unlike the circumstances preceding the RH-003-2011 Decision, shippers that require guaranteed access to the Mainline are largely contributing the full year's reasonable cost of the capacity they require by using firm transportation services to transport gas to markets where they have a firm requirement. This noticeable shift in contracting behaviour has helped inform our view that the Diversion Proposal is not necessary.

In considering whether modifications to the diversion provisions of the Tariff are currently required, we note that the priority level given to diversions does not guarantee that a diversion will be available on a given path. This capacity risk acts as a check on the ability of shippers to use a short-path strategy to meet a firm requirement. Moreover, TransCanada has the ability, by setting the bid floor for IT and STFT service, to compete with out-of-path diversions and ARPs.

In our opinion, and as set out in the following paragraphs, the detrimental effects of implementing the Diversion Proposal currently outweigh the potential detrimental effects that the Diversion Proposal attempts to remedy.

TransCanada did not assume that contracts for firm services expiring in 2014 would be renewed and did not include any revenues for the future sale of discretionary services in 2013 and 2014.

The Diversion Proposal would leave shippers with little opportunity to mitigate UDCs because, for many Mainline markets, the Diversion Proposal's definition of "path" does not include access to liquid trading points on a year round basis. Access to liquid points is important because it allows shippers to freely service markets where there is demand for natural gas and where the price of natural gas is highest. Under the Diversion Proposal, shippers are unlikely to derive significant value from accessing alternative transportation paths in the domestic market. Therefore, in the Mainline's current context, it is our view that giving shippers a reasonable opportunity to mitigate UDCs includes giving them access to out-of-path receipt and delivery points.

During the proceeding, TransCanada suggested that shippers would continue to have options to mitigate UDCs if the Diversion Proposal were adopted. However, it is our view that these options are not reasonable in the current context. For example, we do not think it is reasonable for a shipper to be required to pay for 365 days of service on a longer path than they actually need and to be required to use in-path diversions to meet their firm needs. Nor do we think it is reasonable to require a shipper who pays for 365 days of service to contract for discretionary services on a longer path to mitigate UDCs. On the other hand, we have decided not to implement the Tenaska Proposal because it could increase use of the short-path strategy and reduce shippers' incentive to contract for firm transportation services to markets where they have a firm requirement.

The ability for the secondary market to act as a fair and necessary check on TransCanada's discretion to set the bid floor for IT and STFT service was integral to the Decision.[8] As Tenaska pointed out in its evidence and argument, the main competition for TransCanada's discretionary services comes from firm transportation service shippers reselling their capacity held under contracts for firm transportation services. Limiting the scope of diversions to the contracted path (as defined by TransCanada's Diversion Proposal), all else equal, limits the number of shippers that would be able to compete with TransCanada's discretionary services on any given path.

We recognize that, if the Diversion Proposal were implemented, there might be higher volumes of firm transportation services contracted on longer paths and, therefore, in theory, TransCanada's discretionary services could face more competition from shippers. However, we are not persuaded that the relative increase in competition arising from the additional contracted volumes of firm transportation services would offset the detrimental effects on competition due to shippers having more limited flexibility in accessing alternative receipt and delivery points.

TransCanada suggested that the Diversion Proposal is necessary to align diversions and ARPs with the cost-based/user pay principle. While we continue to uphold that principle, it should not be applied when its application appears unreasonable and arbitrary, as we find to be evident in these specific circumstances. For example, the Diversion Proposal

[8] RH-003-2011 Decision, p. 127.

would not allow shippers that have certain domestic delivery points, as their primary delivery point, to use diversions to change their delivery point to an export point that is surrounded by an "in-path" DDA.[9] This is because historically, export points were excluded from toll zones (and now DDA calculations) and therefore TransCanada's definition of "path" excludes them as an eligible diversion point. The result is that under the Diversion Proposal, a shipper could divert to points in a DDA that are within a few kilometers of an export point, but not to the export point itself.

We note that there may be other mechanisms to eliminate or mitigate any potential detrimental effects associated with the short-path strategy that achieve a more appropriate balance between the pipeline and shippers. We acknowledge the efforts of all parties to respond to Board counsel's questioning on potential alternatives to the Diversion Proposal and the status quo. We also recognize that there are practical impediments and potentially detrimental effects associated with many of the alternatives that were canvassed.

To conclude, the RH-003-2011 Decision outlined a framework that balances shippers' need for transportation flexibility and TransCanada's need to generate revenue from the Mainline. The Board recognizes that the RH-003-2011 Decision's balance can be adjusted given prevailing circumstances, and that the Decision provided mechanisms to make necessary adjustments. It is our view that now is not the time to make adjustments in view of the absence of evidence that the short-path strategy is occurring and is having a detrimental effect on the Mainline.

With that said, TransCanada should monitor the effects of short-path strategy. If that strategy has demonstrable material detrimental effects on the Mainline, then we expect that TransCanada would apply to the Board for a remedy. Although it is not required, it might be helpful for TransCanada to consult with its shippers in determining an appropriate remedy. We remind all parties that the Board has the ability to act to minimize any detrimental effects on the Mainline. For example, if it became evident that shippers were using the short-path strategy to meet firm requirements, such that the market where they have firm requirements were being de-contracted, then the Board would be able to hear an application that could remedy the situation expeditiously, if needed.

Decision

We have decided to deny the proposed amendments to the Tariff in respect of Diversions and ARPs.

[9] See, for example, the Iroquois export point.

2.2 Elimination of STS Overrun

STS overrun is a feature of STS that allows STS shippers to deliver gas in excess of their contract demand either for storage withdrawals or injections depending on the location of the storage and market. Excess delivered quantities under STS overrun are charged the applicable STS daily demand toll on a usage basis. STS overrun and IT service are treated within the same service priority level and ranked based on the applicable toll. When the STS overrun toll is equal to or higher than the IT toll, the priority of STS overrun is higher than IT. When the STS overrun toll is lower than the IT toll, STS overrun has lower priority. However, unlike IT, which has four nomination windows, STS overrun provides access to the eight nomination windows associated with STS.

Views of TransCanada

TransCanada proposed to eliminate STS overrun. Given the toll for STS overrun, TransCanada stated that STS shippers are incented to rely on STS overrun to the greatest extent possible to meet any incremental demand exceeding their contract demand at their contracted delivery point when the IT toll is higher to that point.

TransCanada stated that, in the past five years, there has been minimal use of STS overrun, which demonstrates that elimination of the overrun feature will not have any significant negative impact on existing STS shippers. However, TransCanada expects that going forward, the STS overrun feature would be utilized significantly more than it has been in the past by shippers trying to avoid potentially more costly STFT and IT tolls.

TransCanada asserted that elimination of STS overrun will ensure that STS shippers with firm balancing requirements contract and pay annual demand charges for the capacity they require. In TransCanada's view, this is consistent with the Board's views that shippers with low utilization rates who truly require guaranteed access to the Mainline, should pay for the full year's reasonable cost of the capacity for which they contract. In addition, elimination of the STS overrun feature will also ensure that shippers with more intermittent balancing requirements have the same access to capacity, participate in the competitive bidding process, pay the same toll, and have the same service priority as other STFT and IT shippers seeking to procure capacity.

