

**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #1**

**Reference:** Section 2.0, Lines 37-38, page 1 of 6 and Lines 1-2, page 2 of 6

- Request:**
- a) Please provide a copy of the 2010 open season package.
  - b) What contracts resulted from the 2010 open season? Please include Shipper, Quantity, Receipt Point(s), Delivery Point(s), Term and Commencement Date.
  - c) What facilities were constructed or are being constructed to serve the contracts from the 2010 open season? Please include the in-service date proposed in the open season and the actual or planned in-service date.
  - d) If facilities were placed into physical service later than originally planned, what were the reasons for the delay?

**Response:**

- a) Please refer to Union 1 Attachment 1A and Union 1 Attachment 1B.
- b) In the March 4, 2010 new capacity open season TransCanada received 6 bids. The bids did not proceed to the PA stage.

In the August 25, 2010 new capacity open season TransCanada received two bids that proceeded to contracts and these included J.P. Morgan which contracted for 211,011 GJ/d from Niagara Falls to Enbridge CDA, and Union Gas who contracted for 21,101 GJ/d from Niagara Falls to Kirkwall. Both contracts were for 10 years commencing November 1, 2012 and ending October 31, 2022. In addition, TransCanada received 7 additional bids that did not proceed to contracts.

- c) The following table lists the facilities that were constructed, the planned in-service dates and the actual in-service dates.

Facility	Planned In-Service Date	Actual In-Service Date
Niagara Falls M/S Bidirectional Modifications	November 1, 2012	November 1, 2012
Compressor Station 1301 Bidirectional Modifications	November 1, 2012	November 1, 2012
Union M12	November 1, 2012	November 1, 2012
Parkway Loop (West Section)	November 1, 2012	South of Credit River on January 17, 2013, North of Credit River on

Facility	Planned In-Service Date	Actual In-Service Date
		March 4, 2013, and the Credit River crossing is estimated to be in-service July 31, 2013
Parkway Loop (East Section)	November 1, 2012	January 10, 2013
Compressor Station 127 Bidirectional Modifications and Cooler Additions	November 1, 2012	November 15, 2012
Compressor Station 123 Bidirectional Modifications	November 1, 2012	November 9, 2012

- d) Delays associated with these projects include regulatory approval delays, lengthy landowner negotiations, weather related construction delays and construction delays related to the horizontal directional drill of the Credit River.



## **CANADIAN MAINLINE NEW CAPACITY OPEN SEASON January 29, 2010 to March 4, 2010**

TransCanada is announcing a New Capacity Open Season (the "Open Season") for firm services on its Canadian Mainline System. The Open Season will start on January 29, 2010 and will end on March 4, 2010 at 8:00 a.m. Calgary time.

### **NEW CAPACITY OPEN SEASON AND BIDDING PROCEDURE HIGHLIGHTS**

- Bids must be received by TransCanada no later than 8:00 a.m. MST on March 4, 2010.
- TransCanada is receiving bids for the following services:
  - Firm Transportation (FT),
  - Storage Transportation Service (STS),
  - Storage Transportation Service – Linked (STS-L),
  - Firm Transportation - Short Notice (FT-SN), and
  - Short Notice Balancing (SNB).
- System Segment Capacity:
  - TransCanada will accept bids (for evaluation and allocation) for all paths on its Canadian Mainline System.
- New Service Commencement Date:
  - Transportation services to commence September 1, 2011 for paths with a receipt point of Niagara or Chippawa and a delivery point of Dawn/Union SWDA, St. Clair, or Kirkwall.
  - Transportation services to commence November 1, 2012 for all other paths on the Canadian Mainline System.

While it is anticipated that firm transportation will be available to points on the Canadian Mainline as of the transportation services commencement dates listed above, there may be factors that limit capacity or may delay the in-service date including without limitation the following:

- (a) aggregate new requests being greater than anticipated and/or requiring significant quantities of additional capacity; or
  - (b) contractual arrangements being required on other pipelines; or
  - (c) greater time required for regulatory approvals and/or construction.
- Term:
  - Ten (10) year term for New Capacity bids.



## **CANADIAN MAINLINE NEW CAPACITY OPEN SEASON January 29, 2010 to March 4, 2010**

- Conditional Bidding:
  - Canadian Mainline capacity bids can be conditioned on another Canadian Mainline capacity bid.
  - Bidders in this New Capacity Open Season may condition their bid on receiving upstream or downstream transportation on other pipelines. Provided however, Bidder must elect to withdraw its bid or waive the condition on or before April 30, 2010
- Toll:
  - All capacity is offered at the approved Mainline Toll. The current toll can be found at [NEB Approved Mainline Toll](#)
- Minimum Acceptable Quantity:
  - May be specified by Bidder in the event that prorating of capacity is necessary.
- Upon the close of the Open Season, TransCanada will proceed with accommodating Accepted Bids in the most effective manner.
- Please be advised that TransCanada has initiated a rate and service design review to enhance the competitiveness of its short & long haul rates and services which may result in changes being proposed to the current rate structure.
- Please refer to the Transportation Access Procedures ([TAPs](#)) for additional terms and conditions and information

### **HOW TO BID AND NOTIFICATION**

- Bidders must submit a completed bid via the [Paper Version](#) or [Electronic Version](#) and fax to TransCanada's Mainline Contracting Department at (403) 920-2343.
- Bids must be received by 8:00 a.m. MST on March 4, 2010.
- All bids received will be evaluated together for allocation purposes.
- Notification of successful New Capacity bids will be within fifteen (15) banking days.

### **OPEN SEASON DEPOSIT INFORMATION & PROCEDURE**

Successful Bidders who currently hold a contract with TransCanada are not required to provide a deposit with each bid, although failure to accept awarded capacity will result in a fee charged by TransCanada to Bidder's existing transportation account.

Successful Bidders who do not currently hold a contract with TransCanada shall be required to provide a deposit, within two (2) banking days of the close of the New Capacity Open Season, with each bid provided to TransCanada, equal to the lesser of:

- One (1) month demand charges for the maximum capacity set out on the Bid Form, calculated based on the tolls in place when the Bid Form was submitted; or
- \$10,000 (Cdn).
- The deposit can be provided by either wire transfer or cheque. Please contact your Mainline Customer Account Manager to obtain the TransCanada Bank Account information for wire transfers or to obtain the address for mailing cheques.



**CANADIAN MAINLINE  
NEW CAPACITY OPEN SEASON  
January 29, 2010 to March 4, 2010**

**SUPPORTING DOCUMENTATION FOR NEW SERVICES**

For New Capacity bids, Bidders must provide the supporting documentation for their requested services as set out in the National Energy Board's ("NEB") Filing Manual in order to qualify as acceptable bids under [\(TAPs\)](#). This information must be provided to TransCanada within 5 banking days from the date the successful bidder receives a precedent agreement from TransCanada. Bidders are strongly encouraged to contact one of the TransCanada staff listed below to discuss filing requirements. Such information will form the basis of TransCanada's NEB application.

Information provided by bidders will be on a confidential basis up to the time of a regulatory application to the NEB; any specific requirements for confidentiality will be addressed on an individual basis.

**QUESTIONS**

If you have any questions about this New Capacity Open Season or any other questions related to services on the Canadian Mainline, please contact your Customer Account Manager.

**Calgary**

Gordon Betts (403) 920-6834  
Mike Mazier (403) 920-2651

**Toronto**

Amelia Cheung (416) 869-2115  
Lisa DeAbreu (416) 869-2171  
Todd Anderson (416) 869-2118

**Completed bids must be faxed by 8:00 a.m. MST on March 4, 2010 to:**

**Mainline Contracting Fax Number (403) 920-2343**



## CANADIAN MAINLINE NEW CAPACITY OPEN SEASON January 29, 2010 to March 4, 2010

### APPENDIX

#### LINKS to Additional Information:

- [New Capacity Open Season Bid Form](#) (Paper Version)
- [New Capacity Open Season Bid Form](#) (Electronic Version)
- [Mainline Tariffs](#): Toll Schedules & Pro Forma Contracts
- [TAPs](#): Transportation Access Procedure
- [2010 Mainline Tolls](#) - Final 2010
- [Index of Customers](#) showing recent contracts and renewals
- Other TransCanada Information: [www.transcanada.com/Customer\\_Express](http://www.transcanada.com/Customer_Express)

#### **GST Procedures for FT, FT-SN, STS, STS-L – FOR EXPORT POINTS ONLY**

Pursuant to the Excise Tax Act, Canadian natural gas transporters are required to invoice the Goods and Services Tax (GST) on all services. GST on transportation charges for gas that is consumed in Canada is set at 5%. GST on transportation charges for gas that is consumed in the United States may qualify for zero-rating (0% GST).

For gas that is transported to export points for consumption in the United States, shippers may zero-rate GST on the associated transportation demand, commodity and pressure charges by making a Declaration on the nomination line in NrG Highway.

Shippers may also zero-rate GST on Unutilized Demand Charges (UDC) under firm contracts that have an export point as the primary delivery point in the contract. Note that UDC may only be zero-rated if the firm contract is intended for transportation of gas to, and consumption of gas in, the United States. UDC zero-rating for eligible firm contracts can be obtained by providing TransCanada with an executed Contract Declaration. A *proforma* Contract Declaration Form is available at the following link:

#### [FT GST Declaration](#)

Some key points to note regarding Contract Declarations to zero-rate GST on UDC under firm export Contracts:

- Contract Declarations may only take effect on the first day of a month.
- A Contract Declaration cannot be applied retroactively.
- A single Contract Declaration form is used for all of a shipper's firm export contracts eligible for zero-rating of UDC.

Please keep in mind that, even if 5% GST is applied on your transportation invoice, businesses will typically be eligible for rebates of GST from the Canadian Revenue Agency (CRA). Please refer to the following website for additional information on GST regulations and rebates:

<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/gnrl/txbl/trnsprtn/menu-eng.html>

For more information on TransCanada's GST practices, please contact Vincent Thebault at 403-920-5840 or [vincent\\_thebault@transcanada.com](mailto:vincent_thebault@transcanada.com).



## Canadian Mainline New Capacity Open Season

TransCanada is announcing a New Capacity Open Season (the "Open Season") for firm services on its Canadian Mainline System. The Open Season will start on July 5, 2010 and will end on August 25, 2010 at 8:00 a.m. Calgary time.

### NEW CAPACITY OPEN SEASON AND BIDDING PROCEDURE HIGHLIGHTS

- Bids must be received by TransCanada no later than 8:00 a.m. MST on August 25, 2010.
- TransCanada is receiving bids for the following services:
  - Firm Transportation (FT),
  - Storage Transportation Service (STS),
  - Storage Transportation Service - Linked (STS-L),
  - Firm Transportation - Short Notice (FT-SN), and
  - Short Notice Balancing (SNB).
- **System Segment Capacity:**
  - TransCanada will accept bids (for evaluation and allocation) for all paths on its Canadian Mainline System.
- **New Service Commencement Date:**
  - Transportation services to commence September 1, 2011, or later, for paths with a receipt point of Niagara or Chippawa and a delivery point of Dawn/Union SWDA, St. Clair or Kirkwall.
  - Transportation services to commence November 1, 2013 for all other paths on the Canadian Mainline System, including paths out of Parkway

While it is anticipated that firm transportation will be available to points on the Canadian Mainline as of the transportation services commencement dates listed above, there may be factors that limit capacity or may delay the in-service date including without limitation the following:

- a. aggregate new requests being greater than anticipated and/or requiring significant quantities of additional capacity; or
  - b. contractual arrangements being required on other pipelines; or
  - c. greater time required for regulatory approvals and/or construction.
- **Term:**
    - Ten (10) year term for New Capacity bids.
  - **Conditional Bidding:**
    - Canadian Mainline capacity bids can be conditioned on another Canadian Mainline capacity bid.
  - **Toll:**
    - All capacity is offered at the approved Mainline Toll. The current toll can be found at [NEB Approved Mainline Toll](#)
  - **Minimum Acceptable Quantity:**
    - May be specified by Bidder in the event that prorating of capacity is necessary.
  - Upon the close of the Open Season, TransCanada will proceed with accommodating Accepted Bids in the most effective manner.
  - Please be advised that TransCanada has initiated a rate and service design review to enhance the competitiveness of

its short & long haul rates and services which may result in changes being proposed to the current rate structure.

- Please refer to the Transportation Access Procedures ( TAPs ) for additional terms and conditions and information

## HOW TO BID AND NOTIFICATION

- Bidders must submit a completed bid via the Paper Version or Electronic Version and fax to TransCanada's Mainline Contracting Department at (403) 920-2343.
- Bids must be received by 8:00 a.m. MST on August 25, 2010.
- All bids received will be evaluated together for allocation purposes.
- Notification of successful New Capacity bids will be within fifteen (15) banking days.

## OPEN SEASON DEPOSIT INFORMATION & PROCEDURE

Successful Bidders who currently hold a contract with TransCanada are not required to provide a deposit with each bid, although failure to accept awarded capacity will result in a fee charged by TransCanada to Bidder's existing transportation account.

Successful Bidders who do not currently hold a contract with TransCanada shall be required to provide a deposit, within two (2) banking days of the close of the New Capacity Open Season, with each bid provided to TransCanada, equal to the lesser of:

- One (1) month demand charges for the maximum capacity set out on the Bid Form, calculated based on the tolls in place when the Bid Form was submitted; or
- \$10,000 (Cdn).

The deposit can be provided by either wire transfer or cheque. Please contact your Mainline Customer Account Manager to obtain the TransCanada Bank Account information for wire transfers or to obtain the address for mailing cheques.

## SUPPORTING DOCUMENTATION FOR NEW SERVICES

For New Capacity bids, Bidders must provide the supporting documentation for their requested services as set out in the National Energy Board's ("NEB") Filing Manual in order to qualify as acceptable bids under ( TAPs ). This information must be provided to TransCanada within 5 banking days from the date the successful bidder receives a precedent agreement from TransCanada. Bidders are strongly encouraged to contact one of the TransCanada staff listed below to discuss filing requirements. Such information will form the basis of TransCanada's NEB application.

Information provided by bidders will be on a confidential basis up to the time of a regulatory application to the NEB; any specific requirements for confidentiality will be addressed on an individual basis.

## QUESTIONS

If you have any questions about this New Capacity Open Season or any other questions related to services on the Canadian Mainline, please contact your Customer Account Manager.

### Calgary

#### Gordon Betts

Phone: 1.403.920.6834

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#### Michael Mazler

Phone: 1.403.920.2651



EB-2012-0451/EB-2012-0433/EB-2013-0074

Exhibit M.TCPL.Union.1

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Union 1

Attachment 1B

Email: [mike\\_mazier@transcanada.com](mailto:mike_mazier@transcanada.com)**Toronto****Amelia Cheung**

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Email: [amelia\\_cheung@transcanada.com](mailto:amelia_cheung@transcanada.com)**Lisa DeAbreu**

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Phone: 1.416.869.2159

Email: [reena\\_mistry@transcanada.com](mailto:reena_mistry@transcanada.com)**Completed bids must be faxed by 8:00 a.m. MST on August 25, 2010 to:****Mainline Contracting Fax Number (403) 920-2343****APPENDIX****LINKS to Additional Information:**

- [New Capacity Open Season Bid Form \(Paper Version\)](#)
- [New Capacity Open Season Bid Form \(Electronic Version\)](#)
- [Mainline Tariffs](#) : Toll Schedules & Pro Forma Contracts
- [TAPs](#) : Transportation Access Procedure
- [2010 Mainline Tolls](#) - Final 2010
- [Index of Customers](#) showing recent contracts and renewals
- Other TransCanada Information: <http://www.transcanada.com/customerexpress/index.html>

**GST Procedures for FT, FT-SN, STS, STS-L - FOR EXPORT POINTS ONLY**

TransCanada is required to charge the Goods and Services Tax (GST) or Harmonized Sales Tax (HST), whichever is applicable, on transportation of gas that is consumed in Canada. The GST is set at 5% while HST is set at 13% in Ontario.

Shippers may provide a Declaration which notifies TransCanada that the Shipper's STFT contract is intended to serve an export market and should be charged 0% GST or 0% HST, on any Unutilized Demand Charges (UDC).

The Declaration Form is available at the following link:

**[FT GST/HST Declaration](#)**

Shippers may also zero-rate GST or HST on the associated transportation demand, commodity and pressure charges by making a Declaration on the nomination line in NrG Highway.

Please note:

- Declarations may only take effect on the first day of a month.
- A Declaration cannot be applied retroactively.
- A Declaration supersedes previous Contract Declarations.
- A single Declaration form is used for all of a shipper's firm export contracts eligible for zero-rating of UDC.

EB-2012-0451/EB-2012-0433/EB-2013-0074

Exhibit M.TCPL.Union.1

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Union 1

Attachment 1B

- If a Shipper zero-rates their nomination but does not execute a Declaration the Shipper will be charged 0% GST or 0% HST on their nomination but all associated UDCs will be charged the current applicable GST or HST rate.

Please refer to the following website for additional information on GST/HST regulations and rebates

<http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/gnrl/txbl/trnsprttn/menu-eng.html>

For more information on TransCanada's GST/HST practices, contact [Mainline\\_Contracting@transcanada.com](mailto:Mainline_Contracting@transcanada.com).

Page Updated: 2010-07-09 09:54:37h CT

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**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #2**

**Reference:** Section 3.0, Lines 4-12, Page 2 of 6

**Request:**

- a) Please provide a copy of the TCPL 2012 Firm Transportation New Capacity Open Season package which ran from March 30 to May 4 2012.
- b) What contracts resulted from this 2012 open season? Please include Shipper, Quantity, Receipt Point(s), Delivery Point(s), Term and Commencement Date.
- c) What facilities were planned to be constructed to serve the contracts from the 2012 open season?
- d) Please confirm that TransCanada now does not plan to place these facilities into service under the terms of the 2012 open season.

**Response:**

- a) Please refer to Union 2 Attachment 2A.
- b) Contracts and Bids resulting from the May 4, 2012 new capacity open season.

**2012 Contracts**

DTE and Emera were awarded capacity for an in-service date of November 1, 2013 from Niagara Falls to Kirkwall for 25,585 GJ/d and 26,376 GJ/d respectively. As a result of a request from both shippers TransCanada was able to accommodate an early commencement date of November 1, 2012. Both contracts are for a term of ten years.

**2013 Contracts**

Three additional contracts were awarded capacity with an in-service date of November 1, 2013 and includes 1 from Parkway to Philipsburg for 4,500 GJ/d, 1 from Niagara Falls to KPUC EDA for 2,000 GJ/d and 1 from Parkway to KPUC EDA for 175 GJ/d. All contracts end October 31, 2023.

**2014 Bids**

4 additional bids were received for November 1, 2014. These included the bids from Union Gas for 10,000 from Parkway to Union NDA, and 100,000 from Parkway to Union EDA and two GMI bids, 15,327 GJ/d from Parkway to GMI NDA, and 201,100 GJ/d to the GMI EDA. These bids were for a term of 10 years. All bids for 2014 were delayed to November 1, 2015 due to negotiation of facilities coordination

with Enbridge Gas Distribution, and due to a revised expectation for the on stream date as a result of the issues TransCanada faced in the 2012 expansion.