Views of Intervenors

Centra

Centra argued that there is no evidence on the record to support the removal of the STS overrun feature from the Tariff. Centra contended that, if there is not sufficient rationale to eliminate out-of-path diversions and ARPs, then there can be no rationale to eliminate STS overrun.

MAS

MAS, through the argument of Enbridge, opposed the elimination of STS overrun. MAS stated that the proposed change is premature, should be dismissed and only reconsidered after sufficient time has elapsed and quantitative data has been gathered to demonstrate that the pricing tools given to TransCanada in the RH-003-2011 Decision are insufficient. MAS noted that STS overrun is a valuable service that allows the LDCs to balance intraday gas load changes that are not anticipated under contracted STS service.

MAS did not agree with TransCanada's expectation that STS shippers would use the overrun feature significantly more in the future to avoid paying potentially more costly IT and STFT tolls, especially given the elimination of RAM in the RH-003-2011 Decision. MAS noted that Union, as a user of STS and the associated overrun feature, confirmed that it does not anticipate any change in how STS overrun is used following the implementation of the RH-003-2011 Decision, indicating that it is just an asset that Union uses to manage its operational needs. Further, MAS noted that the service priority of STS overrun is not fixed relative to IT and a shipper seeking to avoid higher cost tolls for STFT and IT by using STS overrun would be at risk of not obtaining that overrun service when STFT and IT tolls are higher, as those two services would take priority.

MAS noted that there was discussion during the hearing that perhaps STS overrun should be priced at the same level as IT service. MAS submitted that this should be rejected by the Board. While the LDC members of MAS agreed that pricing STS overrun at the IT toll would be preferable to STS overrun being eliminated, MAS stated that there is no need to price STS overrun at the IT toll since the current service priority as between IT and STS overrun already permits TransCanada to extract the highest value from its available capacity as between STS overrun and IT.

Tenaska

Tenaska submitted that there is no justification for the elimination of STS overrun rights, for all the same reasons it discussed in the context of out-of-path diversion rights. Tenaska stated that TransCanada is simply seeking a change to the RH-003-2011 model that would benefit it at the expense of STS shippers and probably the market as a whole, and there is no reason for it.

TransCanada's Reply

TransCanada reiterated that STS overrun should be eliminated but if it is to be retained, it should be tolled at the IT toll then in effect to prevent distortions and eliminate the incentive to use the feature to frustrate the impact of the exercise of TransCanada's pricing discretion for IT and STFT services.

Views of the Board

We expect STS shippers with firm balancing requirements to contract for a level of STS that meets their needs and to pay the applicable demand charges throughout the year. However, we recognize that changes in weather and the demand patterns of an LDC's customers can make it difficult to contract for the precise level of STS on a firm basis. In our view, STS overrun is an important tool that allows an LDC to balance these unanticipated load changes during the gas day and to avoid costly balancing fees.

We were not persuaded by TransCanada's argument that the minimal use of STS overrun in the past demonstrates that its removal will not have any significant negative impact on existing STS shippers. In addition, we find that TransCanada's expectations about a potential increase in the use of STS overrun going forward, as a way for STS shippers to avoid more costly STFT and IT tolls, to be speculative at this time. The evidence from the LDCs is that STS overrun is a service that they use to manage their specific operational need to balance unanticipated intraday gas load changes, which are inevitable given the nature of the load profile of an LDC. They also indicated that they do not anticipate that their use of STS overrun will change as a result of the RH-003-2011 Decision.

Lastly, concerning the option of pricing STS overrun at the prevailing IT toll, we do not find it necessary at this time. We were persuaded by the argument that the current service priority of STS overrun relative to IT already permits TransCanada to maximize its revenues between those two services. Should that situation change in the future, the Board would be willing to revisit the issue of the appropriate toll for STS overrun.

Decision

We have decided to deny TransCanada's proposed amendment to eliminate the overrun feature of STS service.

2.3 STFT and ST-SN Open Seasons

As stipulated in its Tariff, TransCanada is required to post available capacity for STFT and ST-SN for five banking days during specified periods for both seasonal service and for individual monthly blocks within the seasonal periods.

Views of TransCanada

TransCanada applied to modify the timing and duration requirements of the existing STFT and ST-SN open seasons such that all open seasons for these services would match the process for the existing daily open seasons.

TransCanada proposed to revise its Tariff to replace the five-day posting period requirement with a period to be determined by TransCanada, but no less than 17 consecutive hours from the time of posting. On certain paths where there was no significant demand or where market forces played a lesser role, longer posting periods may be offered. Once bid floors were established for an open season, TransCanada stated it would not change the bid floors during the open season.

TransCanada indicated that, with the removal of the Tariff language prescribing the timing and duration of STFT and ST-SN open seasons, TransCanada would no longer be obligated to offer open seasons for these services and shippers would not know when or if STFT and ST-SN service would be available. Nonetheless, TransCanada indicated that under the proposed Tariff changes, STFT and ST-SN capacity would be offered on a regular basis.

TransCanada submitted that the current Tariff was prescriptive and must be eliminated for TransCanada to have an opportunity to effectively capture market opportunities when they arise. TransCanada contended that the current provisions inhibit its ability to react to changes in market conditions in a timely and effective manner, and may inhibit TransCanada's opportunity to maximize STFT and ST-SN revenue.

Views of Intervenors

BP

BP argued that if the proposed changes were implemented, there might be a risk that TransCanada would withhold capacity from the market. According to BP, this was not acceptable, because it enabled TransCanada to exercise discretion in the offering of an existing capacity open season with the implication that all available capacity would not be offered at all times. BP argued that this was particularly troublesome for service like STFT, for which there was no true cost-based recourse service.

Centra

Centra reserved comment on the proposed Tariff change. Centra submitted that the likelihood of it contracting for TransCanada's STFT service going forward was low given TransCanada's pricing discretion in establishing bid floors.

MAS

MAS opposed the elimination of the prescribed open season in the current Tariff and argued that the proposed changes to the Tariff are premature. MAS submitted that the existing Tariff provisions allow shippers to plan to use STFT to meet short-term seasonal requirements. Without the prescribed open seasons, MAS contended that LDCs will not know whether STFT would be offered by TransCanada and, therefore, would be forced to manage their gas planning in a manner that effectively excludes substantive use of STFT.

MAS submitted that TransCanada currently has the ability to maximize revenue and be market responsive without eliminating prescribed open seasons. MAS submitted it did not oppose TransCanada having the discretion to post open seasons for these services for shorter periods so long as the posting period is not less than 17 consecutive hours as has been proposed by TransCanada. MAS proposed a period of at least two full days as being reasonable.

Tenaska

Tenaska argued that the existing STFT/ST-SN posting requirements do no harm, and if other parties saw value in them, however minimal, there was no reason for the Board to eliminate them. Tenaska submitted that in the current market, it made no difference whether TransCanada continued to post available STFT capacity in accordance with its existing Tariff provisions. If TransCanada did not want to sell STFT service that it was required to post, Tenaska argued TransCanada could price the service at such level so as to ensure that no party would purchase it.

TransCanada Reply

TransCanada noted that there was little discussion on the proposal to change the posting requirements for STFT and ST-SN open seasons. TransCanada reiterated that the current Tariff provisions inhibit TransCanada's ability to react to changes in market conditions in a timely and effective manner and may inhibit TransCanada’s opportunity to maximize STFT and ST-SN revenue.

> ***Views of the Board***
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> We have decided to retain the Tariff provisions prescribing the timing of STFT and ST-SN open seasons. In our view, keeping the posting requirements is important for transparency purposes. The RH-003-2011 Decision afforded TransCanada discretion to set the bid floor for IT and STFT service. In awarding TransCanada this discretion, the Board emphasized that transparency was important and required TransCanada to post information about how it set its bid floors and to make quarterly filings about how it manages its bid floors. Although these requirements applied to the setting of applicable bid floors, we are of the view this principle should be applied for STFT and ST-SN services so that shippers will know when those services are offered.
>
> We recognize that TransCanada has sole discretion in respect of most aspects of STFT pricing. TransCanada can make any STFT service offering as attractive or unattractive as its wants and can offer STFT capacity beyond the periods prescribed by the Tariff. However, we are of the view that transparency and value to shippers of knowing when a service is offered outweigh the negative effects of leaving the prescriptive language in the Tariff.

It is our view that for a service to have value, a shipper ought to know if and when the service will be offered. We are of the view that a pre-defined open season is a helpful tool for shippers, particularly for LDCs planning seasonal load requirements. Pre-defined open seasons assist shippers in supporting their decisions to either purchase more FT, IT or delivered service, should the STFT service offering not be an economic option.

While we have decided to maintain the current timing of open seasons for STFT and ST-SN services, we see merit in amending the Tariff provisions so that the minimum duration TransCanada is required to hold these open seasons is reduced to 48 hours. We recognize that the market can change over the five-day posting requirement and therefore have allowed this period to be reduced so that TransCanada can respond to any market changes.

Decision

We have decided to maintain the current timing of the open seasons for STFT and ST-SN. However, we have decided to amend the Tariff provisions so that the minimum duration TransCanada is required to hold these open seasons is reduced to 48 hours.

2.4 Renewal Provisions

The existing renewal provisions associated with Firm Mainline Services give a shipper the option to extend the existing term of its contract for a period of one year by providing notice to TransCanada at least six months before the contract's termination date.

Views of TransCanada

TransCanada proposed incorporating the Early Long-Term Renewal Option (ELTRO) as an amendment to the existing renewal provisions in the Tariff and proposed amendments which would give it discretion to decline certain contract renewals related to the ELTRO. Under the ELTRO, existing firm contract holders whose contracts are in an area affected by a major expenditure, maintenance or redeployment have to choose one of two options:

(i) Extend their contracts, commencing on the expected in-service date of the opportunity contemplated, to a minimum term not to exceed 10 years for long-haul paths or 15 years for short-haul paths. Shippers choosing to extend their contracts would retain their renewal rights; or

(ii) Continue their existing contracts, subject to annual renewals up to the "Final Renewal Termination Date." After that date TransCanada could use the shipper's capacity to reduce expansion facilities, costs, or to redeploy facilities to another purpose.

TransCanada listed economic criteria it would take into account when determining whether to invoke the ELTRO. However, TransCanada submitted that it is not realistic to pre-determine the outcome of the economic analysis outside the context of a particular situation of possible new investment or redeployment.

TransCanada submitted that the ELTRO would assist it in understanding a shipper's long-term firm contractual requirements when TransCanada was faced with major expenditures, significant maintenance requirements, or opportunities to redeploy substantial existing assets. Since, the majority of firm contracts are up for renewal annually, TransCanada stated that it has no opportunity to understand whether it will have firm contracting on the Mainline, and on what paths, more than six months in advance. TransCanada contended that this makes longer-term planning extremely difficult.

TransCanada submitted that the existing renewal provisions contribute to outcomes that are generally economically inefficient, and therefore detrimental to the Mainline. For example, if TransCanada needs to construct additional facilities to meet new service requests, the time required to ultimately construct facilities can take three years or longer. However, after construction of new facilities has commenced, shippers might not renew substantial quantities of existing contracts. If TransCanada had known that existing capacity would become available beyond a certain date, TransCanada could have reduced the size of the facilities constructed or considered other alternatives. The consequences include the potential for substantial overbuilding or under-collection of costs, and impeding materially beneficial opportunities to reduce costs and tolls by redeploying Mainline facilities. TransCanada submitted that quantifying the additional and unnecessary costs caused by the renewal provisions is difficult and is very much dependant on the circumstances.

Having greater certainty regarding shippers' contracting intentions ensures efficient investment of capital. The redeployment of underutilized Mainline assets benefits TransCanada and its shippers by reducing capital and operations and maintenance costs while retaining firm billing determinants.

TransCanada requested that if the Board is unwilling to approve its proposed renewal provisions generically, the Board must at a minimum authorize the provisions in the context of the Energy East Project as being in the public interest.[10] Although the project has not been applied for, TransCanada stated that the Energy East Project would benefit Western Canadian oil producers and Eastern Canadian refineries and industries, and augment government revenues in an environmentally conscious manner by minimizing the extent of new pipeline construction. TransCanada submitted that the transfer of Mainline facilities to the Energy East Project would

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[10]The Energy East Project consists of construction of new gas assets and conversion of a portion of the Mainline to oil service. The project, if constructed, would deliver crude oil from Hardisty, Alberta to refineries in Eastern Canada, with the potential for future export. The proposed project has a target in-service date of 2017, with assets transferred from gas to oil service proposed to occur during 2015 and 2016.

contribute to a reduction in Mainline rate base and revenue requirement and may therefore result in lower tolls beyond the 2013-2017 multi-year fixed-toll period for Mainline shippers.

TransCanada argued that these benefits far outweigh the impacts associated with requiring a subset of shippers to determine whether to make Mainline contractual commitments for a longer period than would be required pursuant to the existing renewal provisions. Further, these impacts would only materialize if the Energy East Project is ultimately approved and implemented and new gas transportation facilities are required to meet the demand for firm gas service.

Based on currently available information, contract demand may exceed remaining natural gas pipeline capacity in portions of the Eastern Triangle served through the North Bay Shortcut if all existing contracts for Firm Mainline Services are renewed. ELTRO notices would be issued to holders of contracts for Firm Mainline Services with the following delivery points: Cornwall, East Hereford, Enbridge Eastern Delivery Area (EDA), GMIT EDA, Iroquois, KPUC EDA, Napierville, Philipsburg, and Union EDA. The ELTRO notices would have a Final Renewal Termination date of 31 October 2016. TransCanada indicated that it is still seeking to determine whether there will be sufficient capacity after the transfer to meet existing firm contracts that may be present at the time of the transfer.