#### 2015 Bids

GMI bid for 38,048 GJ/d from Parkway to the GMI EDA beginning November 1, 2015 for a term of 10 years. This bid was also delayed to November 1, 2015

#### c) 2012 Facilities

The facilities for the DTE and Emera build were common to the expansion for the 2012 expansion out of Niagara Falls.

#### 2013 Facilities

The facilities for November 1, 2013 were common to an expansion planned as a result of a new capacity open season that closed April 15, 2011. The facilities set for this expansion was compression at Maple.

#### 2015 Facilities

The facilities that were to support the GMI and Union Gas bids originally contemplated a loop of the Parkway to Maple line which included a loop around Brampton. Once the MOU was negotiated with Enbridge, the facilities set was finalized and the facilities included ownership of a portion of Segment A, a meter station at Albion and a new pipeline build from Albion to Maple (Kings North Expansion).

- d) Not confirmed. The facilities required for the November 1, 2012 contracts have been put into service, the facilities required to meet the November 1, 2013 requests are expected to be in place by that date, and the facilities for 2014/2015 will be installed in accordance with the MOU.

## Customer Account Manager

## New Capacity Open Season

### TransCanada's Open Season Advantages for Shippers:

<b>Access to Marcellus supply</b>	Connects suppliers to premium markets within Ontario, Quebec and the Northeast U.S.
<b>Competitive Option into Markets</b>	TransCanada's seamless service provides a competitive option to markets wishing to access Marcellus supply.
<b>Operational Excellence</b>	Secure and reliable annual firm service. Flexible and easy to use transactional systems. Strong record of safety and technical excellence.

### Services Available and Term:

TransCanada is prepared to build facilities for Firm Transportation Service (FT); Storage Transportation Service (STS); Firm Transportation – Short Notice (FT-SN); and Short Notice Balancing Service (SNB) for a minimum term commitment of ten (10) years.

### New Service Start Date(s):

Service	New Service Start Dates
Service from all Receipt Points including Niagara Falls, Chippawa and Parkway to Delivery Points downstream of Parkway	November 1, 2013 or November 1, 2014

*New Service Start Dates are estimated and are subject to the quantity and the path bid by all Service Applicants and will be determined upon the close of the Open Season.*

*New Service Start Dates for a transportation paths requiring transportation service on another pipeline ("TBO Capacity") will be determined based on the in-service date available for the TBO Capacity.*



## New Capacity Open Season

### Other Bidding Information:

Conditional Bidding	<p>Bids may be conditioned on TransCanada's acceptance of another Canadian Mainline capacity bid submitted within this Open Season.</p> <p>Service Applicants may provide any special circumstances or other factors that they would like TransCanada to be aware of in a covering letter to their bid.</p>
Transportation Rates	<p>All New Capacity is offered at the current approved Mainline Toll. The current approved tolls can be found at the following link <a href="#">2012 Interim Tolls</a></p> <p>Please refer to TransCanada's Business and Services Restructuring &amp; 2012/2013 Tolls Application for applied for <a href="#">2013 tolls</a> (starting on page 542).</p>
Notification to Service Applicants and Allocation of Capacity	<p>TransCanada will notify all Successful Bidders within 15 Banking Days of the close of the Open Season.</p> <p>All bids received will be evaluated together for allocation purposes.</p> <p>In the event TransCanada needs to prorate capacity, TransCanada will allocate New Capacity based on demand toll multiplied by contract term, as set forth in TransCanada's <a href="#">Transportation Access Procedure</a> of the Tariff.</p>
Minimum Acceptable Quantity	<p>Service Applicants may specify a minimum acceptable quantity in the event that TransCanada needs to prorate the New Capacity.</p>
Precedent Agreement and Financial Assurances	<p>Successful Bidders will have 30 days to execute the Precedent Agreement once it is received from TransCanada. The Precedent Agreement will become effective on the date that it is received by TransCanada.</p> <p>TransCanada requires acceptable financial assurances (where determined to be necessary) in support of the Precedent Agreement, five (5) Banking Days from a Successful Bidder receiving a Financial Assurances Request. If a Financial Assurance Request has been made and the Successful Bidder does not comply with the request, they will be deemed to have withdrawn their Bid and the awarded capacity will be allocated to other Service Applicants of the Open Season. By submitting a bid a Service Applicant acknowledges that it will comply with this request.</p>



## New Capacity Open Season

<p><b>Deposit Information and Procedure</b></p>	<p>A Bid Deposit is required for each individual Bid Form equal to the lesser of:</p> <ul style="list-style-type: none"> <li>(a) one month worth of demand charges for the maximum capacity set out on the Bid Form, calculated based on the current tolls in effect; or</li> <li>(b) \$10,000 CAD</li> </ul> <p>New Service Applicants (namely those who do not currently hold a contract with TransCanada) are required to provide the Bid Deposit within two (2) Banking Days of the close of the Open Season. Please contact your Mainline Customer Account Manager to obtain the TransCanada Bank Account information for wire transfers or to obtain the address for mailing cheques. Bid deposits for New Service Applicants will not be returned if the Precedent Agreement and Financial Assurances Agreement are not executed.</p> <p>Service Applicants who currently hold a firm transportation service contract with TransCanada are not required to submit the Bid Deposit upon bidding, however, if offered the capacity and the Precedent Agreement and Financial Assurances Agreement are not executed the Bid Deposit fee will be charged to the Existing Service Applicants existing transportation account.</p>
<p><b>Supporting Documentation for New Services</b></p>	<p>For bids in this Open Season, Successful Bidders must provide supporting documentation for their Requested Service as set out in the NEB Filing Manual in order to qualify as acceptable bids under the <a href="#">Transportation Access Procedure</a> of the Tariff. This information must be provided to TransCanada within 5 Banking Days from the date the Successful Bidder receives a Precedent Agreement from TransCanada. Successful Bidders are encouraged to contact their Customer Account Manager to discuss filing requirements. Such information will form the basis of TransCanada's NEB application.</p> <p>Information provided by Successful Bidders will be held on a confidential basis up to the time of a regulatory application to the NEB. The Successful Bidder acknowledges and agrees that TransCanada may use any such information it determines necessary in its NEB Application. Any specific requirements for confidentiality will be addressed on an individual basis.</p>





## New Capacity Open Season

### Other terms and conditions of the Open Season

New Service Start Dates are subject to a number of factors that may limit capacity or delay the New Service Start Date including without limitation;

- 1) aggregate new requests being greater than anticipated and therefore requiring significantly more facilities;
- 2) requests requiring TBO Capacity; and
- 3) greater time required for regulatory approvals and/or construction.

If any bid requires TransCanada to obtain TBO Capacity, TransCanada's acceptance of the bid and the Precedent Agreement and firm transportation service contract between TransCanada and the Service Applicant will all be subject to the condition that TransCanada obtains the TBO Capacity on terms and conditions acceptable to TransCanada prior to the New Service Start Date of the Requested Service, provided however, that TransCanada shall not be obligated to acquire any TBO capacity.

TransCanada's Open Season is subject to TransCanada obtaining all internal and external approvals, including regulatory approvals, required to provide all of the Requested Service on terms and conditions satisfactory to it.

For additional terms, conditions and information please refer to the [Transportation Access Procedure](#) of the Tariff. Any uppercased term not defined herein will have the meaning given to it in Transportation Access Procedure of the Tariff.

### GST Procedures for FT, FT-SN, STS – For Export Points Only

TransCanada is required to charge the Goods and Services Tax (GST) or Harmonized Sales Tax (HST), whichever is applicable, on transportation of gas that is consumed in Canada. Shippers may zero-rate GST or HST on contracts intended to serve an export market by making a Declaration on the nomination line in NrG Highway. Shippers may also provide a monthly Declaration for any Unutilized Demand Charges (UDC). For more information, please see [GST/HST Procedures](#).

## New Capacity Open Season

### Questions:

For inquiries regarding this open season please direct questions to your Customer Account Manager.

Calgary	
Gordon Betts	403.920.6834
Michael Mazier	403.920.2651
Toronto	
Amelia Cheung	416.869.2115
Lisa DeAbreu	416.869.2171
Reena Mistry	416.869.2159

**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #3**

**Reference:** Section 3.0

**Request:**

- a) Did TransCanada conduct any additional open seasons for firm, long-term, short haul transportation between the 2010 open season and the 2012 open season?
- b) If not, why not?

**Response:**

- a) TransCanada held 2 new capacity open seasons in 2010, one that closed March 4, 2010 and one that closed August 25, 2010. Please refer to Union 1 a) Attachment A for the March 4, 2010 posting, and Union 1 a) Attachment B for the August 25, 2010 posting. TransCanada also held a new capacity open season that closed April 15, 2011 which was specifically for firm short-haul and included a limited amount of capacity that could be installed by 2013 downstream of Parkway. The posting is attached as Union 3 Attachment 3A.
- b) Not applicable.

## Canadian Mainline New Capacity Open Season

**April 1, 2011 – April 15, 2011**

TransCanada is announcing a New Capacity Open Season for firm transportation capacity between Niagara Falls or Chippawa to Kirkwall ("**Niagara Falls or Chippawa to Kirkwall Service**"), Niagara Falls or Chippawa to a proposed new Dawn delivery point ("**Niagara Falls or Chippawa to Dawn Facilities**") and approximately 150,000 GJ/d of firm transportation capacity from St. Clair, Dawn, Niagara Falls, Chippawa, or Kirkwall to Delivery Points downstream of Parkway ("**Parkway Service**") for November 1, 2013 on its Canadian Mainline System (the "**Open Season**").

## NEW CAPACITY OPEN SEASON AND BIDDING PROCEDURE HIGHLIGHTS

### Open Season Start and End Dates

- The Open Season will commence on April 1, 2011
- The Open Season will close on April 15, 2011, and bids must be received by TransCanada no later than 3 p.m. MST

### Services Available:

- Firm Transportation (FT);
- Storage Transportation Service (STS);
- Firm Transportation – Short Notice (FT-SN); and
- Short Notice Balancing (SNB)

### New Service Start Date:

- TransCanada estimates that the start date for new: ("**New Service Start Date(s)**")
  - a) Parkway Service will be November 1, 2013;
  - b) Niagara Falls or Chippawa to Kirkwall Service will be November 1, 2012, and/or November 1, 2013 depending on aggregate requests;and
  - c) Niagara Falls or Chippawa to Dawn Facilities Service will be November 1, 2012 or later.

Please note that these New Service Start Dates are subject to any factors that may limit capacity or may delay the New Service Start Date including without limitation the following;

- a) a requirement for TransCanada to enter into contractual arrangements (including transportation service agreements) on other pipelines; or
- b) greater time required for regulatory approvals and/or construction.

## **New Capacity**

TransCanada will receive bids (for evaluation and allocation) on the following System Segments of its Canadian Mainline System:

- Niagara Falls or Chippawa to Kirkwall;
- St. Clair, Dawn, Niagara Falls, Chippawa, or Kirkwall to Delivery Points downstream of Parkway;
- Niagara, or Chippawa to a proposed Dawn Facilities Delivery Point; and
- Parkway to Delivery Points downstream of Parkway.

The aggregate of the New Capacity that can be made available for November 1, 2013 for Parkway Service is approximately 150,000 GJ/d. New Capacity for the Niagara Falls or Chippawa to Kirkwall Service is dependent upon whether the aggregate requests are from Niagara Falls or Chippawa, and depending on the quantity of these aggregate requests, some of the New Capacity may not be available until November 1, 2013.

Availability to any of the Delivery Points downstream of Parkway will be limited to the current firm transportation service available at those locations. Availability of service to the proposed new delivery point Dawn Facilities, is subject to TransCanada obtaining National Energy Board approval to add such point as a delivery point in its tariff on terms and conditions satisfactory to TransCanada.

If any bid requires TransCanada to obtain transportation service on another pipeline ("TBO Capacity"), TransCanada's acceptance of the bid and the Precedent Agreement and firm transportation service contract between TransCanada and the Service Applicant will all be subject to the condition that TransCanada obtains the TBO Capacity on terms and conditions acceptable to TransCanada prior to the commencement date of the Requested Service.

TransCanada's ability to offer the above noted capacity is subject to having binding precedent agreements ready to be filed with its application for facilities that are planned for installation in 2012 and 2013. TransCanada anticipates filing its application with the National Energy Board ("**NEB**") in May 2011 and therefore needs to accelerate the timing of this Open Season. TransCanada anticipates that Successful Bidders will be required to execute a Precedent Agreement and Financial Assurances Agreement on or before May 31, 2011.

## **Interim Point:**

For bids with a Receipt Point of Niagara Falls, or Chippawa and a Delivery Point downstream of Parkway, TransCanada will accept requests for an interim Delivery Point of Kirkwall from November 1, 2012 to October 31, 2013.

## **Term:**

- Ten (10) year minimum term

## **Conditional Bidding:**

Canadian Mainline capacity bids may only be conditioned on TransCanada's acceptance of another Canadian Mainline capacity bid; no other conditions will be accepted.

If Service Applicants would like TransCanada to be aware of special circumstances or other factors associated with its bid, it should do so in a covering letter submitted with the bid.

### **Toll:**

All New Capacity is offered at the approved Mainline Toll. The current toll can be found at: [NEB Approved Mainline Toll](#)

Please be advised that TransCanada has initiated a rate and service design review to enhance the competitiveness of its short & long haul rates and services which may result in changes being proposed to the current rate structure.

### **Minimum Acceptable Quantity:**

A Service Applicant may specify a minimum acceptable quantity in the event that it is necessary to prorate the New Capacity.

### **Allocation of Capacity & Notification to Service Applicants**

TransCanada will notify all Successful Bidders within 15 Banking Days. Below is an estimated timeline for the entire allocation process:

- Successful Bidders will be notified on or before May 6, 2011.
- A Precedent Agreement and Financial Assurances Agreement will be sent to Successful Bidders approximately one week following notification.
- Successful Bidders will be required to execute and return the Precedent Agreement and Financial Assurances Agreement within 30 Calendar Days of its receipt of such agreements.

Should the aggregate of all Service Applicants' bids exceed the current available capacity at any Delivery Point/Area, or should the aggregate of all Service Applicants' bids exceed available capacity out of Parkway, TransCanada will allocate New Capacity based on demand toll multiplied by contract term, as set forth in TransCanada's Transportation Access Procedure of its Canadian Mainline Gas Transportation Tariff (the "**Tariff**").

For additional terms, conditions and information please refer to the Transportation Access Procedure of the Tariff. Any uppercased term not defined herein will have the meaning given to it in Transportation Access Procedure or the Tariff.

### **Precedent Agreement & Financial Assurances:**

Due to the tight timeline for installation of facilities for the Niagara Falls or Chippawa to Kirkwall Service start date of November 1, 2012 and the Parkway Service start date of November 1, 2013, the Precedent Agreement will become effective the date that the executed agreements are returned to TransCanada.

TransCanada requires acceptable financial assurances (where determined to be necessary) in support of the Precedent Agreement to be provided prior to the execution of Precedent Agreement. Service Applicant shall, within 5 Banking Days of receipt of a financial assurances request, provide TransCanada with such financial assurances. If Service Applicant fails to provide TransCanada with financial assurances on or before the date requested, TransCanada may reject or revoke its acceptance of Service Applicants bid.

TransCanada's current Precedent Agreement and Financial Assurances Agreement can be found at the links below.

- [Precedent Agreement](#)
- [Precedent Agreement \(with Interim Delivery Point\)](#)
- [Financial Assurances Agreement](#)

- Financial Assurances Agreement (with Interim Delivery Point)

### How to Bid

Service Applicants must submit a completed bid via the [Paper Version](#) or [Electronic Version](#) and fax to TransCanada's Mainline Contracting Department at (403) 920-2343.

- Bids must be received by 3:00 p.m. MST on April 15, 2011.
- All bids received will be evaluated together for allocation purposes.

### OPEN SEASON DEPOSIT INFORMATION & PROCEDURE

A Bid Deposit is required for each bid. The bid deposit is equal to the lesser of:

- One (1) month worth of demand charges for the maximum capacity set out on the Bid Form, calculated based on the tolls in effect when the Bid Form was submitted; or
- \$10,000

Service Applicants who currently hold a firm transportation service contract with TransCanada are not required to submit the deposit upon bidding, however, the fee will be charged to the Service Applicants existing transportation account if the Precedent Agreement and Financial Assurances Agreement are not executed and returned to TransCanada as required. New Service Applicants who do not currently hold a contract with TransCanada are required to provide the deposit, within two (2) Banking Days of the close of the Open Season, for each bid provided to TransCanada.

The deposit can be provided by either wire transfer or cheque. Please contact your Mainline Customer Account Manager to obtain the TransCanada Bank Account information for wire transfers or to obtain the address for mailing cheques. Bid deposits will not be returned to New Service Applicants who fail to execute and return the Precedent Agreement and Financial Assurances Agreement.

### Supporting Documentation for New Services

For bids in this Open Season, Successful Bidders must provide supporting documentation for their requested services as set out in the NEB Filing Manual in order to qualify as acceptable bids under the Transportation Access Procedure of the Tariff (please see link below). This information must be provided to TransCanada within 5 Banking Days from the date the Successful Bidder receives a Precedent Agreement from TransCanada. Successful Bidders are encouraged to contact their customer account manager to discuss filing requirements. Such information will form the basis of TransCanada's NEB application.

Information provided by Successful Bidders will be held on a confidential basis up to the time of a regulatory application to the NEB; any specific requirements for confidentiality will be addressed on an individual basis.

### Questions

For inquiries regarding current available capacity at any Delivery Point/Area downstream of Parkway, and any other questions regarding this open season please direct questions to your customer account manager.

### Calgary

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**Reena Mistry**

Phone: 1.416.869.2159

Email: [reena\\_mistry@transcanada.com](mailto:reena_mistry@transcanada.com)

**Completed bids must be faxed by 3:00 p.m. MST on April 15, 2011 to:  
Mainline Contracting Fax Number (403) 920-2343**

**APPENDIX**

**LINKS to Additional Information:**

- o [New Capacity Open Season Bid Form \(Paper Version\)](#)
- o [New Capacity Open Season Bid Form \(Electronic Version\)](#)
- o [Mainline Tariffs : Toll Schedules & Pro Forma Contracts](#)
- o [Transportation Access Procedure](#)
- o [2011 Revised Interim Mainline Tolls](#)
- o Other TransCanada Information: <http://www.transcanada.com/customerexpress/index.html>



**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #4**

**Reference:** Section 3.0, Lines 13-19, Page 2 of 6

- Request:**
- a) Please confirm that in September 2012, TransCanada provided notice to shippers that entered the 2012 open season that service would no longer be available in 2014 and was delayed to November 2015. Were there other shippers in addition to Union and Gaz Métro that were awarded capacity?
  - b) When did Enbridge inform TransCanada that the in-service date for Segment A of the proposed GTA Project would be delayed until 2015? Please provide copies of any written correspondence to that effect.
  - c) Please provide a copy of all internal presentations, correspondence including emails, Board of Director directives and any materials provided to the Board of Directors in connection with the suspension of the project and cancellation of the associated Precedent Agreements as per TCPL's letters of April 29, 2013.