TransCanada submitted that the renewal notification process associated with the Energy East Project would enable TransCanada to obtain a clear understanding of firm gas transportation requirements on the Mainline going forward. It would allow TransCanada to design and construct necessary facilities or implement appropriate commercial solutions in an economically efficient and timely manner. TransCanada submitted that granting this authorization would cause no harm to shippers in and of itself, as any long-term extensions of contracts received through the ELTRO would be conditional on Board approval of the Energy East Project.

In response to a question about whether it is appropriate to redeploy assets that are currently being used for natural gas service for use in the Energy East Project, TransCanada responded that the question was outside of the scope of this proceeding and should be addressed in the context of any proceeding established to consider the transfer of Mainline facilities to the Energy East Project.

Views of Intervenors

APPrO

APPrO submitted that electric generators with power sales contracts that do not extend 10 to 15 years into the future would be placed in a difficult commercial position by the ELTRO. Forcing these generators to rely on less firm service could also negatively impact both reliability and the price of electricity in Ontario. In APPrO’s submission, these shippers would have two alternatives:

1) Accept TransCanada’s renewal offer and face a mismatch in the duration of their firm power sales and gas supply arrangements. Generators would potentially be locked into firm gas transportation service for a time period in which they have no assurance that they would continue to be able to operate the facility economically; or

2) Reject TransCanada’s renewal offer and seek to take IT or another less firm service on the Mainline. Generators would lose their security of supply and risk being unable to meet the dispatch requirements of their power sales contracts, as well as facing unpredictable IT and STFT tolls set at TransCanada’s discretion.

APPrO contended that Ontario’s gas fired power generators are captive to the Mainline, with few if any alternatives to secure their gas supply. In entering into gas transportation contracts with TransCanada, shippers relied on regulatory protection to balance their interests with those of TransCanada in respect of both price and term. The historical balance has included annual renewals following the initial term. Retroactively changing that balance would prejudice shippers who have structured their arrangements in reliance on it.

Requiring captive shippers to lock themselves into contract lengths for existing capacity of up to 15 years following expiry of the contracts which they initially committed to in support of TransCanada’s investment would not strike the appropriate balancing of interests. The result would be to shift long-term market risk associated with existing capacity from TransCanada to shippers. But for their captivity to the Mainline, shippers could respond to such a proposal by seeking better terms of service elsewhere. That is not possible in the circumstances facing those shippers today.

APPrO agreed with those parties who take the position that:

(a) In respect of new capacity additions, TransCanada already has the ability to require applicants for new service from new facilities to make an initial, long-term commitment to the Mainline, of up to 20 years. No further authority is required in respect of new capacity additions;
(b) In no event should expenditure on existing assets – maintenance or integrity – be a reason to require that existing shippers enter into long-term renewals or lose access to that capacity which they are already using, and which has already been paid for in their tolls. Maintenance of integrity expenditures are the responsibility of the pipeline owner; and
(c) Existing assets that are currently used and useful should not be redeployed to alternative uses to the prejudice of current gas shippers.

APPrO submitted that TransCanada's proposal to amend the Tariff in respect of renewals should be rejected. Instead, APPrO contended that the Board should direct TransCanada to apply for such authority in respect of particular initiatives. Any such application should include adequate evidence sufficient to demonstrate that any negative impact on existing shippers is balanced by the overall public interest, and then mitigated to the extent possible.

CAPP

CAPP supported the concept of a triggering event as an addition to the current renewal provisions but if and only if this concept is targeted at the problem of off-loading and physical bypass of the long haul that is occurring because of eastern market diversification to U.S. gas supplies. CAPP submitted that the concept has no application to other parts of the system where this problem does not exist. The two triggering events that are reasonable are the need for incremental facilities for new natural gas service and repurposing. In CAPP's view, maintenance and integrity should not be a triggering event. There should be some flexibility for shippers to make changes to their service when confronted with a triggering event. CAPP leaves it to the Board to decide the details and whether the increased term is five years or the 10-15 years, as initially proposed by TransCanada. CAPP opposed the late breaking proposal to change the current six month renewal notice to three years.

IGUA

IGUA took strong exception to the ELTRO. IGUA stated that most industrial gas users are unwilling to assume the financial risk of a long-term capacity commitment and will turn to LDCs or the secondary market for capacity. IGUA submitted that it is very concerned that long-term contracts would tie industrial gas users and LDCs to the Western Canada Sedimentary Basin and impair access to new supply sources closer to market.

ANE

ANE proposed the New Mainline Renewal Provision (NMRP) although ANE noted that that there is solid rationale for retaining existing renewal rights. In ANE's view, measured changes to renewal rights could contribute to the long-term sustainability of the Mainline by improving TransCanada's ability to mitigate the potential impacts of capacity turnbacks and gain more consistency with the U.S. policy on renewals. ANE noted that terms for capacity renewals often range from one to five years and that the notice required under contractual evergreen clauses is typically one to two years.

Under the NMRP, the notice period for renewals would be extended from the current six months to two years. Each primary shipper would be afforded the right to renew existing capacity for a "recourse" term of five years. If the shipper opts not to renew the existing service for the five year term, it may instead opt to renew for a shorter term. However, the shorter term renewal is not guaranteed. The shipper's notice would initiate a right of first refusal (ROFR) process whereby TransCanada makes the capacity available for bid. If the best bid reflects a longer term than the pre-specified contract renewal term, then the existing shipper must match the longer term to retain the service. If the shipper is not willing to match the longer term, then the winning bidder obtains the capacity at the end of the existing shipper's contract term. ANE submitted that this approach is far superior to the ELTRO and should be considered by the Board as it contemplates the best means to address potential business risks under the new regulatory model reflected in the RH-003-2011 Decision.

ANE argued that the ELTRO is not required because of any element of the revised regulatory framework reflected in the RH-003-2011 Decision or to meet a legitimate market need, such as the redeployment of unused assets. In ANE's view, the ELTRO is only relevant to the extent that TransCanada is seeking to redeploy used and useful assets.

ANE submitted shippers typically must enter into multi-year contracts when construction is required to acquire incremental capacity. Generally, these contracts contain initial (and one time only) long-term commitments and provide shippers with the unilateral right to extend the contracts at the end of the primary term. In ANE's view, this structure represents the balance to ensure necessary capacity is built for demand growth. The opportunity to renew pipeline capacity and the length of required renewal are integral to the initial decision to enter into a pipeline capacity agreement.

For ANE shippers, and other shippers serving residential and commercial markets, the renewal provisions are a critical element of service obtained. The ability to renew service on reasonable terms contributes to the LDC's ability to plan for a resource, such as TransCanada pipeline capacity, to be available to support LDC end-use demand. ANE shippers have an obligation to serve and depend on the ability to secure reliable upstream pipeline capacity to meet that obligation. The renewal provisions of a pipeline contract directly affect the ability of ANE shippers to continue to access pipeline service at reasonable terms. Moreover, the specific nature of the renewal provisions affects the flexibility of service, such as the notice period required and the length of the renewal term.

In ANE's view, instituting dramatically longer renewal terms of up to 15 years will disrupt the operation of primary capacity markets. TransCanada's approach exposes a primary shipper to another incremental capacity decision at the end of the existing contract term instead of an orderly renewal decision. ANE submitted that TransCanada's approach is tantamount to requiring shippers to repeatedly agree to long contract terms (for artificial reasons) commensurate with those required to support the initial construction of capacity. The proposal is simply not needed to support an efficient means of addressing the contract renewal interests of all parties, including TransCanada.

ANE did not believe that TransCanada or its affiliates should prepare the Energy East Project's application on the assumption that TransCanada will obtain approval to redeploy assets that are currently used and useful. ANE objected to redeploying used and useful natural gas assets to the Energy East Project. In its view, assets should not *prima facie* be removed from regulated service if they continue to be used and useful unless there is an exceptional, overriding public interest reason for doing so. ANE noted that it is extremely disruptive to the market to force shippers to make weighty decisions with respect to long-term commitments on a hypothetical basis. ANE submitted that TransCanada should apply for the ELTRO only in conjunction with a specific application to redeploy used and useful assets.

ANE submitted that TransCanada overstated the facilities impact the ELTRO would have on the Energy East Project's facilities design. The facilities that would be impacted by the ELTRO are

restricted to the eastern end of TransCanada's existing system. ANE noted that TransCanada estimated that assuming full renewal occurs, there could be a capacity shortfall of approximately 200-300 TJ/d.

BP

BP submitted that the existing renewal provisions should remain in place. In the event TransCanada wants to seek relief with respect to renewal rights under a particular FT contract, then it should apply to the Board in the particular circumstances to have the facts of the particular matter put before the Board for its full consideration, such as in the case of the Energy East Project.

Centra

Centra stated that it only supports changes to renewal provisions in situations of major expenditures or opportunities to redeploy substantial existing assets, with the requirement for TransCanada to obtain pre-approval from the Board in instances when triggering events occur. The three-year renewal notice for all shippers suggested in the alternative renewal mechanism discussed in TransCanada' s Final Reply Evidence is excessive and unnecessary, as demonstrated by the fact that TransCanada did not propose an extended renewal notice period in its application. The three-year renewal notice for all shippers was presented at the conclusion of the oral hearing and was not fully considered or tested by interveners. Centra did not support a change to the current six-month renewal notice period at this time.

Gaz Métro

Gaz Métro, a MAS member, noted that TransCanada does not expect to file an application with the Board for the Energy East Project with supporting evidence until 2014. To date, the Board has not been provided with any formal description of the Energy East Project, including the list and value of the Mainline assets to be sold, or with any evidence concerning its physical, financial or operational impacts on gas service and gas shippers. None of the complex public interest issues necessarily associated with such a "decertification" process nor any stakeholders' evidence or submissions on the legality and merits of this project have been presented before the Board.

TransCanada should not be permitted to affect shippers' contractual entitlements to existing capacity on facilities targeted for the Energy East Project until it applies for leave to sell those facilities, due process has been followed and a final order of the Board has been issued disposing of that application in accordance with statutory requirements.

Gaz Métro submitted that TransCanada admitted that this Board panel is not in a position to perform a cost benefit comparative analysis to conclude that the benefits invoked by TransCanada outweigh the impacts that would be felt by this subset of shippers. In other words, although TransCanada explicitly relies on the results of some comparative analysis as the

foundation for its request for a case specific order, it expressly recognizes that this Board panel is neither tasked nor able to nor should conduct the requisite analysis.

In Gaz Métro's view, TransCanada has placed the Board in a position in which it is unable to meet its own burden and determine whether the proposed terms and conditions to be included in the ELTRO notice are appropriate, reasonable and in the public interest for the Energy East Project. Gaz Métro submitted that the facts and circumstances relating to the Energy East Project, that would permit the Board to make the determination requested by TransCanada, have not been presented to the Board. Gaz Métro submitted that it is trite law that adjudicative bodies ought not to decide complex matters in a "factual vacuum" which is what TransCanada seeks here.

MAS

MAS proposed the MAS Alternate Renewal Provisions which would introduce:

- an open and competitive bid process for purposes of determining contract terms for renewals;
- a right of first refusal mechanism pursuant to which a shipper holding firm transportation capacity under contract can renew the contract if it agrees to match the length of a competing bid for the same service, up to a contract matching term cap of five years, provided that a binding request for capacity has been received and that request for capacity cannot be met through existing facilities such that major expenditures would be required; and
- retention of the existing minimum renewal term of one year and 6-month notice period.

In MAS's view, the MAS Alternate Renewal Provisions balance the risks and benefits between TransCanada and its shippers; promote a market-based approach and competitive gas environment; reflect contracting realities and market behaviour; protect shippers from market power; and eliminate the risk of discrimination. MAS stated that, on the whole, the MAS Alternate Renewal Provisions reflect a reasonable balance between shipper and pipeline interests and meets the regulatory and statutory requirements that the renewal provisions be appropriate and reasonable. MAS filed a benchmarking study performed by National Economics Research Associates Inc. (NERA) to support its proposal.

MAS are of the view that the ELTRO contradicts the Board's finding in the RH-003-2011 Decision to maintain sufficient value for the FT service. The attributes of the FT service help LDCs manage operational flexibility and delivered natural gas costs to customers. As such, LDCs and captive shippers require tariff provisions that are clearly specified, provide continuity and predictability, and that do not create disruption to the market. ELTRO changes the attributes of the FT service in such a way that it diminishes its value.

MAS noted that the existing renewal provisions include:

- a clear and predictable process for renewing a FT contract, a process which is clearly delineated in the publicly available Tariff;
- reasonable notice periods;
- an assurance of continuity of service; and
- flexibility to access transportation services and sources of supply.

These elements give shippers reasonable predictability with respect to procurement of gas transportation service on the Mainline.

As captive customers of the Mainline, MAS are vulnerable to TransCanada's abusive use of market power. With the ELTRO, TransCanada could force eastern shippers to sign unreasonably long firm contracts, so that they will lose access to new competitive gas sources and increase their reliance on declining production basins. In MAS's view, with the ELTRO, TransCanada is trying to limit the flexibility of shippers and their ability to choose their source of natural gas supply and the way they want to shape their transportation services portfolios.

MAS believe that renewal rights have been granted to strike a reasonable balance between the interests of a pipeline and those of its shippers to protect shippers from abuse of monopoly or market power. Potential renewal terms of 10 to 15 years would prevent shippers from retaining the flexibility they need to meet their obligations to their customers with respect to security, diversity, reliability and cost competitiveness of supply.

It is MAS' view that TransCanada is solely responsible for the maintenance of its pipelines as a prudent operator and therefore the overall length of contract term should not be used as justification to avoid maintaining pipelines in service. Having "opportunities" to redeploy assets should not be a sufficient justification to force shippers into long-term contracts or to deem currently utilized capacity as non-renewable. Having generic renewal provisions to address potential asset redeployments, or retirements, is at odds with the unique and complex nature of these situations.