**Response:**

- a) Confirmed. No other shippers were awarded capacity for 2014 or 2015.
- b) There was no formal notification from Enbridge of the change in schedule. TransCanada was informally notified during ongoing facility collaboration conversations with Enbridge in the late summer early fall of 2012.
- c) At its April 25-26, 2013 Board Meeting, the TransCanada Board of Directors was provided with an overview of the NEB's Mainline Decision in RH-003-2011. At that time, the Board of Directors was advised in an oral presentation that management had determined it could not recommend that the Board approve the project to serve the 2015 new service requests as a result of the Mainline Decision. The Board Members accepted this recommendation of management not to go forward with the project.

TransCanada's Board of Directors materials, presentations, minutes, and directives are commercially sensitive and confidential.

**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #5**

**Reference:** Section 5.0, lines 30-34, page 5 of 6

**Request:** a) TCPL notes that one consequence of the RH-003-2011 Decision was a choice not to build to meet the service requests of Gaz Métro or Union. Are there any other consequences or decisions TCPL has undertaken as a result of the Decision? Please describe. Please provide all presentations and correspondence (including emails) related to these consequence and decisions.

**Response:**

a) Additional consequences include the request for tariff provision changes in RH-1-2013, and the changed terms on which capacity is offered in the new capacity open season closing July 29, 2013.

**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #6**

**Reference:** Section 5.0, lines 1-3, page 6 of 6

- Request:**
- a) Please provide a copy of the recently posted new capacity open season.
  - b) Please provide details and results of any other Firm Transportation open seasons conducted since April 29 2013 (including for short notice and non-renewable service).
  - c) Please file copies of any letters of complaint that the NEB has received in regard to TCPL since the Compliance Toll appeal in May 2013.
  - d) Please file any NEB correspondence in response to any complaint letters.
  - e) Please file any responses to the NEB submitted at the time of filing this interrogatory response.
  - f) Please confirm that the following table comparing the tolls for services offered in the recently posted new capacity open season to the tolls approved under RH-003-2011 is correct. If not, please provide a new table.

Receipt Point	Delivery Point	Compliance Tolls (RH-3-2011) (GJ/d)	2015/2016 NCOS Tolls (GJ/d)	Price Difference (GJ/d)	Increase
Empress	Union EDA	\$1.65	\$1.65	N	0
Empress	GMi EDA	\$1.73	\$1.73	N	0
Empress	Enbridge EDA	\$1.62	\$1.62	N	0
Empress	East Hereford	\$1.83	\$1.40	-\$0.43	-24%
Parkway	Union EDA	\$0.25	\$1.65	\$1.40	560%
Parkway	GMi EDA	\$0.41	\$1.73	\$1.32	322%
Parkway	Enbridge EDA	\$0.32	\$1.62	\$1.30	406%
Parkway	East Hereford	\$0.51	\$1.40	\$0.89	175%
Niagara	Union EDA	\$0.32	\$1.75	\$1.43	447%
Niagara	GMi EDA	\$0.48	\$1.83	\$1.35	281%
Niagara	Enbridge EDA	\$0.39	\$1.72	\$1.33	341%
Niagara	East Hereford	\$0.58	\$1.50	\$0.92	159%
Chippawa	Union EDA	\$0.32	\$1.75	\$1.43	447%
Chippawa	GMi EDA	\$0.48	\$1.83	\$1.35	281%
Chippawa	Enbridge EDA	\$0.39	\$1.72	\$1.33	341%
Chippawa	East Hereford	\$0.58	\$1.50	\$0.92	159%

**Response:**

- a) Please refer to Union 6 Attachment 6A.
- b) Please refer to Union 6 Attachment 6B.
- c) Please refer to Union 6 Attachment 6C.
- d) Please refer to Union 6 Attachment 6D.
- e) Please refer to Union 6 Attachment 6E.
- f) Confirmed.

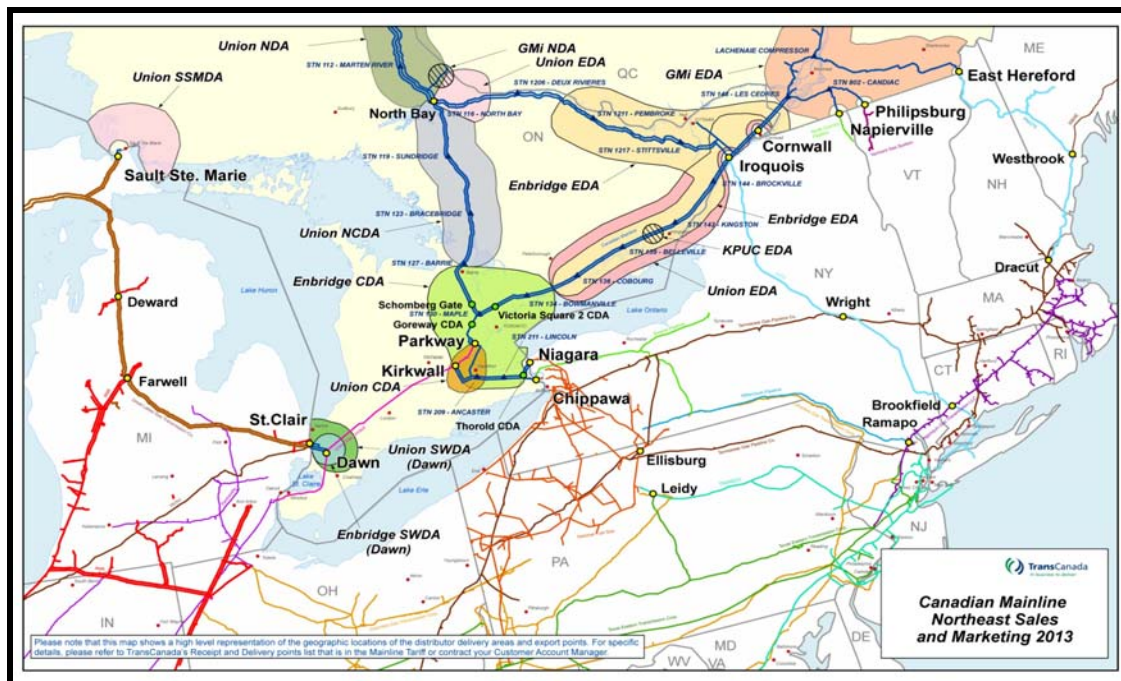


## New Capacity Open Season

**June 28 – July 29, 2013**

TransCanada PipeLines Limited ("TransCanada") has received requests for firm transportation capacity to connect natural gas supplies to Canadian and U.S. Northeast markets. In support of these requests, TransCanada is pleased to announce a New Capacity Open Season (the "Open Season") on its Canadian Mainline for firm transportation service from Empress, Parkway, Niagara Falls, and Chippawa, to delivery points in the EDA and points east including Enbridge EDA, Union EDA, KPUC EDA, GMi EDA, Iroquois, Cornwall, Napierville, and Philipsburg. TransCanada is also offering delivery to East Hereford from Iroquois as well as the receipt points mentioned above. In addition, TransCanada is offering service to the Union CDA, and two new Distributor Delivery Areas: Parkway Enbridge CDA and Bram West CDA.

This Open Season will provide an opportunity for shippers to access additional volumes of natural gas from abundant supplies located in the Western Canadian Sedimentary Basin as well as the Marcellus region and will allow producers to connect these supplies to premium and growing markets in Ontario, Quebec and the U.S. Northeast. The TransCanada Mainline connects major supply sources and key storage hubs to all of the key Eastern Canadian and U.S. Northeast markets through its secure, reliable and safe pipeline system.



**This Open Season closes at 8:00 a.m. Mountain Standard Time on July 29, 2013.**

**Electronic and paper bid forms can be found at the following links:**

[Electronic Bid Form](#)

[Paper Bid Form](#)

**Please fax completed bids to 403-920-2343**

**For inquiries regarding this Open Season please direct questions to your**

[Customer Account Manager](#)



## New Capacity Open Season

### TransCanada's Open Season Advantages for Shippers:

<b>Access to abundant supply</b>	Connects suppliers to premium markets within Ontario, Quebec and the U.S. Northeast.
<b>Operational Excellence</b>	Secure and reliable annual firm service. Flexible and easy to use transactional systems. Strong record of safety and technical excellence.

### Services Available and Term:

TransCanada is prepared to build facilities for Firm Transportation Service (FT) with a minimum term commitment of fifteen (15) years for those shippers meeting the terms and conditions set out in this Open Season.



## New Capacity Open Season

### New Service Start Date(s):

Service	New Service Start Dates
Service from Receipt Points including Empress, Parkway, Niagara Falls, and Chippawa to Delivery Points in the EDA and points east including Enbridge EDA, Union EDA, KPUC EDA, GMi EDA, Iroquois, Cornwall, Napierville, and Philipsburg	November 1, 2015 <sup>(1)</sup> or November 1, 2016
Service from Receipt Points including Empress, Parkway, Niagara Falls, Chippawa, and Iroquois to the East Hereford Delivery Point (capacity limited to approximately 300,000 GJ/d)	November 1, 2016
Service from the Receipt Points of Parkway, Niagara Falls, and Chippawa to the Delivery Point of Union CDA	November 1, 2015 <sup>(2)</sup>
Service from the Receipt Points of Niagara Falls or Chippawa to the Delivery Point of Parkway Enbridge CDA (capacity limited to 200,000 GJ/d)	November 1, 2015
Service from the Receipt Point of Parkway to the Delivery Point of Bram West CDA (capacity limited to 800,000 GJ/d)	November 1, 2015

<sup>(1)</sup>Incremental capacity from Parkway to points downstream is limited to approximately 300,000 GJ/d for service starting November 1, 2015. Additional amounts can be accommodated for service commencing November 1, 2016.

<sup>(2)</sup> Service may be available earlier, at TransCanada's sole discretion.

Parkway Enbridge CDA is a new Distributor Delivery Area that will be created by removing the Enbridge Parkway meter from the Enbridge CDA. Bram West CDA is a new Distributor Delivery Area which will interconnect with Enbridge Gas Distribution Inc.'s proposed pipeline.

New Service Start Dates are estimated and are subject to a number of factors which are outlined in "Other terms and conditions of the Open Season".

Available capacity and estimated New Service Start Dates for transportation paths requiring transportation service on another pipeline ("TBO Capacity") will be subject to the availability of TBO Capacity.



## New Capacity Open Season

### Transportation Rates<sup>(3)</sup>:

TransCanada is offering a fixed rate that will not vary for the entire minimum 15 year term of the transportation service contract for the paths indicated in Table 1.

Table 1: Fixed Transportation Rates GJ/d

	Delivery Point							
Receipt Point	Enbridge EDA	Union EDA	KPUC EDA	GMI EDA	Iroquois	Cornwall	Napierville	Philipsburg
Empress	\$1.6154	\$1.6504	\$1.6841	\$1.7294	\$1.6259	\$1.6429	\$1.7215	\$1.7304
Parkway	\$1.6154	\$1.6504	\$1.6841	\$1.7294	\$1.6259	\$1.6429	\$1.7215	\$1.7304
Niagara Falls	\$1.7154	\$1.7504	\$1.7841	\$1.8294	\$1.7259	\$1.7429	\$1.8215	\$1.8304
Chippawa	\$1.7154	\$1.7504	\$1.7841	\$1.8294	\$1.7259	\$1.7429	\$1.8215	\$1.8304

TransCanada is offering a new custom service with a fixed rate to attract and retain capacity for the following paths:

- from the Empress and Parkway Receipt Points to the East Hereford Delivery Point at a rate of \$1.40 GJ/d;
- from the Receipt Points of Niagara Falls and Chippawa to the East Hereford Delivery Point at a rate of \$1.50 GJ/d; and
- from the Receipt Point of Iroquois to the East Hereford Delivery Point at a rate of \$0.65 GJ/d.

TransCanada's new custom service will allow diversions on eligible paths at a rate that is based on the greater of the above custom service rate or the toll in effect at the delivery point which is the subject of the diversion. The new custom service will not be renewable at the expiration of the minimum 15 year term.

TransCanada is offering transportation from the Parkway, Niagara Falls, or Chippawa Receipt Points to the Union CDA Delivery Point at the annual FT toll in effect at the time of service.

TransCanada is offering transportation from Niagara Falls or Chippawa to the new Parkway Enbridge CDA as well as Parkway to the new Bram West CDA at the annual FT tolls in effect at the time of service.

<sup>(3)</sup> Additional existing surcharges, such as delivery pressure, or new NEB approved surcharges may apply.





## New Capacity Open Season

### Other Bidding Information:

Conditional Bidding	<p>Bids may be conditioned on TransCanada's acceptance of another TransCanada Canadian Mainline capacity bid submitted within this Open Season.</p> <p>Service Applicants may provide any special circumstances or other factors that they would like TransCanada to be aware of in a covering letter to their bid.</p>
Notification to Service Applicants and Allocation of Capacity	<p>TransCanada will notify all Successful Bidders within 15 Banking Days of the close of the Open Season.</p> <p>All bids received will be evaluated together for allocation purposes.</p> <p>In the event TransCanada needs to prorate capacity, TransCanada will allocate New Capacity based on demand toll multiplied by contract term, as set forth in TransCanada's <a href="#">Transportation Access Procedure</a> of the Tariff.</p>
Minimum Acceptable Quantity	<p>Service Applicants may specify a minimum acceptable quantity in the event that TransCanada needs to prorate the New Capacity.</p>
Precedent Agreement and Financial Assurances	<p>Successful Bidders will have 30 days to execute the Precedent Agreement once it is received from TransCanada. The Precedent Agreement will become effective on the date that it is received by TransCanada.</p> <p>TransCanada requires acceptable financial assurances (where determined to be necessary) in support of the Precedent Agreement, five (5) Banking Days from a Successful Bidder receiving a Financial Assurances Request. If a Financial Assurance Request has been made and the Successful Bidder does not comply with the request, they will be deemed to have withdrawn their Bid and the awarded capacity will be allocated to other Service Applicants of the Open Season. By submitting a bid a Service Applicant acknowledges that it will comply with this request.</p>



## New Capacity Open Season

<p><b>Deposit Information and Procedure</b></p>	<p>A Bid Deposit is required for each individual Bid Form equal to the lesser of:</p> <ul style="list-style-type: none"> <li>(a) one month worth of demand charges for the maximum capacity set out on the Bid Form, calculated based on the current tolls in effect; or</li> <li>(b) \$10,000 CAD</li> </ul> <p>New Service Applicants (namely those who do not currently hold a contract with TransCanada) are required to provide the Bid Deposit within two (2) Banking Days of the close of the Open Season. Please contact your Mainline Customer Account Manager to obtain the TransCanada Bank Account information for wire transfers or to obtain the address for mailing cheques. Bid deposits for New Service Applicants will not be returned if the Precedent Agreement and Financial Assurances Agreement are not executed.</p> <p>Service Applicants who currently hold a firm transportation service contract with TransCanada are not required to submit the Bid Deposit upon bidding, however, if offered the capacity and the Precedent Agreement and Financial Assurances Agreement are not executed the Bid Deposit fee will be charged to the Existing Service Applicants existing transportation account.</p>
<p><b>Supporting Documentation for New Services</b></p>	<p>For bids in this Open Season, Successful Bidders must provide supporting documentation for their requested service as set out in the NEB Filing Manual in order to qualify as acceptable bids under the <a href="#">Transportation Access Procedure</a> of the Tariff. This information must be provided to TransCanada within five (5) Banking Days from the date the Successful Bidder receives a Precedent Agreement from TransCanada. Successful Bidders are encouraged to contact their Customer Account Manager to discuss filing requirements. Such information will form the basis of TransCanada's NEB application.</p> <p>Information provided by Successful Bidders will be held on a confidential basis up to the time of a regulatory application to the NEB. The Successful Bidder acknowledges and agrees that TransCanada may use any such information it determines necessary in its NEB Application. Any specific requirements for confidentiality will be addressed on an individual basis.</p>



## New Capacity Open Season

<p>Other terms and conditions of the Open Season</p>	<p>New Service Start Dates are subject to a number of factors that may limit capacity or delay the New Service Start Date including without limitation;</p> <ol style="list-style-type: none"> <li>1) aggregate new requests being greater than anticipated and therefore requiring additional facilities;</li> <li>2) requests requiring TBO Capacity;</li> <li>3) greater time required for regulatory approvals and/or construction; and</li> <li>4) TransCanada receiving all internal and external approvals, including regulatory approvals, it determines necessary to construct facilities and provide the service, all on terms and conditions satisfactory to TransCanada in its sole discretion.</li> </ol> <p>If any bid requires TransCanada to obtain TBO Capacity, TransCanada's acceptance of the bid and the Precedent Agreement and firm transportation service contract between TransCanada and the Service Applicant will all be subject to the condition that TransCanada obtains the TBO Capacity on terms and conditions acceptable to TransCanada prior to the New Service Start Date of the requested service, provided however, that TransCanada shall not be obligated to acquire any TBO capacity.</p> <p>Prior to allocation of capacity, Service Applicant shall within five (5) business days of TransCanada's request demonstrate, to TransCanada's satisfaction, that it has an equivalent amount of takeaway capacity on the downstream pipeline.</p> <p>For additional terms, conditions and information please refer to the <a href="#">Transportation Access Procedure</a> of the Tariff. Any uppercased term not defined herein will have the meaning given to it in Transportation Access Procedure of the Tariff.</p>
<p>GST Procedures for FT, FT-SN, STS – For Export Points Only</p>	<p>TransCanada is required to charge the Goods and Services Tax (GST) or Harmonized Sales Tax (HST), whichever is applicable, on transportation of gas that is consumed in Canada. Shippers may zero-rate GST or HST on contracts intended to serve an export market by making a Declaration on the nomination line in Nrg Highway. Shippers may also provide a monthly Declaration for any Unutilized Demand Charges (UDC). For more information, please see <a href="#">GST/HST Procedures</a>.</p>

## TransCanada's Firm Transportation New Capacity Open Season



### Questions:

For inquiries regarding this Open Season please direct questions to your Mainline Customer Account Manager.

Calgary	
Gordon Betts	403.920.6834
Michael Mazier	403.920.2651
Toronto	
Amelia Cheung	416.869.2115
Lisa DeAbreu	416.869.2171
ReenaMistry	416.869.2159

#### May 15, 2013 Existing Capacity Open Season

Service Type	Receipt Point	Delivery Point	Start Date	End Date	Contract Demand (GJ/d)
FT-NR	Empress	Cornwall	1-Nov-2013	31-Mar-2015	1,175
FT-NR	Empress	East Hereford	1-Nov-2013	31-Mar-2015	21,101
FT-NR	Empress	Enbridge EDA	1-Nov-2013	31-Oct-2015	500
FT-NR	Empress	Enbridge EDA	1-Nov-2013	31-Mar-2015	50,000
FT-NR	Empress	GMIT EDA	1-Nov-2013	31-Mar-2015	42,449
FT-NR	Empress	GMIT EDA	1-Nov-2013	31-Mar-2015	10,304
FT-NR	Empress	GMIT EDA	1-Oct-2013	31-Oct-2015	130,000
FT-NR	Empress	GMIT EDA	1-Nov-2013	30-Apr-2015	10,551
FT-NR	Empress	GMIT EDA	1-Oct-2013	31-Mar-2015	14,500
FT-NR	Empress	Iroquois	1-Dec-2013	28-Feb-2015	52,753
FT-NR	Empress	Iroquois	1-Nov-2013	31-Mar-2015	36,927
FT-NR	Empress	Iroquois	1-Nov-2013	31-Mar-2015	21,101
FT-NR	Empress	Union EDA	1-Nov-2013	31-Oct-2015	1,262
FT	SS. Marie	Union SSMDA	1-Jun-2013	30-Jun-2014	7,385
FT	SS. Marie	Union SSMDA	1-Nov-2013	30-Nov-2014	26,215

#### June 10, 2013 Daily Existing Capacity Open Season

Service Type	Receipt Point	Delivery Point	Start Date	End Date	Contract Demand (GJ/d)
FT-NR	Empress	GMIT EDA	1-Nov-2013	31-Oct-2014	5,196

#### June 14, 2013 Daily Existing Capacity Open Season

Service Type	Receipt Point	Delivery Point	Start Date	End Date	Contract Demand (GJ/d)
FT-NR	Empress	East Hereford	1-Nov-2013	31-Oct-2015	21,101

#### June 19, 2013 Daily Existing Capacity Open Season

Service Type	Receipt Point	Delivery Point	Start Date	End Date	Contract Demand (GJ/d)
FT-NR	Empress	Enbridge EDA	1-Nov-2013	31-Oct-2015	96,250
FT	Empress	Emerson 2	1-Jul-2013	30-Jun-2014	10,000

#### June 20, 2013 Daily Existing Capacity Open Season

Service Type	Receipt Point	Delivery Point	Start Date	End Date	Contract Demand (GJ/d)
FT	Empress	Emerson 1	1-Jul-2013	30-Jun-2014	10,551

#### June 24, 2013 Daily Existing Capacity Open Season

Service Type	Receipt Point	Delivery Point	Start Date	End Date	Contract Demand (GJ/d)
FT	Empress	Emerson 1	1-Jul-2013	30-Jun-2014	15,826

#### June 27, 2013 Daily Existing Capacity Open Season

Service Type	Receipt Point	Delivery Point	Start Date	End Date	Contract Demand (GJ/d)
FT	Empress	TCPL WDA	3-Jul-2013	31-Oct-2014	4,000

#### July 3, 2013 Daily Existing Capacity Open Season

Service Type	Receipt Point	Delivery Point	Start Date	End Date	Contract Demand (GJ/d)
FT	Empress	Emerson 1	4-Jul-2013	31-Oct-2014	10,551
FT	Empress	Emerson 2	4-Jul-2013	31-Oct-2014	10,551

#### July 8, 2013 Daily Existing Capacity Open Season

Service Type	Receipt Point	Delivery Point	Start Date	End Date	Contract Demand (GJ/d)
FT	Empress	Emerson 2	9-Jul-2013	31-Oct-2014	10,551
FT	Empress	Emerson 2	10-Jul-2013	31-Oct-2014	85,000
FT	Empress	Emerson 1	10-Jul-2013	31-Oct-2014	9,000

#### July 9, 2013 Daily Existing Capacity Open Season

Service Type	Receipt Point	Delivery Point	Start Date	End Date	Contract Demand (GJ/d)
FT	Empress	Centram MDA	10-Jul-2013	31-Oct-2014	13,000
FT	Empress	Emerson 2	10-Jul-2013	31-Oct-2014	5,275
FT	Empress	Emerson 1	10-Jul-2013	31-Oct-2014	5,000
FT	Empress	Emerson 2	10-Jul-2013	31-Oct-2014	85,000

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NEB/ONE

July 2, 2013

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National Energy Board  
444 Seventh Avenue S.W.  
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T2P 0X8

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File No. A125029

**Attention: Sheri Young, Board Secretary**

Dear Ms. Young:

Re: TransCanada PipeLines, Limited (TCPL) - Daily Existing Capacity Open Season(s) for FT, FT-SN and FT-NR Services

### Introduction

BP Canada Energy Company ULC (BP Canada) is a large marketer and trader of natural gas in North America and buys and sells natural gas directly and indirectly to customers in Alberta, and other Canadian and export regions. In that capacity, BP Canada contracts and pays tolls for services on the TransCanada Pipeline. BP Canada has been and continues to be a FT shipper on the TransCanada Mainline, and is one of TransCanada's largest customers of IT and STFT service.

Pursuant to section 12 (1) of the *National Energy Board Act* (the Act), the National Energy Board (Board or NEB) has full and exclusive jurisdiction to inquire into, hear and determine any matter.

Section 13 of the Act provides that:

The Board may

- (a) order and require any person to do, forthwith, or within or at any specified time and in any manner prescribed by the Board, any act, matter or thing that such person is or may be required to do under this Act, or any regulation, certificate, licence or permit, or any order or direction made or given under this Act; and
- (b) forbid the doing or continuing of any act, matter or thing that is contrary to this Act or any such regulation, certificate, licence, permit, order or direction.



Pursuant to Part IV of the Act, the Board may make orders with respect to all matters relating to traffic, tolls or tariffs.<sup>1</sup>

Upon the facts and for the reasons set out below, BP Canada writes to initiate a formal complaint with the Board regarding a recent change that TCPL has unilaterally made to its tariff and the terms and conditions under which a shipper can access and contract for FT, FT-SN and FT-NR services.

### **TCPL Restructuring Decision: RH-001-2011**

In its decision on the various services and pricing proposals before it in the RH-001-2011 proceeding, the Board made several clear findings regarding FT service, including:

- (a) FT service requires a minimum 1-year commitment (p. 120)
- (b) noting TCPL's request for increased pricing flexibility to remain economically viable in a world where the market values different transportation paths differently, and over time (121)c) noting TCPL's evidence that the presence of recourse cost-based FT rates constrains TCPL's potential market power (p. 122)
- (c) firm shippers commit to use the Mainline for an entire year (p. 126) and pay the annual costs related to their guaranteed access (p. 127)
- (d) the cost-based, 365 day, FT recourse rate is an implicit cap for discretionary shippers(p. 127)
- (e) any interested party that is denied access to the recourse rates may file a complaint with the Board (p. 129)

In the Decision, the Board also affirmed a number of fundamental and principled underpinnings for the Mainline, including continuing access or recourse to firm service. Access to such service is governed by TCPL's Transportation Access Procedure (TAP), which forms part of the company's

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<sup>1</sup> *National Energy Board Act*, R.S.C., 1985, c. N-7, s. 59.





Board-approved Tariff, and the purpose of which (according to the TAP) is to ensure fair and equitable treatment to all who want firm service.<sup>2</sup>

As part of the TCPL Tariff, changes to the TAP, directly or indirectly, and whether made explicitly or by other means, require NEB approval. Where TCPL chooses to act unilaterally to make changes to the availability or terms and conditions of firm service, a complaint to the Board, as it noted in the RH-001-2013 Decision, will lie.

### **TCPL Transportation Access Procedure**

In relation to open seasons for Existing Capacity:

- (a) the TAP applies to all requests for, *inter alia*, FT, FT-NR and FT-SN services (3.1)<sup>3</sup>
- (b) prior to or during any open season for Existing Capacity, TCPL may post notice of the Existing Capacity on each available System Segment, the start date for such Capacity, the type of service available, "in the case of FT-NR the terms the service is available for", and the end date for the Existing Capacity Open Season (4.1)<sup>4</sup>
- (c) TCPL must hold an annual Existing Capacity Open Season (assuming such Capacity exists). Bids must be for a minimum term of 1 year, and bids for more than 1 year shall be in full month increments (4.2)<sup>5</sup>
- (d) if all Existing Capacity is not allocated in the annual Existing Capacity Open Season, TCPL will conduct a Daily Existing Capacity Open Season for, *inter alia*, FT, FT-NR and FT-SN services, bids for which being evaluated as per the criteria for Existing Capacity Open Seasons(4.6)<sup>6</sup>

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<sup>2</sup> See Appendix A, TransCanada PipeLines Limited, Transportation Tariff: Transportation Access Procedure, section 2.1.

<sup>3</sup> See Appendix A, *supra*, at Sheet 3.

<sup>4</sup> See Appendix A, *supra*, at Sheet 3.

<sup>5</sup> See Appendix A, *supra*, at Sheet 3.

<sup>6</sup> See Appendix A, *supra*, at Sheet 7.



## FACTS

### **June 14, 2013: TCPL Changes Daily Existing Capacity Open Season Posting**

In its Daily Existing Open Capacity Open Season Posting dated June 14, 2013, under the heading of Open Season and Bidding Procedures Highlights (see attached), TCPL defined Term as follows:

*Minimum one (1) year term for the posted firm transportation services, ending October 31, 2014 or October 31, 2015.<sup>7</sup>*

It was evident to BP Canada that TCPL had unilaterally and without notice to shippers changed a fundamental aspect of the terms and conditions under which FT service is offered. By adding these specific end dates as caveats to the minimum term requirement for FT service, TCPL limited the flexibility shippers had available in previous open seasons. Prior to this change on June 14, 2013, the only term requirement for qualifying bids was a minimum term of one year, and full month increments for any term greater than one year, as set out in section 4.2(a) of the TAP.<sup>8</sup>

It appeared to BP Canada that this unilateral change in eligibility for FT service forced a shipper requiring service for a period greater than one year to contract for a term perhaps in excess of their requirement and in some cases, forced a shipper into a contract with a minimum term of 23 months (e.g.: a bid for service commencing December 1, 2013 would require a term ending October 31, 2015).

On June 18, 2013, BP Canada participated in TCPL's Canadian Mainline Daily Existing Capacity Open Season for FT, FT-SN, FT-NR. BP Canada submitted three bids in an attempt to obtain FT capacity to address its business needs.<sup>9</sup> They were as follows:

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<sup>7</sup> See Appendix "B", TransCanada FT -- Daily Canadian Mainline Daily Existing Capacity Open Season for FT, FT-SN, FT-NR, Revised June 14, 2013.

<sup>8</sup> Supra, Note 5.

<sup>9</sup> See attached BP Canada bid documentation Appendix "C" attached.



1. 10,550 GJ/Day FT Empress to Iroquois – November 1, 2013 to March 31, 2015<sup>10</sup>
2. 15,825 GJ/Day FT Empress to Iroquois – December 1, 2013 to February 28, 2015<sup>11</sup>, and
3. 10,000 GJ/Day FT Empress to Emerson - July 1, 2013 to June 30, 2014<sup>12</sup>

One bid was for a term of 17 months, one for a term of 15 months and the third bid was for twelve months, commencing July 1, 2013. TCPL rejected each of these bids. The reasons provided by TCPL for rejection of the first two bids was (a) that there was no available FT capacity on the paths that BP Canada sought, namely Empress to Iroquois, and (b) the terms bid did not have the required end dates of October 31, 2014 or October 31, 2015. The reason TCPL rejected the third bid was that the term bid did not have the required end dates of October 31, 2014 or October 31, 2015.

Upon receiving this information from TCPL, BP Canada resubmitted two additional bids that same day:

1. 10,550 GJ/Day FT-NR for Empress to Iroquois – November 1, 2013 to March 31, 2015,<sup>13</sup>  
and
2. 15,825 GJ/Day FT-NR for Empress to Iroquois – December 1, 2013 to February 28, 2015.<sup>14</sup>

As is evident, the only change from BP Canada's 1<sup>st</sup> two bids in this open season was with respect to the type of service requested. TCPL again rejected these bids on the basis that they were submitted with end dates that were not October 21, 2014 or October 31, 2015.

Adding to the confusion and uncertainty surrounding the terms of the open season and TCPL's changes, a further Notice was posted by TCPL in the afternoon of June 18 advising parties that it had

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<sup>10</sup> Appendix C-1.

<sup>11</sup> Appendix C-2.

<sup>12</sup> Appendix C-3.

<sup>13</sup> Appendix D-1.

<sup>14</sup> Appendix D-2.



made changes to the contracting term being made available on a daily basis for FT, FT-NR, and FT-SN. It stated that the effective end date was July 18, 2013 at 9:00 a.m. and the posting date was June 18, 2013 at 3:50 p.m.<sup>15</sup>

### **June 19, 2013: TCPL Changes Daily Existing Capacity Open Season Posting**

On June 19, 2013, TCPL again unilaterally changed the terms and conditions under which FT service was being offered. Specifically, in the open season posting dated June 19, 2013, under the heading of Open Season and Bidding Procedures Highlights, TCPL defined Term as follows:

*Customers can contract for firm transportation service for a one (1) year term. For terms greater than one (1) year, contracts must expire on October 31, 2014 or October 31, 2015.<sup>16</sup>*

On June 19, 2014, BP Canada submitted a bid for 10,000 GJ/Day FT from Empress to Emerson for a term commencing July 1, 2013 until June 30, 2014.<sup>17</sup> BP Canada was awarded this bid.

### **June 24, 2013: Further TCPL Changes to Daily Existing Capacity Open Season Posting**

Then again, on June 24, 2013, TCPL unilaterally changed the terms and conditions under which FT service was offered, reverting back to the Term requirements as they appeared in the June 14 posting:

*Customers can contract for firm transportation service for a minimum of one (1) year term expiring on October 31, 2014 or October 31, 2015.<sup>18</sup>*

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<sup>15</sup> See Appendix "E" attached.

<sup>16</sup> See Appendix "F", TransCanada FT – Daily Canadian Mainline Daily Existing Capacity Open Season for FT, FT-SN, FT-NR, Revised June 19, 2013..

<sup>17</sup> See Appendix "G", TransCanada -- Application for Service, dated June 18, 2013.

<sup>18</sup> See Appendix "H", TransCanada FT-Daily Canadian Mainline Daily Existing Capacity Open Season for FT, FT-SN, FT-NR, revised June 24, 2013.



Therefore, even though BP Canada had been awarded a 12 month term on June 19 for FT capacity from Empress to Emerson, it was apparent that after the June 24 change, again unilaterally made by TCPL, BP Canada would not be able to acquire further FT capacity unless a bid included end dates of either October 31, 2014 or October 31, 2015.

### **Complaint:**

BP Canada submits that TCPL is unilaterally changing the terms of its FT service via these open season postings, and in the result, parties are being denied access to a fundamental pillar of service on the TCPL Mainline; namely, recourse to firm service on the terms and conditions of the TCPL tariff.

TCPL's changes to the term for FT service are evidently beyond the scope of its unilateral discretion or authority. TCPL's unilateral changes to the terms of its Tariff has created uncertainty in the market which, in BP Canada's view has led to, and has the potential to further lead to, decreased liquidity.

In BP Canada's view, neither TCPL's Tariff nor the Board's Decision in RH-003-2011 provide TCPL with the authority to limit access to FT service by allowing it to impose commencement and end dates for FT terms in its open seasons (with FT-NR being the exception). By changing the term requirements for FT service, TCPL has removed the safety net established by the NEB in order to protect Shippers from the exercise of TCPL's new authority in respect of discretionary services, creating uncertainty in the secondary market. Therefore, BP Canada submits that the Board should order TCPL to immediately remove these restrictions on FT term from its open season documentation.

Specifically, with respect to the Tariff, BP Canada submits that the FT Toll Schedule and the TAP govern the parameters under which FT service is offered. In the FT Toll Schedule, Term is described



as “a minimum of 1 year”<sup>19</sup> with no reference to any specific dates and in the TAP, Term is described as “ a minimum of 1 year and any bid in excess of one year is to be bid in full month increments”, again with no reference to specific start and end dates.<sup>20</sup>

With respect to FT-NR service, BP Canada acknowledges that TCPL is permitted under the TAP, to post at any time prior to or during an open season for Existing Capacity the maximum – not minimum - term for or during which that service will be available. No such similar authority is granted to TCPL in its tariff to designate, unilaterally, a commencement and end date for FT service. Neither can it be seriously argued that because the Tariff is silent on this point, such authority can be exercised. If TCPL had wished to have the same authority for FT that it’s Tariff provides for FT-NR, it would be expressly provided for, assuming Board approval. Because such authority was expressly provided for in the one (FT-NR) instance, it was intentionally excluded in the second (FT) instance: *expressio unius est exclusio alterius*.

Market participants rely on the TCPL Tariff to be instructive regarding the NEB-approved terms and conditions related to transportation services including the very important element of qualifying Term. Indeed, TCPL says that fair and equitable treatment is the purpose of the TAP. If there is to be a change to the underlying terms and conditions of FT service, specifically what constitutes a minimum term for FT service, then that change must be duly considered and approved by the Board. It must not be changed without due process, particularly where FT is the recourse service available to shippers wanting to avoid the risk of the pricing discretion TCPL has been given for IT and STFT services.

The effect of the unilateral TCPL actions described above is that parties wanting to bid for FT service in the TCPL Daily Existing Capacity Open Seasons are precluded from having adequate access to the recourse rate that was fundamental to the Board’s granting of discretion to TCPL with respect to the pricing of IT and STFT. Impacts are already being felt by the market such that the

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<sup>19</sup> See Appendix “I”, excerpt from TransCanada PipeLines Limited, Transportation Tariff, FT Toll Schedule, Sheet No. 1.

<sup>20</sup> See TAP, attached as Appendix “A”, Sheet No. 3.



uncertainty created has led, in BP Canada's view, to minimal transactions at Emerson and Waddington. The market cannot function in such a state of uncertainty.

The result is that the recourse rate for a minimum 12 month FT term is currently unavailable, notwithstanding what the TCPL Tariff provides. For example, a bid for FT service in accordance with the June 24 TCPL posting, for service commencing July 1, 2013 (the implementation date of RH-003-2011) would only be successful (other things equal) if it was for the minimum 16 month term ending October 31, 2014 unilaterally prescribed by TCPL. This is the case notwithstanding that a bid made in accordance with the June 19 TCPL posting for a 12 month FT term was accepted.

Whether these changes are commercially driven in order to force customers to pay for additional less valuable summer months, even though the customer is accessing FT capacity for the necessary twelve months is unknown. However, the result is known: it will continue to drive down the value of FT service.

TCPL frequent and arbitrary changes have clearly restricted access to FT service under the TCPL Tariff. It is apparent from the Board's reasons in RH-003-2011 that FT is intended to serve as a check against abuse by TCPL with respect to the pricing of discretionary services. Access to FT service therefore functions as a fundamental pillar to the service provided by the TCPL Mainline and the continued operation of the secondary market. If FT is to be the recourse service then it must be available and have attributes that enable shippers to choose the service to meet their business needs, without being unduly disadvantaged. Unilateral restrictions on capacity access such as those documented in the June 18<sup>th</sup> and the June 24<sup>th</sup> open season postings should not be allowed.

Therefore, pursuant to section 13(1) of the *National Energy Board Act*, BP Canada requests that the Board:

- (a) order TCPL to remove the restrictions which require more than a 1-year term, or prescribe specific commencement and end dates for FT service, from its open season documentation; and



(b) requiring TCPL to ensure that its open season documentation is consistent with the NEB approved terms and conditions for FT service in the TCPL Tariff.