MAS submitted that the ELTRO needs to be evaluated within the context of specific redeployment applications where all of the impacts of redeploying a specific assets or assets can be considered. MAS believe that it would be premature to enter into any case specific analysis since there is no current redeployment application before the Board justifying such a measure. TransCanada's unsubstantiated claims of future hypothetical cost savings in unidentified situations due to the exercise of renewal rights, in MAS' view, cannot be a basis to justify changes to the Renewal Provisions.

MAS reviewed pipeline tariffs for Group 1 natural gas pipelines in Canada and a representative group of major pipelines in the U.S. Based on that review, MAS concluded that no pipeline tariff grants the pipeline company the right to require, at its sole discretion, renewals of 10- and

15-year periods as contemplated by the ELTRO. Moreover, no tariff grants the level of discretion sought by TransCanada to decline renewal requests or to issue an ELTRO notice. MAS pointed out that minimum renewal terms provided in tariffs in effect for Group 1 Canadian natural gas pipelines range from one to two years. MAS submitted that if no FT recourse service is available for purchase, the existence of an approved recourse toll cannot restrain the exercise of market power in the market for discretionary service. Without such restraint, TransCanada can price the discretionary service at tolls up to a shipper's next best economic alternative. For captive customers, there may be no alternative available for several years.

Tenaska

Tenaska submitted that TransCanada's new proposal in its Final Reply Evidence to change the renewal provision notice to three years would be a significant change from the current regime and from what TransCanada proposed in the Tariff Amendment Application. It would involve an arbitrary and significant restriction on the renewal rights of existing FT shippers who would not otherwise be subject to the ELTRO. In Tenaska's submission it would be unfair and inappropriate for the Board to consider TransCanada's new proposal in this proceeding. The FT shippers who would be adversely affected by the new mechanism have had no notice that their existing rights might be affected in the way TransCanada has proposed, and obviously no opportunity to consider the matter and respond to the new proposal.

TransCanada Reply Evidence and Final Reply Evidence

TransCanada reviewed the intervenors alternative proposals and concluded that it could not endorse either of them for acceptance by the Board. Neither would provide the information and commitments necessary for TransCanada to undertake significant expenditures or redeployment of assets.

TransCanada submitted that no ruling is required in this proceeding as to whether the Energy East Project is in the public interest. In this proceeding, the issue is whether implementation of the ELTRO is justified and in the public interest, so that TransCanada can plan for replacement facilities as part of the Energy East Project, if any are required. Beyond providing TransCanada with the information it needs to prudently develop this project and manage its capital investments, the ELTRO would allow TransCanada to present the Board with information that would assist the Board in determining whether a project, such as the Energy East Project, is in the public interest.

While TransCanada believes that the ELTRO is a reasonable solution, it submitted that a ROFR mechanism could also be a workable solution if implemented with certain key provisions. In particular, it was TransCanada's view that the ROFR should be triggered in the event of:

- an opportunity to redeploy Mainline assets to an alternative use;

- large capital costs are required to be incurred, yet there is no incremental demand (for example, pipeline integrity requirements); or
- large capital costs are required to be incurred due to incremental demand requirements. (Collectively, the Triggering Events)

TransCanada indicated it was prepared to apply for pre-approval to initiate a ROFR for redeployment opportunities and when large capital expenditures are required, without incremental demand. However, TransCanada's submission was that pre-approval would concern only whether the ROFR should be initiated and it should not provide an opportunity for parties to modify the terms of the ROFR, for example, contract renewal term, and the length of the notice period. It was TransCanada's view that a five-year contract renewal term commencing from the anticipated in-service date for the incremental capacity is the minimum term for which an affected shipper should be required to contract if a ROFR process is initiated by a Triggering Event.

In addition to the ROFR process for Triggering Events, TransCanada submitted that all shippers should be provided with a standard renewal right under which a shipper may choose to renew its service for a minimum one-year term upon a minimum three-year renewal notice. TransCanada contended that a three-year renewal notice would be generally consistent with the TransCanada's current infrastructure planning horizon.

TransCanada was of the view that a ROFR is superior to extending the existing contract renewal notice period. It submitted that an extension of the contract renewal notice period, without a ROFR, would not sufficiently address its concerns associated with the existing renewal provisions.

Views of the Board

Two issues arise from the parties' proposals to amend the existing renewal provisions:

- In the existing circumstances, what are the appropriate provisions for renewal notice and renewal term?
- What mechanism (if any) is appropriate to reallocate existing capacity, or to determine long-term contractual commitments for specific classes of projects, including the Energy East Project?

Renewal notice and renewal term

Based on the NERA benchmarking study, we observe that the existing renewal provisions with one-year renewal terms on six months' notice are among the most generous to shippers in the pipeline industry. TransCanada has less information available to it for planning and operating the Mainline than almost any other major natural gas pipeline in North America. Meanwhile, and as detailed in the RH-003-2011 Decision, the Mainline is facing unprecedented changes in its business environment in the form of

increased competition for gas supply and gas markets. In these circumstances, we are of the view that the existing renewal provisions should be modified to provide TransCanada with more information to manage the Mainline.

We have decided that the renewal term should continue to be a minimum of one year. In the RH-003-2011 Decision, the Board relied on full-year FT service as recourse to TransCanada's discretion in setting the minimum bid floors for IT and STFT service. Consistent with the RH-003-2011 Decision, shippers may also elect to renew contracts for multiple full years.

We have, however, decided to increase the notice period for contract renewals to two years, as proposed by ANE. In making this finding, we recognize that determining the appropriate renewal terms requires a balance of 1) the need for information to manage the pipeline; 2) contractual expectations; and 3) regulatory certainty.

A two-year notice period combined with a minimum one-year renewal term gives TransCanada a three-year window into the future that will assist it in planning and operating the Mainline. Compared to the existing renewal provisions, the three-year window provides TransCanada more information in determining future demand for Mainline transportation service. Moreover, we note that the three-year window closer aligns the Mainline with renewal provisions on other North American pipelines.

We do not accept that firm contracts are TransCanada's *only* source of information about future demand for Mainline services. It is our view that TransCanada has other sources of information that can be used to inform its management of the Mainline. We have confidence that TransCanada tracks historical and current Mainline utilization trends; understands the market including prices, supply and demand developments; is well-informed of existing and proposed infrastructure; and generally knows the nature of its shippers' businesses, among other things. We expect TransCanada to use the greater contractual information provided by this decision, in conjunction with information from other sources, to manage the Mainline and make reasonable and informed, estimates and projections about the future demand for Mainline transportation services.

We are of the view that renewal rights are an important feature of FT service, especially on constrained portions of the Mainline. In finding that two years is an appropriate notice period, we recognize that TransCanada and its shippers may have entered into contracts for gas transportation service with primary terms of 10 or more years. They may have entered into these contracts on the expectation that they would be able to renew those contracts for shorter durations, on six months' notice, once the primary term ended. Insofar as the two-year notice requirement deviates from parties' contractual expectation, it is, in our view, necessary. The existing renewal provisions are inappropriate for the context in which the Mainline currently operates. The current renewal provisions simply provide TransCanada with too little information about shippers' future contracting intentions.