Yours very truly,

**GOWLING LAFLEUR HENDERSON LLP**

A handwritten signature in blue ink, appearing to read "J. Smellie".

James H. Smellie

JHS/bs

Encls.

cc. M. Catharine Davis, TCPL  
Vice President Pipelines Law



July 10, 2013

Ms. Sheri Young  
Secretary of the Board  
National Energy Board  
444 - 7th Avenue SW  
Calgary AB T2P 0X8

Dear Ms. Young:

**Re: TransCanada PipeLines Limited (“TransCanada”) – Tolls and Tariff Complaint Against TransCanada by Union Gas Limited (“Union”) and Gaz Métro Limited Partnership (“Gaz Métro”) and Enbridge Gas Distribution Inc. (“EGD”) (collectively the “Complainants”)**

## **1. Introduction**

Union, Gaz Métro and EGD hereby file a Complaint pursuant to Parts I and IV of the *National Energy Board Act*, R.S.C., 1985, c. N-7 (the “**NEB Act**”) concerning recent actions taken by TransCanada including but not limited to cancellation of accepted service requests for new capacity; unjust and unreasonable tolls and conditions of service imposed upon future access to short haul service on the pipeline as confirmed by TransCanada management (Mr. Johansson’s letter dated June 17, 2013, **Attachment 1**), and by certain Open Seasons initiated by TransCanada seeking to carry these unjust and unreasonable tolls and conditions of service into effect.

In particular, on June 27, 2013, TransCanada announced the initiation of its 2015/2016 New Capacity Open Season (“**2015/2016 NCOS**”) that is scheduled to close on July 29, 2013 (**Attachment 2**). On its face, TransCanada’s 2015/2016 NCOS contains provisions that are contrary to the NEB Act and this Board’s Decision in RH-3-2011. In particular, TransCanada’s 2015/2016 NCOS:

- (a) is unjustly discriminatory and sets tolls that are not just and reasonable and not consistent with the Board’s findings on tolling and rate structures in the RH-3-2011 Decision;
- (b) contravenes the Board’s findings in the RH-3-2011 Decision by stipulating incremental eastern short haul service commencing in 2016 will only be available at tolls which are several times higher than the tolls determined in the RH-3-2011 Decision;
- (c) substitutes a 15-year minimum term requirement for the 10-year minimum term requirement in its 2014 NCOS;

- (d) contravenes the Open Access principle and constitutes an abuse of market power.

In view of TransCanada's contravention of the NEB Act and of the directions set out in the RH-3-2011 Decision, each of Union, Gaz Métro and EGD hereby complain to this Board pursuant ss. 12 and 13 of the NEB Act and ss. 2 and 19 of the *National Energy Board Rules of Practice and Procedure*, 1995, SOR/95-208 (the "**NEB Rules**"). The Complainants seek this Board's intervention to preserve their rights, bring an end to and prevent further contravention of the NEB Act, protect the open access principle, and ensure that its RH-3-2011 Decision is fully respected. In respect of the 2015/2016 NCOS, therefore, Union, Gaz Métro and EGD respectfully request, *inter alia*, an immediate stay of that Open Season pending resolution of this complaint.

## 2. The Complainants

Union is regulated under the *Ontario Energy Board Act (1998)* and serves approximately 1.4 million customers in northern, eastern and southern Ontario through an integrated network of over 67,000 kilometres of natural gas pipelines. Union operates storage and transmission assets that include 163 Bcf of underground natural gas storage at the Dawn Hub and the Dawn-Parkway transmission system. Union's northern and eastern in-franchise customers are served solely off of the TransCanada Mainline system. Some customers in Union's southern franchise area are served solely off of the TransCanada Mainline system.

Gaz Métro is a natural gas distributor within the meaning of s. 2 of *An Act respecting the Régie de l'énergie*, R.S.Q. c. R-6.01. Pursuant to s. 77 of *An Act respecting the Régie de l'énergie*, Gaz Métro is required to supply and deliver natural gas to every person who so requests within the territory served by Gaz Métro's distribution system.

EGD is the largest regulated natural gas distribution utility in Canada and serves over 2 million customers. EGD carries on the business of selling, distributing, transmitting and storing natural gas within Ontario. EGD has an obligation to reliably serve its franchise area customers and believes diversity of both supply and transportation options are vital to fulfilling this obligation.

In order to perform their respective contractual and statutory obligations to supply and deliver natural gas to persons within their delivery areas, each of the Complainants necessarily rely on long haul and short haul transportation services provided by TransCanada.

## 3. Relevant Facts

### a. The New Capacity Open Seasons

TransCanada's Transportation Tariff approved by the NEB includes a Transportation Access Procedure (**Attachment 3**). Section 5 of the Transportation Access Procedure provides a process by which TransCanada may offer new transportation capacity through a "New Capacity Open Season".

*i. TransCanada's 2014 NCOS*

On or about March 30, 2012, pursuant to the Transportation Access Procedure, TransCanada announced a new capacity open season on its Mainline for firm transportation service to delivery points east of Parkway in Ontario, including delivery to Gaz Métro's delivery area ("**2014 NCOS**") (**Attachment 4**). The new capacity would be made available beginning in November 2013 or November 2014.

TransCanada's 2014 NCOS was intended to provide an opportunity for shippers of natural gas to access additional volumes of natural gas from abundant supplies located in the Marcellus region and to allow producers to connect these supplies to markets in Ontario, Québec and the Northeast United States at competitive tolls.

Pursuant to TransCanada's 2014 NCOS, the transportation toll offered for the new capacity was the existing approved Mainline Toll. Moreover, 2014 NCOS provided for a minimum term commitment of 10 years.

TransCanada's 2014 NCOS promised incremental firm short haul service along the Parkway to Maple path in competition with Union's earlier Open Season. As a result, both Union and Gaz Métro made service requests for 110,000 GJ/d (10,000 GJ/d Parkway to Union NDA and 100,000 GJ/d Parkway to Union EDA) and 258,000 GJ/d (Parkway to GMi EDA) respectively, which were accepted by TransCanada and Precedent Agreements ("**PAs**") were tendered and executed. Union and Gaz Métro's access to incremental TransCanada capacity, therefore, was fully consistent with and governed by the approved Tariff and its Transportation Access Procedure.

Union and Gaz Métro's decisions to contract for incremental short haul service from Parkway, and their decisions not to renew certain long haul contracts from Empress were discussed in the RH-3-2011 proceeding and were relied upon, in part, for some of the Board findings<sup>1</sup>.

It is worth noting that, on July 6, 2012, Gaz Métro had already applied to the Régie for the approval of its most recent gas supply plan<sup>2</sup>. Gaz Métro sought approval to move its source of supply to the Dawn Hub from Empress. The Régie characterized the request as a "fundamental strategy orientation"<sup>3</sup>, intended to reflect the recent significant changes in the natural gas market in Canada<sup>4</sup>.

In addition to the economic benefits and the reduction of the distance between supply and market, the change in supply source is intended to enable Gaz Métro to reduce its vulnerability and dependence on the TransCanada Mainline<sup>5</sup>. TransCanada intervened aggressively before the Régie and contested Gaz Métro's application<sup>6</sup>. TransCanada did so despite the fact that it had

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<sup>1</sup> Ex 64-23-2 at pp 1-2; Gaz Métro's shift to short haul was specifically mentioned by the Board (at page 85) as part of its rationale for eliminating toll zones.

<sup>2</sup> Demande d'approbation du plan d'approvisionnement et de modification des conditions de service et tarif de Société en commandite Gaz Métro à compter du 1er octobre 2012, File number R-3809-2012, Phase 1 (translated version) (**Attachment 5**).

<sup>3</sup> Régie de l'énergie Decision D-2012-175, para. 52 (translated version) (**Attachment 6**).

<sup>4</sup> Régie de l'énergie Decision D-2012-175, paras. 15-20 (translated version) (**Attachment 6**).

<sup>5</sup> Régie de l'énergie Decision D-2012-175, paras. 26 and 28 (**Attachment 6**).

<sup>6</sup> TransCanada filed its Request for Intervention on August 10, 2012.

contracted with Gaz Métro for new short haul capacity between the Dawn Hub and GMi-EDA pursuant to its 2014 NCOS<sup>7</sup>.

In September 2012, TransCanada advised that its in-service date had slipped to November 1, 2015.

On December 18, 2012, the Quebec Régie de l'énergie ("**Regie**") approved Gaz Métro's new gas supply and transportation arrangements, rejected TransCanada's position and concluded:

[43] The Régie shares the distributor's opinion and deems that remaining with Empress and not acquiring additional carrying capacities for the Dawn-GMi-EDA route would leave the distributor's customers captive of [TransCanada]'s FTLH tolls.

[44] The Régie agrees with the IGUA in saying that transferring to Dawn would give Gaz Métro and its customers greater selection and flexibility. As a matter of fact, transferring to Dawn would give access to new supply sources from Northeastern America while continuing to have the possibility of purchasing natural gas from Empress while going through Dawn, if it turned out to be the most economical solution. [...]

[54] For all these reasons, the Régie approves Gaz Métro's proposal to transfer the supply structure from Empress to Dawn, a proposal that is materializing through the tenders submitted by Gaz Métro for the calls for tenders launched in 2012 by Union and [TransCanada], who retained them<sup>8</sup>.

On March 27, 2013, this Board issued its Decision RH-3-2011. Pursuant to the RH-3-2011 Decision, on May 1, 2013, TransCanada made compliance filings with the NEB (**Attachment 7**). Included in such compliance filings are compliance tolls extrapolated from the benchmark multi-year fixed toll of \$1.42 per GJ/d set for FT service from Empress to Dawn.

On April 29, 2013 Union and Gaz Métro received letters from TransCanada cancelling its Eastern Mainline Expansion projects for 2015 (**Attachment 8**). With respect to Gaz Métro, who had executed its PA, TransCanada took the position that its Board of Director's failure to approve the Eastern Mainline Expansion projects signified that a condition precedent in the PA was not satisfied. This Board's Decision in RH-3-2011 is given as the sole reason for the failure to approve the transactions. In cancelling TransCanada's 2014 NCOS, TransCanada undermined the award of incremental short haul services pursuant to a process which complied with all tariff requirements.

## *ii. TransCanada's 2015/2016 NCOS*

As noted above, on or about June 27, 2013, TransCanada announced its 2015/2016 NCOS, a second new capacity open season on its Mainline for firm transportation service to delivery points east of Parkway in Ontario, including delivery to Gaz Métro's delivery area in Québec. The new capacity would be made available beginning in November 2015 or November 2016.

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<sup>7</sup> Régie de l'énergie Decision D-2012-175, paras. 32 and following and paras. 51-53 (Attachment 6).

<sup>8</sup> Régie de l'énergie Decision D-2012-175, paras. 43-44 and 54 (Attachment 6).

Having delayed and cancelled Union and Gaz Métro's earlier service requests and PAs, TransCanada now seeks to compel them both to re-bid on much more onerous terms.

TransCanada's 2015/2016 NCOS is purportedly aimed at providing an opportunity for shippers of natural gas to access additional volumes of natural gas from abundant supplies located in the WCSB as well as the Marcellus region and to allow producers to connect these supplies to markets in Ontario, Québec and the Northeast United States.

It is telling that, contrary to 2014 NCOS, TransCanada's 2015/2016 NCOS does not mention that one of its objectives is to provide such access at competitive tolls.

Pursuant to 2015/2016 NCOS, bids must now be for a minimum term commitment of 15 years. Moreover, rather than referring to TransCanada's current approved Mainline Toll, 2015/2016 NCOS stipulates that fixed transportation tolls must be accepted by the prospective shipper in order to obtain the requested service (**Attachment 2, Table 1**). Such transportation tolls make no distinction between long haul and short haul transportation services despite the different distances and costs involved in these two services; indeed, some short haul tolls are higher:

Table 1: 2015/2016 NCOS Tolls

Delivery Point									
Receipt Point	Enbridge EDA	Union EDA	KPUC EDA	GMI EDA	Iroquois	Cornwall	Napierville	Philipsburg	East Hereford
Empress	\$1.62	\$1.65	\$1.68	\$1.73	\$1.63	\$1.64	\$1.72	\$1.73	\$1.40
Parkway	\$1.62	\$1.65	\$1.68	\$1.73	\$1.63	\$1.64	\$1.72	\$1.73	\$1.40
Niagara Falls	\$1.72	\$1.75	\$1.78	\$1.83	\$1.73	\$1.74	\$1.82	\$1.83	\$1.50
Chippawa	\$1.72	\$1.75	\$1.78	\$1.83	\$1.73	\$1.74	\$1.82	\$1.83	\$1.50

As may be readily observed from the tolls proposed in the 2015/2016 NCOS (with the exception of the tolls proposed for delivery to East Hereford), the long haul tolls proposed in the 2015/2016 NCOS (i.e. receipt point Empress) are precisely the compliance tolls filed by TransCanada pursuant to the RH-3-2011 Decision. Remarkably, however, TransCanada seeks to charge exactly the same toll for long haul transportation to delivery points east of Parkway as it would charge for short haul transportation from Parkway to those same delivery points.

To take Gaz Métro's situation as an example, TransCanada proposes under 2015/2016 NCOS to charge \$1.73 per GJ/d for transportation irrespective of whether the natural gas is transported

from Empress or merely transported over 638 kilometres from Parkway. The same pattern is observed for all delivery points mentioned in TransCanada's 2015/2016 NCOS.

## **b. Existing Capacity Open Season**

### ***i. TransCanada's 2013-2015 FT-NR Open Season (FT-NROS)***

In addition, based on the new market environment that results from the recent TransCanada decisions, customers who had previously elected to source their transportation needs from the secondary market and/or through discretionary services are now requesting firm transportation services, as the Board contemplated in the RH-3-2011 Decision. TransCanada, however, sought to unreasonably curtail the ability of shippers to renew those firm service requests over the long term to serve long term distribution requirements as the tariff had permitted

Gaz Métro and EGD, therefore, were able to secure additional transportation capacity through the FT-NR existing capacity open season held by TransCanada. However, the capacity could only be secured for a period of two years in the form of Firm Transportation – Non Renewable (FT-NR) as this was the only service offered by TransCanada. No option was provided to commit to that existing capacity for a longer term nor were the existing tariff provisions respecting renewals made available that might have secured the same result.

In Union, Gaz Métro and EGD's respectful submission, it is unjust and unreasonable that shippers were not given the opportunity to commit for firm service on longer terms in this existing capacity Open Season.

The demand served by this capacity will not disappear in two years and a viable solution must be found in order to serve this market. A new open season permitting shippers to commit to existing short haul capacity for renewable firm service without any restriction on the length of the contract requested would be fairer to shippers and would represent a more accurate picture of the market's needs.

## **c. Presumed Oil Conversion**

TransCanada's 2015/2016 NCOS anticipates the approval of its preferred outcome arising from its yet-to-be-filed oil conversion application in support of the Energy East Project.

In conjunction with its recent FT-NR Open Season, the 2015/2016 NCOS threatens existing customers with the loss of existing Eastern Triangle capacity (one of the two loops of the North Bay Shortcut) which remains fully utilized and for which there is no existing alternative.

Gaz Métro and EGD subscribed for 130,000 GJ/d and 146,250 GJ/d respectively in the recent FT-NR Open Season and subsequent FT-NR Daily Open Season. Some of these requirements relate to a firming up of their discretionary services as contemplated by the RH-3-2011 Decision.

What is critical to Union, Gaz Métro and EGD, however, is that TransCanada did not make existing capacity available for either short haul or long haul service after November 1, 2015. Eastern shippers, therefore, have no option but to subscribe for service in the 2015/2016 NCOS in order to ensure their ability to continue to serve their markets over the long term since

TransCanada simply assumes approval of its application to withdraw fully utilized facilities on the North Bay Shortcut from gas service and further assumes that the Board will allow it to replace those facilities with more costly new capacity, charging short haul tolls several times higher than the short haul tolls found to be just and reasonable in RH-3-2011 and requiring long term commitments of 10 years for long haul but 15 years for short haul service.

With respect, it is wrong to expect shippers to make contracting decisions now based on such contentious hypotheticals. The Open Seasons themselves unduly restrict the efficient functioning of the market and have prevented shippers from committing for firm service for longer terms according to their needs in a fair, reasonable and transparent existing capacity Open Season.

#### **4. TransCanada's 2015/2016 NCOS is Contravening the NEB Act**

The tolls stipulated by TransCanada in order to obtain the required transportation services in TransCanada's 2015/2016 NCOS unjustly discriminate against shippers of natural gas requiring short haul transportation services. Moreover, the tolls stipulated in TransCanada's 2015/2016 NCOS are neither just nor reasonable since they greatly exceed the tolls contemplated in the RH-3-2011 Decision. As a result, TransCanada is acting in contravention of ss. 62 and 67 of the NEB Act and the open access principle. TransCanada is also clearly acting in contravention of the Decision.

##### ***a. TransCanada is Unjustly Discriminating Against Shippers Requiring Short haul Transportation Services***

Pursuant to s. 67 of the NEB Act, TransCanada may discriminate in its discretionary tolls and services but it cannot unjustly discriminate in its firm tolls and services as its firm tolls serve as a recourse rate for captive shippers. By charging exactly the same amount for long haul and short haul transportation services under 2015/2016 NCOS, TransCanada is conceptually offering its proposed new capacity to short haul shippers with a surcharge equal to the difference between the compliance long haul and short haul tolls. Moreover, it charges higher tolls for the same service over the same path to shippers under the 2015/2016 NCOS than the RH-3-2011 toll charged to existing short haul shippers over that same path.

Such treatment unjustly discriminates against shippers, such as the Complainants, seeking short haul transportation services. As a result, TransCanada's 2015/2016 NCOS does not treat short haul shippers in a fair and equal manner and constitutes an offer of services on an unjustly discriminatory basis in contravention of s. 67 of the NEB Act and the open access principle.

##### ***b. TransCanada is Seeking to Charge Tolls that are Not Just and Reasonable***

Pursuant to s. 62 of the NEB Act, TransCanada must charge just and reasonable tolls. Moreover, TransCanada must charge the same toll with respect to all traffic of the same description carried over the same route under substantially similar circumstances and conditions. Failure to do so will result in a toll that is unjustly discriminatory. Conversely, where the same toll is charged for traffic carried over different routes, such toll is unlikely to be just and reasonable.

The benchmark for a just and reasonable tolls for long haul and short haul FT service at this time can be none other than that set by the Decision and the tolls listed in compliance therewith in TransCanada's compliance filings. These tolls were recently reconfirmed in the Board's rejection of TransCanada's Review and Variance Application (NEB letter dated June 11, 2013, Order TG-006-2013). The following table compares the tolls charged under TransCanada compliance tolls with the tolls proposed in TransCanada's 2015/2016 NCOS:

Table 2: Comparison between Compliance Tolls and 2015/2016 NCOS Toll

<b>Receipt Point</b>	<b>Delivery Point</b>	<b>Compliance Toll (RH-3-2011) (GJ/d)</b>	<b>2015/2016 NCOS Tolls (GJ/d)</b>	<b>Price Difference (GJ/d)</b>	<b>Increase</b>
Empress	Union EDA	\$1.65	\$1.65	Nil	0%
Empress	GMI EDA	\$1.73	\$1.73	Nil	0%
Empress	Enbridge EDA	\$1.62	\$1.62	Nil	0%
Empress	East Hereford	\$1.83	\$1.40	-\$0.43	-24%
Parkway	Union EDA	\$0.25	\$1.65	\$1.40	560%
Parkway	GMI EDA	\$0.41	\$1.73	\$1.32	322%
Parkway	Enbridge EDA	\$0.32	\$1.62	\$1.30	406%
Parkway	East Hereford	\$0.51	\$1.40	\$0.89	175%
Niagara	Union EDA	\$0.32	\$1.75	\$1.43	447%
Niagara	GMI EDA	\$0.48	\$1.83	\$1.35	281%
Niagara	Enbridge EDA	\$0.39	\$1.72	\$1.33	341%
Niagara	East Hereford	\$0.58	\$1.50	\$0.92	159%
Chippawa	Union EDA	\$0.32	\$1.75	\$1.43	447%
Chippawa	GMI EDA	\$0.48	\$1.83	\$1.35	281%
Chippawa	Enbridge EDA	\$0.39	\$1.72	\$1.33	341%
Chippawa	East Hereford	\$0.58	\$1.50	\$0.92	159%

As may be readily observed, the short haul tolls proposed by TransCanada in 2015/2016 NCOS are many times higher than the compliance tolls that flow the Decision.

Manifestly, the tolls proposed by TransCanada for short haul transportation under TransCanada's 2015/2016 NCOS are not cost-based as determined by the RH-3-2011 Decision and are inconsistent with the criteria established for Multi-Year Fixed Price services. On the contrary, it is obvious that TransCanada has arbitrarily sought to set short haul tolls at the same level as its compliance tolls for long haul transportation .

TransCanada's purpose in doing so can only be to recover revenue foregone by reason of volumes being switched from long haul to short haul (clearly stated in Mr. Johannson's letter of TransCanada's President dated June 17, 2013, **Attachment 1**) or to discourage the use of short haul transportation services, thereby abusing its market power and acting in a manner contrary to



the open access principle creating a barrier to accessing alternative supplies. In either case, the tolls proposed in TransCanada's 2015/2016 NCOS cannot be described as just and reasonable.

The unreasonable and unjust character of the tolls proposed in TransCanada's 2015/2016 NCOS is also demonstrated by the fact that TransCanada proposes short haul and long haul tolls for transportation to East Hereford – which involves transportation of natural gas over a further distance than any other delivery point under TransCanada's 2015/2016 NCOS – at tolls that are lower than any other delivery point contemplated by TransCanada's 2015/2016 NCOS. The proposed long haul tolls for East Hereford are, in fact, substantially lower than even the compliance tolls for that delivery point. TransCanada will likely argue that these preferential tolls are justified to attract new business from new service applicants. What this ignores, however is that, by removing existing capacity on the basis that it is not needed to serve existing load, all load using the yet-to-be constructed new infrastructure is new load having all the same characteristics as new load to East Hereford. TransCanada therefore is not treating all new service applicants in a fair and equitable manner as required by its Tariff in Section 2.1 of the Transportation Access Procedure. To the extent that the RH-3-2011 compliance toll is less than a fully allocated cost-of-service rate, the 2015/2016 NCOS toll to East Hereford is certainly further below a fully allocated cost-of-service rate. According to TransCanada, neither toll would allow them to recover existing capital or, especially, new capital.

In addition, it is worth noting that the short haul tolls for transportation offered to Union CDA and Enbridge CDA are to be the tolls in effect at the time of service (i.e. the compliance tolls) for these delivery points, which is not consistent with the approach followed to other delivery areas.

***c. TransCanada is Acting in a Manner Contrary to this Board's Decision in RH-3-2011***

Pursuant to s. 12 of the NEB Act, this Board has full and exclusive jurisdiction to inquire into, hear and determine any matter where it appears that a person is contravening one of its orders or directions. The 2015/2016 NCOS contravenes to the Board's Decision RH-3-2011, for the following reasons:

The 2015/2016 NCOS does not provide any RH-3-2011 derived tolls as a recourse rate to the new short haul tolls stipulated in the open season despite the fact that, amongst other things, the new tolls would relate to at least part of the multi-year fixed toll period. In fact, TransCanada's enormous increase in tolls for eastern short haul service from Dawn/Parkway and Niagara Falls/Chippawa receipt points without any reference to the availability of an RH-3-2011 recourse rate is a clear violation of the RH-3-2011 Decision.

Moreover, it is inconsistent with the Board's findings in RH-3-2011 that TransCanada, rather than its captive shippers, bear the cost of TransCanada's excess capacity; and it is inconsistent with longstanding principles assuring fair and transparent, open access to the TransCanada system. These principles were not overturned by the RH-3-2011 Decision. The tolls TransCanada intends to charge customers for incremental short haul service directly contradicts that finding as Mr. Johansson's letter confirms.

**d. *TransCanada is Acting in Contravention of the Open Access Principle and Abusing its Market Power***

The open access principle has been a necessary and key component of the natural gas market since deregulation. The hallmark elements of the open access principle, namely non-discrimination, equality, prohibition on abuse of the market or unjust actions such as those creating barriers to access of alternative gas supplies, are present in the NEB Act. Indeed, the Board is fully cognizant of the necessity of upholding the open access principle by virtue of its importance in enabling the effective and efficient operation of the market and must intervene in the present matter<sup>9</sup>.

As stated in Board Decision RH-3-2004:

*“The Board must intervene to prevent the abuse of market power. In the Board's view, this implies the prevention of discriminatory pricing, of inappropriate barriers to the efficient functioning of the market, and of favourable treatment of affiliates. An implication of this principle is that the tools provided to pipelines to compete should not provide them the tools to compete unfairly.”* (RH-3-2004, at p. 8; emphasis added)

Indeed, and in line with the foregoing section on TransCanada's attempt to defeat the Board's decision in RH-3-2011, the tools given to TransCanada cannot be used abusively, and the existence of such abuse therefore requires the Board's intervention. The 2015/2016 NCOS providing for, *inter alia*, a five to sevenfold increase in rates in a captive market without justification and in a manner inconsistent with normal market forces constitutes an abuse of market power. This conduct by TransCanada strikes at the very core of the open access principle, and consequently creates a barrier to the functioning free market that the Canadian regulators sought to create, foster and maintain.

Critically, TransCanada's intentions to utilize its market power to the prejudice of its shippers and the means by which it purports to exert that market power are manifest on the face of its recent correspondence with the Complainants. That correspondence confirms TransCanada's insistence that eastern short haul shippers must bear the costs of TransCanada's assets which are underutilized as a prerequisite to securing incremental short haul service (Mr. Johansson letter dated June 17, 2013, **Attachment 1**, and Mrs. Brochu letter dated June 7, 2013, **Attachment 9**). As Mr. Johansson's letter indicates, the only basis upon which TransCanada is prepared to accept incremental short haul service requests is as outlined in TransCanada's 2015/2016 NCOS. TransCanada's purpose is to undermine its acceptance of incremental short haul service requests made fully in accord with the relevant provisions of TransCanada's tariff. Now, TransCanada, having delayed and cancelled Union and Gaz Métro's earlier service requests and PAs, compels Union and Gaz Métro to re-bid into the 2015/2016 NCOS on much more onerous terms.

That correspondence, combined with the 2015/2016 NCOS and other actions taken by TransCanada, have clearly had the effect of denying access to incremental short haul service on the Parkway to Maple Path unless shippers agree to pay tolls higher than RH-3-2011-derived tolls. The 2015/2016 NCOS does not make RH-3-2011-derived tolls for short haul firm service

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<sup>9</sup> The Board has stated in no uncertain terms that “open access to transportation capacity is an important prerequisite to enable the effective and efficient operation of the market”. (OH-1-2007, at p. 20)

available as a recourse rate to the significantly higher tolls stipulated therein. As noted above, a comparison of the RH-3-2011 tolls and the 2015/2016 NCOS tolls appears in Table 2 above.

The financial impact of TransCanada's actions are significant, particularly when one considers that it is the shippers and ultimately the consumers who will bear the costs. Denial of access to this incremental short haul service is estimated to cost Union and Gas Metro's customers between \$103 million and \$138 million per year in increased gas costs. Acquiescing to the terms demanded by TransCanada in its 2015/2016 NCOS for the same service requests accepted in May 2012 and now deliberately frustrated by TransCanada would increase costs to consumers by up to \$2 billion over the 15 year term of the required contract relative to the alternative requested and accepted following the 2014 NCOS. Bearing in mind that such costs to consumers results from TransCanada's efforts to pass on the costs of assets that are underutilized, TransCanada's actions are evidently abusive and in contravention of the RH-3-2011 Decision and the open access principle.

## **5. Market Impacts of 2015/2016 NCOS**

TransCanada's actions are highly disruptive to the market. Union, Gaz Métro and EGD are captive shippers to TransCanada. They rely on eastern short haul service to satisfy their own obligations to serve their distribution customers. Whatever may be the state of underutilization of other parts of the TransCanada system, the Eastern Triangle not only remains fully utilized but continues to require expansion. Union, Gaz Métro and EGD require access to that capacity to serve their continuing market requirements as do their direct purchase industrial customers.

The Eastern Triangle, including the North Bay Shortcut, is not a surplus asset. TransCanada acknowledges that fact when it advises customers that its oil conversion project will result in the removal of a section of the North Bay Shortcut in 2016 leaving insufficient capacity available to satisfy existing firm commitments and that removal of capacity on the Northern Ontario Line (NOL) will leave the market short as early as November 2015.

What TransCanada describes as the "existing" level of firm commitments, however, does not take into account incremental firm service requirements associated with market growth nor incremental firm service associated with the conversion of discretionary services as contemplated by the RH-3-2011 Decision and as now reflected, at least in part, in the FT-NR Open Season subscriptions of Gaz Métro and EGD. In addition, industrial direct purchase customers can hardly be expected to sign even conditional 15-year firm service short haul contracts to take effect two to three years hence at the exorbitant tolls TransCanada insists upon to support those service requests. Indeed, how can the "existing" level of firm commitments be accurately identified when shippers like EGD and Gaz Métro were not permitted to subscribe for existing capacity beyond 2015.

All shippers and potential customers, therefore, are confronted with a *fait accompli* in terms of the loss of existing North Bay Shortcut facilities due to the oil conversion. The chilling effect of the tolls and terms of the various Open Seasons, the TransCanada letter and most recently, the 2015/2016 NCOS discourage demand and, thereby, understate the true needs of eastern gas markets. Moreover, TransCanada erects substantial barriers to accessing the Dawn Hub, and the

Niagara Falls and Chippawa receipt points forcing shippers back to the uncompetitive WCSB gas supplies at Empress.

This is contrary to the Complainants' need to reduce their supply risk due to the decline in supply available from the WCSB by proactively contracting transportation to access new supply options in their supply portfolios with natural gas sourced from other production basins. Shifting to short haul supply sourced from the Dawn Hub provides gas supply benefits in the form of security and diversity of supply in addition to important gas cost savings.

As noted above, the messages or market signals received from Open Seasons premised on assumptions that semi-depreciated existing North Bay Shortcut facilities will be withdrawn from gas service and will be replaced with expensive new replacement facilities are not valid indicators of true market need. Nor should shippers be required to make such choices until the assumptions underlying them are validated by the Board following the filing of an oil conversion application, a hearing on its merits, and a Board decision which prescribes the related terms and conditions of the conversion, if any. Rather, an appreciation of true market needs requires a fair and transparent open season for existing capacity from all receipt points with no term limits and for new capacity at the cost-based recourse tolls contemplated by the RH-3-2011 Decision.

Union, Gaz Métro and EGD strongly oppose any withdrawal of eastern short haul capacity and its replacement with expensive new capacity. Union, Gaz Métro and EGD require the existing capacity for both their existing and future needs and for those of their direct purchase customers. From the perspective of long term gas users, it is plainly imprudent to replace any part of the North Bay Shortcut with more expensive replacement facilities. The contemplated conversion of part of the TransCanada system from natural gas to oil use must not be done at the detriment of the natural gas markets in Québec or Ontario.

In the circumstances, Union, Gaz Métro and EGD caution the Board that the results of the two Open Seasons cannot be viewed as a reasonable indicator of the true incremental demand for firm transportation to customers located in Ontario, Québec or elsewhere. No conclusions as to the need for any Eastern Triangle facilities, therefore, can be derived from a hypothetical exercise based on such highly disputed assumptions.

Moreover, the practical effect of the Open Seasons is unfair and unreasonable and highly prejudicial to Union, Gas Métro and EGD. Eastern shippers are bumped out of the existing capacity (vacated in favour of the oil conversion) and those that remain are forced to underpin the construction of replacement capacity with 15-year contracts at short haul tolls which are equal to or greater than the long haul tolls from Empress to Dawn or 10 year contracts for long haul service at compliance tolls.

## **6. Relief Requested**

To continue to provide their consumers with a reliable supply of natural gas, Union, Gaz Métro and EGD require significant short haul transportation capacity. TransCanada is well aware of this need and well-aware that it has a captive market. Union, Gaz Métro and EGD and their customers cannot go elsewhere for their natural gas transportation needs.

Through its actions, TransCanada is transparently abusing its market power by seeking to and obtain agreement to tolls and terms that are unjustly discriminatory, unjust and unreasonable. In short, TransCanada is acting in contravention of the NEB Act, flouting the open access principle and the RH-3-2011 Decision.

Respectfully, this Board must intervene to preserve Union, Gaz Métro and EGD's rights, bring an end to and prevent further contravention of the NEB Act, protect the open access principle and ensure that the directions reflected in its RH-3-2011 Decision are fully respected.

In light of the foregoing, Union, Gaz Métro and EGD respectfully urge the Board in these extraordinary and urgent circumstances to employ its general powers pursuant to sections 12 and 59 of the Act:

- (a) to investigate TransCanada's misuse of Open Season procedures<sup>10</sup>; its effective denial of access to incremental capacity from Parkway to markets located to the east in 2014, 2015 and beyond; its unjustly discriminatory pricing of incremental service from Parkway, Niagara Falls and Chippawa contrary to section 67 of the Act; its imposition of tolls for short haul service well in excess of the tolls specified in RH-3-2011 and well in excess of just and reasonable tolls for the years beyond the multi-year fixed toll term established therein; its imposition of tolls for short haul service inconsistent with the tolls and rate structure in the Board's RH-3-2011 Decision
- (b) to employ its powers under sections 13, 65 and 66 to remedy all conduct and actions found to be in contravention of the Act and of the Board's prior directions including, but not limited to its RH-3-2011 Decision; or found not to be in the public interest;
- (c) to stay the 2015/2016 NCOS and to delay any required responses to it pending a decision on the merits of this Complaint;
- (d) to direct TransCanada to cease and desist initiating any further open seasons premised on TransCanada's preferred outcome of the yet-to-be-filed oil conversion application;
- (e) to reject any purported conclusions regarding the long term needs of eastern gas markets for existing facilities in the Eastern Triangle based on the Open Seasons;
- (f) to indicate that it would immediately suspend or disallow any purported filings of toll or tariff amendments reflecting the results of the 2015/2016 NCOS pending a full and fair review of the contentious issues in a public hearing;
- (g) to direct TransCanada to initiate an existing capacity Open Season from all receipt points on the basis of pre-existing renewal rights and with no limits on the term for firm service which may be requested;

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<sup>10</sup> relating to rules, practices, terms and conditions "applicable to the provision of a service" including the calculation of tolls "for the provision of a pipeline when the pipeline is available and ready to provide for the transmission of ... gas" (ss. 2 and 58.5)

- (h) to direct TransCanada to initiate a new capacity Open Season from all receipt points at the cost-based recourse rates contemplated by the RH-3-2011 Decision and otherwise on the same terms as governed the May 2012 Open Season; and
- (i) to direct such further or other related relief as to the Board may seem just and proper.

Time is of the essence. Union, Gaz Métro and EGD, and their direct purchase customers, require certainty respecting fair and reasonable terms of access to existing short haul service pre- and post-oil conversion (assuming the latter is applied-for and is subsequently approved).

Union and Gaz Métro will shortly address in a separate application measures required to ensure by or after November 1, 2015, timely access to incremental short haul service to replace the frustrated TransCanada May 2012 service requests and PAs which resulted from the 2014 NCOS.

Union, Gaz Métro and EGD further note that despite their best efforts, TransCanada's position appears intractable. As the Johannson letter confirms, there is no prospect of settlement given TransCanada's resolve to require captive shippers to bear the cost of underutilized facilities as a condition of providing access to incremental eastern short haul service.

Sincerely,

**Union Gas Limited**

**Société en commandite Gaz Métro**

**Enbridge Gas Distribution Inc.**

Per      Original Copy Signed  
            By  
            \_\_\_\_\_  
Mark Isherwood  
Vice-President

Per      Original Copy Signed By  
            \_\_\_\_\_  
Patrick Cabana  
Vice-President

Per      Original Copy Signed By  
            \_\_\_\_\_  
Malini Giridhar  
Vice-President

cc:      C. Kemm Yates, Q.C., Blake, Cassels & Graydon LLP (TransCanada)  
            Eric Dunberry, Norton Rose (Gaz Métro)  
            L. E. Smith, Q.C., Bennett Jones (Union)  
            D. Crowther, Dentons (EGD)

National Energy  
Board



Office national  
de l'énergie

File OF-Tolls-Group1-T211-2011-04 04  
11 July 2013

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Manager, Tolls and Tariffs  
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Facsimile 403-663-2297

Dear Mr. Pelletier, Ms. Davis, Mr. Cameron and Mr. Yates:

**Complaint by BP Canada Energy Company ULC (BP Canada) regarding  
TransCanada PipeLines Limited (TransCanada) – Daily Existing Capacity Open  
Season(s) for FT, FT-SN and FT-NR Services (BP Canada's Complaint)**

The National Energy Board (Board) has received an application from BP Canada dated 2 July 2013 requesting that the Board, pursuant to subsection 13(1) of the *National Energy Board Act*:

- a) order TransCanada to remove the restrictions which require more than a 1-year term, or prescribe specific commencement and end dates for FT service, from its open season documentation; and
- b) require TransCanada to ensure that its open season documentation is consistent with the NEB approved terms and conditions for FT service in the TransCanada Tariff.

The Board has decided to invite comments in respect of BP Canada's Complaint.

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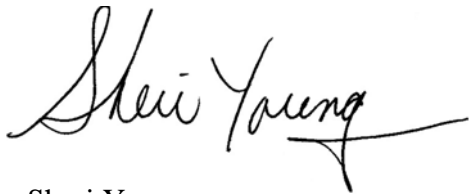
All comments from interested persons must be filed with the Board and served on BP Canada and TransCanada by noon on 19 July 2013. TransCanada may file its comments with the Board and serve them on BP Canada, existing shippers and interested persons by noon on 26 July 2013 and BP Canada may file any reply comments by noon on 2 August 2013.

The Board directs TransCanada to serve a copy of this letter on all shippers on the TransCanada Mainline and any interested persons.