We recognize that shippers assumed risk when entering into the initial long-term contracts that enabled the Mainline to be constructed and provided for renewals with six months' notice. Extending the renewal notice period for a longer period of time changes the balance of risk between the pipeline and its shippers. However, we find that a two-year notice requirement does not impose overly long renewal terms on FT contract holders, which would make it difficult for certain FT contract holders to retain their renewal rights and could impede their flexibility in choosing alternate fuels or sources of supply.

Regarding CAPP's concern that capacity constraints are not present on the Western portion of the Mainline, we find that if capacity is not constrained, shippers will continue to have the option of contracting for non-renewable contracts on an annual basis to meet their requirements. If capacity becomes constrained, CAPP's objection ceases to be valid.

Long-term commitments/Capacity reallocation

We have decided that general renewal provisions are not the appropriate mechanism for determining long-term contractual support for specific expenditures, and accordingly deny the ELTRO, the corresponding discretion to decline certain contract renewals, and other proposals with specific triggering events. These approaches attempt to use a generic rule to deal with exceptional circumstances. We agree with ANE's submissions that instituting dramatically longer renewal terms of up to 15 years requires shippers to make incremental capacity decisions at the end of the existing contract term instead of having an orderly renewal decision, and will disrupt the operation of primary capacity markets. Even the potential to institute these terms creates market uncertainty.

We have also decided at this time not to implement the ELTRO in the specific circumstances of the Energy East Project. We agree with the submissions of Gaz Métro (and many other intervenors) that adjudicative bodies ought not to decide complex matters in a "factual vacuum", and we are not prepared to do so here. There is no way for us to know at this time whether the ELTRO's negative impacts on shippers are balanced by the overall public interest.

It is our opinion that the increased renewal notice period provided for in this decision enables TransCanada and its affiliates to obtain sufficient information to make an application for the Energy East Project. At the conclusion of the transition period, as outlined in the Board's letter of 10 October 2013 (see Appendix II), TransCanada will know what capacity will be required by gas users in 2016 when TransCanada proposes to remove facilities from gas service. The issue of whether long-term commitments to the Mainline are required of certain natural gas shippers can be addressed in a Board proceeding dealing with an application for the Energy East Project.

ANE, MAS and TransCanada all suggested ROFR mechanisms. Although we find the concept of ROFRs to be attractive when they operate automatically and transparently, we have not been persuaded that there is a requirement for Mainline capacity to be reallocated at this time. We recognize that a ROFR mechanism could be appropriate in the future, if the circumstances warrant.

Decision

We deny TransCanada's proposed renewal provisions. We have decided to amend renewal provisions for Firm Mainline Services to require contract holders to provide TransCanada with two years' notice of their intention to renew, and to require a renewal term to be one or more full years (the Amended Renewal Provisions).

Consistent with our 10 October 2013 letter decision, TransCanada may amend the Tariff to give contract holders for Firm Mainline Services the choice to align their renewal terms with the Gas Year, provided that the renewal term exceeds one year. We have also decided to implement a transition mechanism that aligns existing contracts with the Amended Renewal Provisions (see Appendix II).

Other aspects of the renewal provisions for Firm Mainline Services, for example, provisions prescribing the form and content of a renewal notice, and how that notice is to be provided to TransCanada, are unchanged by this decision.

3. Disposition

The foregoing constitutes our Reasons for Decision in respect of the Tariff Amendment Application heard by the Board in the RH-001-2013 proceeding.

L. Mercier
Presiding Member

R.R. George
Member

J. Gauthier
Member

Calgary, Alberta
November 2013

Appendix I - Reasons for Ruling on APPrO motion[11]

This Appendix provides the reasons for our ruling refusing APPrO's request, which it presented in its final argument, for the Board: (i) to direct TransCanada to file the minutes of a settlement agreement, made on 10 September 2013 among TransCanada, Gaz Métro, Union and Enbridge (the Term Sheet), on the record of the RH-001-2013 proceeding so that the Board could read it and consider it in full; and (ii) to defer determination of the Tariff Amendment Application until more information was available to the Board.[12]

It is our view that the first part of APPrO's request is, in substance, a motion to reopen the record of the RH-001-2013 proceeding to allow the Board to consider the Term Sheet. Although the evidentiary record for the RH-001-2013 proceeding closed on 12 September 2013, the Board has the discretion to reopen the evidentiary record of a proceeding and to admit new evidence at any time before its final decision is issued. In considering motions to reopen the record to admit new evidence, the Board examines whether the information sought to be admitted is relevant, would further assist the Board in reaching its ultimate decision, whether the information could have been provided at an earlier date and what prejudice parties to the proceeding may suffer if the relief is granted.[13]

It is our view that admitting the Term Sheet on the evidentiary record would not assist us in reaching our ultimate decision. The Term Sheet outlines broad principles applicable to a settlement agreement that has yet to be concluded. How the settling parties have settled their dispute over the issues of diversion rights and renewal rights is part of a broader package of compromises that cannot be stripped out to inform us about how we should decide those issues in this proceeding.

We recognize that the Term Sheet has some relevance to the issue of market uncertainty insofar as it contemplates that TransCanada may, in the future, make a new application that seeks relief different from the relief applied for in the Tariff Amendment Application. However, there is information currently on the evidentiary record about market uncertainty following the Board's RH-003-2011 Decision[14] and, irrespective of the Term Sheet, nothing prevents TransCanada or any other party from making further applications to the Board seeking amendments to the Tariff. In this context, further information on the issue of market uncertainty does not outweigh the prejudice, caused by delay, which would result from the Board re-opening the evidentiary record.

[11] The Board's ruling on APPrO's request can be found at 9 T 9489.
[12] APPrO argument, paras. 14-15; 9 T 9035-9036.
[13] National Energy Board, OH-005-2011, Enbridge Pipelines Inc., Line 9 Reversal Phase I Project, Letter to the Ontario Pipeline Landowners Association, 20 July 2012.
[14] See, for example, 7 T 8270-8272.

Notwithstanding that we have decided not to reopen the record to admit the Term Sheet, we have decided to affirm our view that parties to an ongoing Board proceeding have a positive obligation to immediately disclose that they may be aligned in interest on certain issues with other parties to whom they are acting adverse. It is our view that this positive disclosure obligation extends to counsel representing parties before the Board, a quasi-judicial tribunal.

It is fundamental to Board proceedings – which rely on aspects of the adversarial system, such as cross-examination – to know what parties may be aligned in interest.[15] The Board must know how a settlement agreement, or other informal arrangement, might affect positions taken by the parties and their witnesses during its proceedings because there is potential for the parties to abuse the Board's process by appearing as adversaries when they are not.