Upon receiving submissions from parties, the Board may issue its ruling on this matter, or have further process to deal with BP Canada's Complaint.

If you have any questions, please contact Diana Audino, Legal Counsel, at 403-299-3552 or Parvez Khan, Legal Counsel, at 403-299-3933 or toll free at 1-800-899-1265.

Yours truly,

A handwritten signature in black ink, appearing to read "Sheri Young", with a long horizontal flourish extending to the right.

Sheri Young  
Secretary of the Board

c.c. Mr. James H. Smellie, Gowling Lafleur Henderson LLP, Facsimile 403-695-3427  
Ms. Lisa Jamieson, Gowling Lafleur Henderson LLP, Facsimile 403-695-3560



National Energy  
Board



Office national  
de l'énergie

File OF-Tolls-Group1-T211-2011-04 05  
11 July 2013

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Dear Mr. Pelletier, Ms. Davis, Mr. Cameron and Mr. Yates:

**Tolls and Tariff Complaint by Union Gas Limited (Union), Gaz Métro Limited Partnership (Gaz Métro) and Enbridge Gas Distribution Inc. (EGD) regarding TransCanada PipeLines Limited (TransCanada) – (The LDC's Complaint)**

The National Energy Board (Board) has received an application from Union, Gaz Métro and EGD (the Complainants), dated 10 July 2013, pursuant to Part I and Part IV of the *National Energy Board Act* (the Act). The Complainants requested that the Board, among other things, stay the 2015/2016 New Capacity Open Season (2015/2016 NCOS) and delay any required responses to it pending a decision on the merits of the LDC's Complaint. TransCanada initiated the 2015/2016 NCOS on 27 June 2013 and it is scheduled to close on 29 July 2013.

The Board has decided to invite comments **in respect of the stay portion** of the LDC's Complaint, and recognizes that time is of the essence given the nature of the relief requested.

Accordingly, all comments from interested persons must be filed with the Board and served on Union, Gaz Métro, EGD and TransCanada by noon on 15 July 2013. TransCanada may file its comments with the Board and serve them on Union, Gaz Métro, EGD, existing shippers and interested persons by 5:00 p.m. on 16 July 2013 and Union, Gaz Métro and EGD may collectively file any reply comments by 5:00 p.m. on 17 July 2013.

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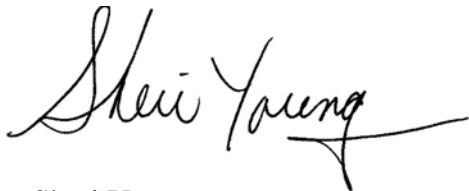
-2-

The Board directs TransCanada to serve a copy of this letter on all shippers on the TransCanada Mainline and any interested persons.

Upon receiving submissions from parties, the Board will issue its ruling with respect to the request for a stay. The Board may decide to have further process to deal with the remainder of the LDC's Complaint.

If you have any questions, please contact Diana Audino, Legal Counsel, at 403-299-3552 or Parvez Khan, Legal Counsel, at 403-299-3933 or toll free at 1-800-899-1265.

Yours truly,

A handwritten signature in black ink, appearing to read "Sheri Young", with a stylized flourish extending from the end of the name.

Sheri Young  
Secretary of the Board

c.c. Mark Isherwood, Union Gas Limited, Email [misherwood@uniongas.com](mailto:misherwood@uniongas.com)  
Patrick Cabana, Société en commandite Gaz Métro, Facsimile 514-598-3839  
Malini Giridhar, Enbridge Gas Distribution Inc., Email [malini.giridhar@enbridge.com](mailto:malini.giridhar@enbridge.com)  
Eric Dunberry, Norton Rose (Gaz Métro), Facsimile 514-286-5474  
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July 16, 2013

**FILED ELECTRONICALLY**

Reference: 16531.95

National Energy Board  
444 Seventh Avenue S.W.  
Calgary, Alberta  
T2P 0X8

**Attention: Ms. Sheri Young**  
**Secretary of the Board**

Dear Ms. Young:

**Re: Tolls and Tariff Complaint by Union Gas Limited (Union), Gaz Métro Limited Partnership (Gaz Metro) and Enbridge Gas Distribution Inc. (EGD)<sup>1</sup> regarding TransCanada PipeLines Limited (TransCanada)—(The LDC Complaint)  
Comments of TransCanada re LDC Stay Request  
National Energy Board (NEB or Board) File OF-Tolls-Group1-T211-2011-04 05**

By letter dated July 11, 2013, the Board invited comments in respect of the stay portion of the LDC Complaint. Interested persons were required to provide comments by noon on July 15, 2013 and TransCanada was invited to file its comments by 5:00 pm on July 16, 2013.

Comments were filed by only four interested persons—Alberta Northeast Gas Limited (ANE), Association of Power Producers of Ontario (APPRO), Industrial Gas Users Association (IGUA) and Tenaska Marketing Canada (Tenaska).

This letter provides the comments of TransCanada on the LDC stay request. The submissions of APPRO, IGUA and Tenaska amount only to statements of concern about the actions of TransCanada and support for the LDC position, without going to the merits of a stay, so do not warrant response. The comments of ANE on the merits of the stay request, including its legal arguments, are addressed in the response to the LDCs.

TransCanada submits that the LDC request for a stay should be rejected as being entirely without justification in law, precedent, practice or logic.

**The LDC Stay Request**

The LDCs seek “an immediate stay” of the TransCanada 2015/2016 New Capacity Open Season (Open Season or NCOS), and a “delay of any required responses to it pending a decision on the merits of [the LDC] Complaint”.<sup>2</sup> The alleged grounds for the stay request are “unjust discrimination”, “unjust and

<sup>1</sup> Union, Gaz Metro and EGD are collectively referred to as “the LDCs”.

<sup>2</sup> LDC Complaint, Page 2 of 15, and Page 13 of 15, paragraph (c).





unreasonable tolls", contravention of the RH-003-2011 Decision<sup>3</sup>, change of minimum term requirements from the 2014 NCOS, contravention of an alleged "Open Access principle", and "abuse of market power".<sup>4</sup>

## The TransCanada Response

The Open Season is a commercial initiative of TransCanada to determine the level of interest in a proposed service. The National Energy Board has no jurisdiction to intervene in a commercial initiative that does not contravene the *National Energy Board Act*<sup>5</sup> or other applicable law. Nor should the Board have any interest in intervention in the early stages of the workings of the market for transportation capacity. Any market result of the Open Season—facilities or toll methodology—will be subject to NEB review and approval before implementation. There is no law, precedent, practice or logic that would justify intervention by the Board in an open season.

### Open Seasons

The stay request relates to a TransCanada open season. An open season is not a toll, nor is it a tariff. It is the first step in a commercial process that is used to determine the level of interest in a proposed service.

A gas pipeline is not required to conduct open seasons. The open season simply provides an opportunity for potential shippers to contract for a service that is offered by the pipeline. Should the open season result in contracts that demonstrate need for additional facilities, then the pipeline must apply to the Board for approval of those facilities and the related toll methodology to which shippers have committed.

The NEB Act does not define or refer to the term "open season".<sup>6</sup> Nor does the Board prescribe guidelines governing the content or process for open seasons for gas pipelines.<sup>7</sup> Rather, the Board expects that open seasons, if conducted, will involve consultation among parties, and will be conducted in a transparent and fair manner.<sup>8</sup> The nature and conduct of the open season may be reviewed in the subsequent applications for approval of facilities and tolls.<sup>9</sup>

The initiation of the NCOS does not trigger the Board's Part IV jurisdiction over tolls and tariffs. There is no NEB precedent or practice of prescribing or intervening in the terms proposed in an open season. Nor is there any logical reason for it to do so, given that open season results are ultimately subject to NEB review and approval in subsequent facilities and tolls applications. TransCanada has simply initiated the exploration of market appetite for the provision of service on particular terms. That action is beyond the

<sup>3</sup> *National Energy Board Reasons for Decision TransCanada PipeLines Limited, NOVA Gas Transmission Ltd., and Foothills Pipe Lines Ltd., RH-003-2011, Tolls and Tariff*, March 2013 (RH-003-2011 Decision).

<sup>4</sup> LDC Complaint, Pages 1 and 2 of 15.

<sup>5</sup> R.S.C. 1985, c. N-7, as amended (NEB Act).

<sup>6</sup> A fact that was noted by the Board in its *Reasons for Decision Trans Mountain Pipeline ULC on behalf of Trans Mountain Pipeline, L.P., RH-2-2011, Firm Service to Westridge Marine Terminal*, December 2011, at p. 26.

<sup>7</sup> See, e.g. *National Energy Board Reasons for Decision, Alliance Pipeline Ltd., GHW-1-2007, Facilities and Toll Methodology* (September 2007), at p. 13.

<sup>8</sup> See, e.g. *National Energy Board Reasons for Decision Trans Mountain Pipeline ULC, RH-001-2012, Tolls and Tariff*, May 2013, at pages 12-13. The *National Energy Board Filing Manual* (NEB Filing Manual) provides guidance that an oil pipeline that seeks an exemption from its common carrier obligations under subsection 71(1) of the NEB Act, must be able to show that it conducted a fair open season that provided all interested shippers the same opportunity to participate and allowed adequate time for their consideration of the issues. (NEB Filing Manual, p. 5-S-1).

<sup>9</sup> As was done in the RH-2-2011 and RH-001-2012 proceedings.



purview of the Board. The implementation of any contractual results of the initiative will be within the Board's purview when it reviews any resulting facilities and tolls application.

#### *"Open Access Principle"*

The LDCs assert violation by TransCanada of something that they refer to as "the open access principle". The LDC Complaint does not define the alleged principle, nor does it reference any NEB decisions to support its assertion.

In fact, TransCanada, as a gas pipeline and a contract carrier—not a common carrier—is not compelled by statute to provide service to customers in any area. Certificates of public convenience and necessity confer a right on TransCanada, not an obligation, to construct facilities for gas transportation service.<sup>10</sup>

A gas pipeline has the right to refuse service,<sup>11</sup> and the Board has found that it would be unreasonable to require a pipeline to offer service if it does not have a reasonable opportunity to recover its costs from shippers.<sup>12</sup>

#### *The RH-003-2011 Decision*

The LDCs allege that the NCOS violates the RH-003-2011 Decision. That decision dealt with TransCanada's investment in the Mainline to date, and directed TransCanada to take responsibility for the economic viability of the Mainline. The RH-003-2011 Decision fixed rates until December 31, 2017, based on cost estimates that did not include any allowance for investments in new capacity additions. At the same time, the Board said that it is imperative that TransCanada effectively maximize revenues and limit costs in every circumstance.<sup>13</sup> The Compliance Tolls are inadequate to recover new capital investment. Absent NEB direction, TransCanada cannot be required to make any new investment in the Mainline, but if it does choose to do so, it is imperative that it do so in a manner that recognizes the fundamental financial premises of the RH-003-2011 Decision.

The NCOS is entirely consistent with the letter and spirit of the RH-003-2011 Decision. TransCanada is willing to invest its capital to serve gas transportation markets in a timely fashion. There is no case for the Board preventing TransCanada from trying to do so on terms that provide a better opportunity to recover its revenue requirement. There is certainly no case for the Board staying an effort by TransCanada to see if the market wants service on those terms, subject as always to Board approval.

#### *The LDC Allegation of Abuse of Market Power*

The LDCs allege that the NCOS is an "abuse of market power". In fact, TransCanada in the NCOS is offering to do something that it has absolutely no obligation to do: to invest its capital in facilities that will provide shippers with service. What appears to offend the LDCs is that TransCanada is not willing to commit economic suicide by doing so. It is not an abuse of market power to offer a service at rates that provide a reasonable opportunity to recover the related costs. It is not a requirement of just and reasonable tolls that the service provider operate at a loss.

<sup>10</sup> RH-003-2011 Decision, at page 38.

<sup>11</sup> *National Energy Board Reasons for Decision, BC Gas Utility Ltd., RH-2-98, Access and Tolls*, March 1999, (RH-2-98 Decision) at p. 12.

<sup>12</sup> *National Energy Board Reasons for Decision Kinder Morgan Canada MH-1-2009*, April 2010.

<sup>13</sup> RH-003-2011 Decision, at page 242.





The fact that TransCanada is offering service at rates that are above those that preclude cost recovery is certainly no reason for the Board to intervene to preclude any parties who may wish service at those rates from contracting for such service.

#### *The NEB and Requests for Stays*

The LDC stay request is notable—if not unique—in that it asks the Board to issue an injunction, as a court would do, to prohibit TransCanada's commercial activities. While the Board's jurisdiction to do so is more than questionable, the LDC Complaint nonetheless raises the issue of the circumstances in which a stay could be granted. The ANE submission discusses these circumstances at length, so warrants a response from TransCanada.

Historically, the stay issue has arisen in respect of NEB decisions. The *National Energy Board Rules of Practice and Procedure*, 1995<sup>14</sup> provide that a party may apply for a stay of a Board order or decision pending the outcome of a review or rehearing.<sup>15</sup> Interpreting its Rules, the Board has applied the common law three-part test for a stay—serious issue to be tried, irreparable harm, and balance of convenience.<sup>16</sup> Irreparable harm is harm that cannot be quantified in monetary terms or which cannot be cured.<sup>17</sup>

In the judicial world, it is generally accepted that a stay should only be granted in the clearest of cases, and that a decision maker's discretion to grant a stay should be applied sparingly.<sup>18</sup> Generally, a stay will only be granted in special circumstances and the onus will be on the applicant to show that those circumstances exist.<sup>19</sup>

According to the NEB Rules, there must be a Board decision or order before a stay may be considered. There is none and may not be—that is dependent upon the outcome of the Open Season. Therefore a stay is not available.

Application of the established principles to the current situation shows clearly that a stay—what is in effect an injunction—is not justified.

In order for an injunction to be justified, the established requirements must be met. There must be a serious issue to be considered by the Board, irreparable harm to those seeking the injunction, and the balance of convenience must favour the parties seeking the injunction. There is no issue to be tried, serious or not. There is only an offer to enter a contract. The LDCs and other shippers do not face any irreparable harm from the NCOS. As noted by the Supreme Court of Canada, and as cited by ANE in its submission, irreparable harm is harm "which either cannot be quantified in monetary terms or which cannot be cured,

<sup>14</sup> *National Energy Board Rules of Practice and Procedure*, 1995, SOR/95-208, as amended (NEB Rules).

<sup>15</sup> NEB Rules, s. 47.

<sup>16</sup> See, e.g. National Energy Board Letter Decision dated September 11, 2007 re Standing Buffalo Dakota First Nation application for review and stay of NEB Decision OH-2-2007 in which the Board accepted the three part test articulated by the Supreme Court of Canada in *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311, [1994] SCJ No 17 (*RJR MacDonald*). See also NEB Letter Decision dated June 30, 2009 re refusal of Kinder Morgan request for a stay of Board Order MO-04-2009.

<sup>17</sup> *RJR MacDonald*, at para. 59.

<sup>18</sup> *Weight Watchers International Inc v Weight Watchers of Ontario Ltd*, (1972) 5 CPR (2d) 122. Note that an appeal was allowed by consent of both parties, but not on this issue: 42 DLR (3d) 320. See also: *Wellcome Foundation Ltd v Novopharm Ltd*, 59 FTR 81, [1992] FCJ No 917.

<sup>19</sup> *Wellcome Foundation Ltd. et al. v. Novopharm Ltd*, [1992] FCJ No 917.

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usually because one party cannot collect damages from the other<sup>20</sup>; in other words, harm for which there cannot be adequate monetary compensation. The LDCs have not alleged any harm that fits this definition.

Importantly, the test for a stay or injunction requires the Board to conclude that “a refusal to grant relief could so adversely affect the applicants’ own interests that the harm could not be remedied if the eventual decision on the merits of the case does not accord with the result of the interlocutory decision.”<sup>21</sup> In other words, the stay or injunction should only issue if there is nothing the Board can do when the LDC Complaint is heard, or when the topics of the Complaint are dealt with in subsequent Board hearings.

The LDCs need not bid into the open season. They may choose not to enter into contracts on the terms offered by TransCanada, thereby avoiding any “harm” that they might incur through voluntary contractual obligation.

ANE states that the possibility of subsequent Board approval of terms does not address its concerns. It states that shippers will lose an opportunity if they choose not to participate in the open season, and the Board subsequently changes the terms of service. ANE merely states the obvious characteristic of every open season where sophisticated commercial parties choose whether to contract for capacity based on their own economic judgment. It is not irreparable harm, or any harm at all, and does not warrant a stay of the NCOS.

Mainline capacity will not go into or come out of gas service without Board orders. NCOS tolls will only be paid by those who bid into the NCOS and only when the Board approves those tolls. The mere offering of service at the NCOS tolls—what the LDCs would have the Board stay—causes no harm of any sort, let alone irreparable harm.

The balance of convenience is clearly in favour of allowing the market to work—to determine if parties wish to contract in accordance with the open season offering. It is clearly in the public interest to allow the market to work.

### **Conclusion and Disposition Requested**

The NCOS clearly meets the Board’s standards of transparency and fairness. The same terms are offered to all customers on an equal basis. Whether customers choose to bid into the NCOS, and to accept the contract terms offered by TransCanada, will determine whether there will be a subsequent application to the NEB for approval of facilities and toll methodology.

The appropriate time for the NEB to consider the appropriateness of the conduct of the Open Season and the terms under which new service is proposed is at the time of the pipeline’s application for approval to construct, maintain, and provide service on new pipeline facilities. The LDCs, or any other parties, will be free to raise any relevant concerns at the time of the hearing of that application.

TransCanada respectfully submits that the LDC request for a stay of the NCOS is unsupported in law, precedent, practice or logic. There is no justification for the NEB to interfere in the operation of the market at this point in time. There is no violation of the NEB Act, no “toll” or “tariff”, no “open access principle”, no violation of the RH-003-2011 Decision, no abuse of market power, no serious issue to be tried, and no

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<sup>20</sup> *RJR MacDonald*, at para. 59

<sup>21</sup> *RJR MacDonald*, paragraph 58.



*Blakes*

harm—let alone irreparable harm—to the LDCs. To grant a stay would be a completely unjustified interference in the operation of the market for transportation capacity.

The LDC stay request should be dismissed.

Yours very truly,

*Katell Alpp*

*for*: C. Kemm Yates

CKY/smr

c.c. Union Gas Limited, Mark Isherwood  
L.E. Smith, Q.C  
Société en commandite Gaz Métro, Patrick Cabana  
Eric Dunberry, Norton Rose  
Enbridge Gas Distribution Inc., Malini Giridhar  
D.E. Crowther, Dentons  
Existing Shippers on the TransCanada Mainline  
Alberta Northeast Gas Limited, Jim Carmichael  
Association of Power Producers of Ontario, Ian Mondrow, Gowlings  
Industrial Gas Users Association, Guy Sarault, Bissonette, Fortin, Giroux  
Tenaska Marketing Canada, Tomasz Lange.