It is insufficient that the parties have agreed among themselves that their arrangement does not apply to an ongoing Board proceeding. If the parties' undisclosed arrangement were determinative, a host of games could be played. For example, the notional adversaries could cross-examine each other, when they may otherwise not be permitted to do so,[16] or use the Board's adjudicative process to secretly bolster their settlement arrangement. Also troublesome is that if all parties to a Board proceeding were to settle issues relevant to that proceeding, but agree that their arrangement did not apply to that proceeding, public resources could be wasted by holding a proceeding that would not otherwise be required.

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[15] We recognize that positions can change and develop throughout the course of a proceeding.

[16] For example, a determination on "sweetheart cross-examination" can only be made if parties fully and accurately disclose their position to the Board.

Appendix II

National Energy Board

Office national de l'énergie

LETTER DECISION

File OF-Tolls-Group1-T211-2011-04 03
10 October 2013

To: Parties to the RH-001-2013 Proceeding

TransCanada PipeLines Limited (TransCanada)
Application for Approval of Tariff Amendments (Tariff Amendment Application)
RH-001-2013 Decision with Reasons to Follow

On 17 June 2013, TransCanada filed the Tariff Amendment Application under Part I and Part IV of the *National Energy Board Act*[1] (NEB Act). In the Tariff Amendment Application, TransCanada sought National Energy Board (Board) approval to amend its Canadian Mainline Gas Transportation Tariff (Tariff) as follows:

- to modify provisions applicable to Diversions and Alternate Receipt Points (ARPs);
- to eliminate the overrun feature of Storage Transportation Service (STS);
- to eliminate provisions that establish requirements for the timing and duration of open seasons for Short-Term Firm Transportation (STFT) service and Short-Term Short Notice (ST-SN) service; and
- to modify renewal provisions for Firm Mainline Services.[2]

The Board set the Tariff Amendment Application down for an oral public hearing. A number of parties participated in the hearing and opposed the Tariff Amendment Application in whole or in part. The oral portion of the hearing, consisting of cross-examination and reply argument, took place in Calgary, Alberta in September 2013 over nine days.

The Board has decided to release its decision on the Tariff Amendment Application with reasons to follow. It is the Board's view that there is market uncertainty surrounding the terms and conditions of access to transportation services on the Mainline. Releasing the decision, in advance of the reasons, provides shippers with information that may affect their contracting decisions for the upcoming Gas Year.[3]

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[1] *National Energy Board Act*, R.S.C. 1985, c. N-7.
[2] In this letter and Appendix A, "Firm Mainline Service" or "Firm Mainline Services" refers to any one or more of the following services: Firm Transportation; Storage Transportation Service; Storage Transportation Service Linked, Firm Transportation - Short Notice; and Short Notice Balancing.
[3] In this letter, "Gas Year" refers to the annual period between 1 November of a year and 31 October of the following year.

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Filing Deadline
The Board directs TransCanada to file, pursuant to paragraph 60(1)(a) of the NEB Act, amendments to the Tariff to reflect this decision (the Filing).The Board directs TransCanada to make the Filing by **15 November 2013**.

Diversions and ARPs
The Board has decided to deny the proposed amendments to the Tariff in respect of alternate receipt points and diversions.

STS Overrun
The Board has decided to deny the proposed amendments to eliminate the overrun feature of STS service.

STFT and ST-SN Open Season Requirements
The Board has decided to maintain the current timing of the open seasons for STFT and ST-SN. However, the Board has decided to amend the Tariff provisions so that the minimum duration TransCanada is required to hold these open seasons is reduced to 48 hours.

Renewal Provisions
The Board has decided to amend renewal provisions for Firm Mainline Services to require contract holders to provide TransCanada with two years' notice of their intention to renew (instead of the six month renewal notice provision in existence prior to this decision), and to require a renewal term to be one or more full years (the Amended Renewal Provisions).

The Board directs TransCanada, as part of the Filing, to amend the Tariff to reflect the Amended Renewal Provisions. TransCanada may, as part of the Filing, amend the Tariff to give contract holders for Firm Mainline Services the choice to align their renewal terms with the Gas Year, provided that the renewal term exceeds one year.

Other aspects of the renewal provisions for Firm Mainline Services, for example, provisions prescribing the form and content of a renewal notice, and how that notice is to be provided to TransCanada, are unchanged by this decision. The Board rescinds the suspension of the renewal provisions set out in its 22 May 2013 letter.

Renewal Notice Transition Mechanism
The Amended Renewal Provisions are in effect immediately with one exception. The Board recognizes that many Existing Contracts[4] have terms of less than two years. It is impossible for these contract holders to provide TransCanada two years notice of their intention to renew the contracts. Applying the Amended Renewal Provisions immediately to these contracts would effectively make them non-renewable. Therefore, the Board has decided to establish the transition mechanism set out in Appendix A to this letter and apply that mechanism to the Existing Contracts as indicated in that Appendix.

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[4] In this letter and Appendix A, "Existing Contracts" refers to contracts for Firm Mainline Services that are made on or before the date of this letter decision.

The transition mechanism is in effect immediately until 31 January 2014. The transition mechanism provides Firm Mainline Service contract holders with at least 90 days' notice to decide whether to renew their Existing Contracts and maintain the option of retaining their renewal rights. The Amended Renewal Provisions will come into effect on 1 February 2014 for the Existing Contracts set out in Appendix A.

Under the transition mechanism, a contract that is renewed for a total of two or more years will maintain renewal rights in accordance with the Amended Renewal Provisions. A contract holder may renew a contract for only one year, but the contract holder would not maintain renewal rights in accordance with the Amended Renewal Provisions. For greater clarity, as of 31 January 2014, contracts must have a termination date in 2016 or later to retain renewal rights.

Decision on Union Renewals

The Board's decision on Union's "expiring shipper evidence" was pronounced on the bench. It can be found at Transcript Volume 9, paragraphs 10128 to 10131.

Disposition

The foregoing constitutes our Decision in respect of TransCanada's Application for Approval of Tariff Amendments heard by the Board in the RH-001-2013 proceeding.

L. Mercier
Presiding Member

R.R. George
Member

J. Gauthier
Member

Calgary, Alberta
October 2013

Appendix A

Transition Mechanism

This Appendix applies to contracts for Firm Mainline Services that expire between 11 April 2014 and 31 December 2015 and sets notice and term requirements for renewing these contracts. Other aspects of the renewal provisions for Mainline Firm Services, for example, provisions prescribing the form and content of a renewal notice, and how that notice is to be provided to TransCanada, are unchanged by the transition mechanism.

STEP 1: Applicable to Existing Contracts that expire between 11 April 2014 and 30 July 2014, inclusive

A contract holder has the option of extending the term of its contract for a period of one or more full years, provided that the contract holder provides TransCanada six months' notice of its intention to renew the contract before the contract termination date. If the new termination date of the contract falls between the dates set out in Step 2, then the contact holder has an additional opportunity to extend the term of its contract in accordance with Step 2.

STEP 2: Applicable to Existing Contracts that expire between 31 July 2014 and 31 December 2015, inclusive

A contract holder has the option of extending the term of its contract for a period of one or more full years, provided that the contract holder provides TransCanada notice of its intention to extend the term of the contract by 31 January 2014.