June 26, 2013

**FILED ELECTRONICALLY**

National Energy Board  
444 Seventh Avenue S.W.  
Calgary, AB  
T2P 0X8

**Attention: Ms. Sherri Young, Secretary of the Board**

Dear Ms. Young:

**Re: July 10, 2013 Toll and Tariff Complaint by Union Gas Limited, Gaz Métro Limited Partnership and Enbridge Gas Distribution Inc. regarding TransCanada PipeLines Limited ("TransCanada") - (the "LDC's Complaint")  
Alberta Northeast Gas, Limited ("ANE") Comments on Stay Request**

ANE is writing in response to the National Energy Board's ("NEB" or "Board") July 11, 2013 invitation to comment in respect of the stay portion of the LDC's Complaint.

**Background**

ANE understands that the Board is only interested at this time on comments related to the stay aspect of the LDC's Complaint. However, in order to set the stage for such comments, some background is important.

ANE is concerned with positions taken by TransCanada in the 2015/2016 New Capacity Open Season ("2015/2016 NCOS"), and in related communications between TransCanada and the LDCs, that reflect a new, more restrictive, policy in the provision of natural gas service by TransCanada using its regulated natural gas transmission assets. This new policy ("Restricted Access Policy") is summarized at page 1 of the June 17, 2013 letter from TransCanada management included as Attachment 1 in the LDC's Complaint ("TransCanada Policy Letter"):

It is clear that the current NEB toll Decision has made the deployment of new capital challenging. The Decision has set fixed tolls that do not cover the costs of operating our Mainline system. It defers substantial amounts and places TransCanada under a threat of disallowance of some or all of

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those costs. The primary tool given to TransCanada to bridge this gap is pricing flexibility on discretionary services. It is TransCanada's view that it cannot rely solely on discretionary services to generate the substantial revenues required for it to meet its costs and earn a fair return. The Mainline must incentivize its shippers to contract for the long term in order to maximize revenues, stabilize rates, and position it to seize on new opportunities to reduce its costs or expand its services. When we do build for new opportunities, we must recover the full cost of any expansion, including a return of and on capital, and any revenue foregone, due for example to switching volumes from long haul to short haul.

ANE shares the concerns raised in the LDC's Complaint that the Restricted Access Policy is inconsistent with principles of just and reasonable tolling and open access.

As the Board is aware, ANE was a proponent of increased price flexibility for TransCanada in conjunction with other changes to TransCanada's pricing and services menu proposed in the RH-003-2011 proceeding. However, ANE did not envision such pricing flexibility being used as it now is under the Restricted Access Policy, i.e. where tolls for short-haul service are arbitrarily set to match long-haul tolls with the clear objective of forcing shippers to contract long-haul.

Further, as noted in ANE's May 13, 2013 Complaint with respect to TransCanada's unilateral May 9, 2013 tariff changes, ANE is concerned with actions taken by TransCanada to restrict renewal rights:

The Tariff Changes are prejudicial to parties holding transportation contracts in that they narrow or restrict the existing renewal rights of such parties. Such changes should not be implemented without a proper review process.

At the time of ANE's Complaint, the Restricted Access Policy had not been fully communicated by TransCanada. That has changed with the TransCanada Policy Letter. TransCanada's efforts to restrict renewal rights are part of the Restricted Access Policy, the rationale for which is set forth at page 2 of the TransCanada Policy Letter:

In order to be efficient in the use of existing infrastructure and the creation of new infrastructure, TransCanada must continue to seek changes to the Mainline tariff renewal provisions to allow it to require long term commitments from shippers in areas of the system that could be utilized to reduce expansions for new service requests, retire, or redeploy facilities (as in the oil conversion). We also feel it is imperative that we have the discretion to deny renewals that are exercised in ways that would have the effect of precluding a more valuable opportunity for the Mainline system from being pursued, without any commitment from existing shippers to contribute to system revenues through long term financial commitments...

ANE is concerned that TransCanada, through its Restricted Access Policy and applied-for tariff changes, is seeking to redeploy assets currently used and useful for natural gas

- 3 -

transportation service to oil transportation service and intends to provide its oil conversion project with access to such assets at their depreciated, or net book, value ("NBV"). TransCanada then proposes that its natural gas shippers who continue to require service, some of whom would have underpinned the facilities now being offered to the oil conversion project at NBV, to fully underpin the construction of new facilities. ANE submits that this amounts to a subsidy from natural gas transmission customers to the oil conversion project. If new facilities are required to meet the demands of TransCanada's proposed new oil shippers, those facilities should be supported by the oil shippers.

ANE notes that in the RH-003-2011 Decision, in turning down TransCanada's proposed reallocation of accumulated depreciation, the Board was concerned with the potential impact of that proposal in conjunction with any oil conversion:

With respect to a potential conversion of Mainline assets to oil service, we note that it is not yet known whether this will happen and which assets would be involved in the conversion. Although TransCanada has stated that, if it brings forward an application for oil conversion, it would provide the net book values of affected assets before and after the accumulated depreciation shift, we note TransCanada's admission that given the uncertainty of the timing of oil conversion, unscrambling the net book values of assets could be difficult as it would involve double-bookkeeping for many years. Therefore, we find that the transfer of accumulated depreciation would have an uncertain, but potentially significant impact if, in the future, part of the Mainline is redeployed for oil service.<sup>1</sup>

Just as the Board was sensitive to the potential impacts the reallocation of depreciation might have in the event of an oil conversion project, ANE believes the Board should be similarly sensitive to efforts to convert assets to oil transportation service on an NBV basis, when these assets remain used and useful for gas transportation service. Any oil conversion project should stand on its own feet, economically speaking, and not depend on access to depreciated assets still required for natural gas service. It is entirely a different matter, of course, if the natural gas assets are no longer used and useful for natural gas service (e.g. Prairies, NOL segments).

In summary, ANE submits that the Restricted Access Policy, reflected in 2015/2016 NCOS, raises fundamental principles with respect to just and reasonable tolling and open access. ANE opposes the *de facto* adoption, or implementation, of aspects of the Restricted Access Policy (e.g. equal pricing for long and short haul service) which would result from allowing the 2015/2016 NCOS to proceed in its present form. As such, ANE supports the request for a stay of 2015/2016 NCOS pending the resolution of the LDC's Complaint on its merits.

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<sup>1</sup> NEB RH-003-2011 Reasons for Decision, s. 5.3, p. 65.

## **Test for a Stay**

The test to apply when considering whether to grant a suspension or stay is set out in the *RJR MacDonald v. Canada (Attorney General)*<sup>2</sup> decision of the Supreme Court of Canada ("RJR MacDonald"). In *RJR MacDonald*, the Supreme Court followed its findings in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*<sup>3</sup> The Court described the three-part test as follows:

Metropolitan Stores adopted a three-stage test for courts to apply when considering an application for either a stay or an interlocutory injunction. First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits...<sup>4</sup>

### **First Test - Serious Issue to be Argued**

RJR MacDonald provided guidance on how to assess whether the applicant has satisfied the first test, indicating that "a preliminary assessment of the merits of the case" is required but that "the threshold is a low one."<sup>5</sup> The Court further stated:

Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable.<sup>6</sup>

The purpose of the first aspect of the RJR MacDonald three-part test is not to decide the merits of the LDC's Complaint, but rather to simply determine whether or not the LDC's Complaint is vexatious or frivolous and if, based on a preliminary assessment of the merits of the case, there is a serious issue to determine. ANE also notes the guidance of the Supreme Court that the threshold is low.

ANE respectfully submits that the issues raised by the Restricted Access Policy are serious issues going to the core of the Board's ratemaking jurisdiction. They raise issues with respect to just and reasonable tolling and open access. A preliminary assessment of the merits of the case is provided under the "Background" section above. ANE submits that there are reasonable grounds for concluding that the LDCs will prevail on the merits. There is certainly enough information for the Board to conclude that the low threshold set out in *RJR MacDonald* has been met, even if the Board is of the opinion that the LDC's will not prevail on the merits.

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<sup>2</sup> [1994] 1 S.C.R. 311 ("RJR MacDonald").

<sup>3</sup> [1987] 1 S.C.R. 110.

<sup>4</sup> RJR MacDonald, paragraph 43.

<sup>5</sup> RJR MacDonald, paragraph 49.

<sup>6</sup> RJR MacDonald, paragraph 50.

### Second Test – LDCs (and other Shippers) Will Suffer Irreparable Harm

The Court in RJR MacDonald referred to the second test as deciding whether the applicant seeking "the interlocutory injunction would, unless the injunction is granted, suffer irreparable harm"<sup>7</sup>. The Court went on to explain how the test was to be applied and what was meant by "irreparable harm":

At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicants' own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.

"Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which can not be cured, usually because one party cannot collect damages from the other...<sup>8</sup>

ANE respectfully submits that if a stay does not issue and 2015/2016 NCOS is allowed to proceed as currently structured, the LDCs, and other shippers, will suffer irreparable harm as they will either be required to drop out of 2015/2016 NCOS or to contract for service on TransCanada's system under tolls that are not just or reasonable and on terms inconsistent with open access principles. Further, it is not only the LDCs or any other parties active in 2015/2016 NCOS that will suffer irreparable harm, but also TransCanada's wider base of shippers. This is because once elements of the Restricted Access Policy have been implemented through the 2015/2016 NCOS, such implementation will serve as a basis for applying the policy more broadly in order not to discriminate against 2015/2016 NCOS shippers.

While it may be argued that harm is not irreparable in that the Board may subsequently order TransCanada to change the terms of service for 2015/2016 NCOS shippers, this will not address the harm that will result from shippers dropping out of 2015/2016 NCOS due to its unwarranted onerous terms. Those shippers will have permanently lost the opportunity to apply for service in the 2015/2016 NCOS timeframe.

### Third Test – Balance of Convenience

RJR MacDonald described the third test, balance of convenience, as follows:

The third test to be applied in an application for interlocutory relief was described by Beetz J. in Metropolitan Stores at p. 129 as: "a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits"...<sup>9</sup>

It is respectfully submitted that granting a stay pending resolution of the merits will not cause significant, if any, harm to TransCanada in the present circumstances. Upon

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<sup>7</sup> RJR MacDonald, paragraph 57.

<sup>8</sup> RJR MacDonald, paragraphs 58-59.

<sup>9</sup> RJR MacDonald, paragraph 62.

- 6 -

resolution of the merits, TransCanada may continue with 2015/2016 NCOS, revised to reflect any directions from the Board resulting from the merits review, or initiate a new Open Season. On the other hand, not granting the stay will cause the LDCs, and other TransCanada shippers, substantial harm, as outlined in the "Irreparable Harm" discussion above.

The balance of convenience clearly supports granting a stay in the circumstances.

### **Conclusion**

For the reasons stated above, ANE respectfully submits that the traditional test for injunctive relief in the nature of a stay is met in the present circumstances. Elements of the Restricted Access Policy should not be implemented on a *de facto* basis, without further review, which would be the result if 2015/2016 NCOS is allowed to proceed as currently structured.

ANE supports the request for a stay of 2015/2016 NCOS pending the resolution of the LDC's Complaint on its merits.

Yours truly,

*(Original Signed By)*

Jim Carmichael  
President

- c. C. Kemm Yates, Q.C., Blake, Cassels & Graddon LLP (TransCanada) Email [kemm.yates@blakes.com](mailto:kemm.yates@blakes.com)  
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July 15, 2013

**BY ELECTRONIC FILING & DELIVERY**

Ms. Sheri Young, Secretary of the Board  
**NATIONAL ENERGY BOARD**  
444 Seventh Avenue S.W.  
Calgary, Alberta  
T2P 0X8

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Dear Ms. Young:

**Re: Tolls and Tariff Complaint by Union Gas Limited (Union), Gaz Métro Limited Partnership (Gaz Métro) and Enbridge Gas Distribution Inc. (EGD) regarding TransCanada PipeLines Limited (TransCanada) – (The LDCs' Complaint).**

**Comments of Association of Power Producers of Ontario (APPRO) in respect of the stay portion of the LDC's Complaint.**

We write as legal counsel to APPRO in the captioned matter. Pursuant to the Board's 11 July 2013 letter in respect of the LDCs' Complaint, APPRO wishes to communicate to the Board its support for the request by Union, Gaz Métro and EGD (together LDCs) that the Board stay TransCanada's 2015/2016 New Capacity Open Season (NCOS) and delay any required responses to it, pending a decision on the merits of the LDCs' Complaint.

The fact that the LDCs have taken the highly unusual step of filing, jointly, such a significant complaint regarding TransCanada's recent market activities reflects the tremendous uncertainty and concerns which those activities have caused. Those uncertainties and concerns are shared by APPRO's gas fired power generator members who are also captive to TransCanada's gas transmission facilities. APPRO's affected members share the LDCs' concerns that captive TransCanada eastern market shippers require certainty respecting fair and reasonable terms of access to existing short haul service pre- and post-oil conversion (assuming that oil conversion is applied for and is subsequently approved).

TransCanada's 2015/2016 NCOS reflects significant assumptions by TransCanada regarding its entitlement to deal with assets without regard to the impacts of such dealings on existing eastern market shippers. Whether or not TransCanada in fact has this entitlement, including the entitlement to require captive shippers to pay tolls and accept contract terms as proposed in the 2015/2016 NCOS are questions that have caused significant anxiety and uncertainty among APPRO's gas fired generator members, as they apparently have for the LDCs on behalf of their customers.



In APPrO's respectful submission, TransCanada's interpretation and application of the RH-003-2012 Decision, which is reflected in its recent market activities, requires consideration by this Board in order to provide TransCanada and the market, including those captive customers whose interests APPrO believes the Board has a mandate to protect, with further regulatory guidance, direction, and ultimately greater certainty. Requiring captive shippers to make long term commercial decisions of this significance while uncertainties and concerns remain would put them in a commercially untenable position. On the other hand, staying the NCOS pending further consideration of the LDCs' Complaint and such further direction as the Board ultimately deems appropriate should not unduly prejudice TransCanada, who may then reinitiate an appropriate open season within the next few months.

APPrO continues to review the LDCs' Complaint, and respectfully requests that the Board provide further directions permitting APPrO and similarly interested and affected stakeholders the opportunity to provide comment on the balance of the issues addressed in that complaint.

Yours truly,

A handwritten signature in blue ink, appearing to read "Ian A. Mondrow".

*for* Ian A. Mondrow

- c. David Butters, President, APPrO  
Bernard Pelletier, TCPL  
Catharine Davis, TCPL  
Gordon Cameron, BLAKES  
C. Kemm Yates, BLAKES  
Mark Isherwood, UNION  
Patrick Cabana, GAZ MÉTRO  
Malini Giridhar, ENBRIDGE  
Eric Dunberry, NORTON ROSE  
L.E. Smith, Q.C., BENNETT JONES  
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**BISSONNETTE FORTIN GIROUX**  
Cabinet d'avocats, s.a.

**FILED ELECTRONICALLY**  
**Original by messenger**

St-Jérôme July 15<sup>th</sup>, 2013

**National Energy Board**  
444, Seventh Avenue S.W.  
Calgary (Alberta) T2P 0X8

**Attention:** Ms. Sheri Young  
Secretary of the Board

**Object : Tolls and Tariff Complaint by Union Gas Limited (Union), Gaz Métro Limited Partnership (Gaz Métro) and Enbridge Gas Distribution Inc. (EGD) regarding TransCanada PipeLines Limited (TransCanada) - (The LDC's Complaint)**  
**Our : 3070-0326**

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Dear Ms. Young,

On behalf of our client, the Industrial Gas Users Association (IGUA), we submit the following observations in response to your Letter dated July 11, 2013 seeking comments in respect of the stay portion of the LDC's Complaint.

IGUA **fully supports the LDC's Complaint request to stay** the 2015/2016 New Capacity Open Season (2015/2016 NCOS) and to delay any required responses to it pending a decision on the merits of this Complaint.

IGUA's members are both Shippers and LDC's customers. The ability for IGUA's members to secure a competitive and reliable natural gas supply will **directly** be impacted should the Board authorize the application of tolls and terms proposed by TCPL in its 2015/2016 NCOS.

Object : Tolls and Tariff Complaint by Union Gas Limited (Union), Gaz Métro Limited Partnership (Gaz Métro) and Enbridge Gas Distribution Inc. (EGD) regarding TransCanada PipeLines Limited (TransCanada) - (The LDC's Complaint) Page 2  
Our ☎: 3070-0326

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Furthermore, IGUA feels essential to remind you of its comments stated in its May 16<sup>th</sup> 2013 letter to the Board, whereby IGUA "*respectfully asked the Board to direct TCPL to refrain from holding open seasons premised on the existence of the proposed contentious tariff amendments until such time that this dramatically altered tariff regime has first been approved by the Board.*" (our emphasis)

IGUA therefore restates its opposition to any new open season process until the current tariff issues have been resolved by the Board after all stakeholders will have had the opportunity to be heard.

Finally, should the Board decide to have further process to deal with the remainder of the LDC's Complaint, IGUA indicates its interest to participate.

Yours very truly.

**BISSONNETTE FORTIN GIROUX**

**Legal Office**

By :



Guy Sarault, Attorney

GS/jk

c.c. Union Gas Limited – c/o: Mark Isherwood, Vice-President  
Gaz Métro – c/o: Patrick Cabana, Vice-President  
Enbridge Gas – c/o: Malini Giridhar, Vice-President  
TransCanada – c/o: C. Kemm Yates  
Gaz Métro – c/o: Eric Dunberry  
Union Gas – L. E. Smith  
EGD – c/o: D. Crowther  
IGUA – c/o: Dr. Shahrzad Rahbar and Darlene Prokop  
Yves Séguin  
Lucie Gervais

July 17, 2013

Ms. Sheri Young  
Secretary of the Board  
National Energy Board  
444 - 7th Avenue SW  
Calgary AB T2P 0X8

Dear Ms. Young:

**Re: TransCanada PipeLines Limited (“TransCanada”) – Tolls and Tariff Complaint Against TransCanada by Union Gas Limited (“Union”) and Gaz Métro Limited Partnership (“Gaz Métro”) and Enbridge Gas Distribution Inc. (“EGD”) (and collectively with Union and Gaz Métro the “LDCs”)**

#### **A. Introduction**

In their letter of complaint dated July 10, 2013 (the “**Complaint**”), the LDCs request, as interim relief, that TransCanada’s most recent New Capacity Open Season (the “**2015/2016 NCOS**”) be stayed and that any required responses to the 2015/2016 NCOS be delayed pending a decision on the merits of the Complaint. Pursuant to the filing schedule set out in the National Energy Board’s (“**NEB**” or “**Board**”) letter of July 11, 2013, the following are additional submissions of the LDCs in support of their request for interim relief and in response to TransCanada’s submissions dated July 16, 2013.

The factual basis for the LDCs’ request for interim relief is set out in the Complaint.

#### **B. Preliminary Comments**

As a general matter, the LDCs note that TransCanada misses the significance of the broader Complaint about its abuse of its monopoly powers when it observes that “only four” parties provided comments on the stay. These parties represent virtually all residential, commercial and industrial volumes flowing to Canadian consumers east of Manitoba. All complain they have been adversely affected by TransCanada’s overt campaign against short haul and demand the latest expression of that abuse – the 2015/2016 NCOS – be stayed. In this effort, these Canadian interests are joined by the bulk of the export market which also relies on these services. By our rough approximation these seven shippers represent 75% of the revenues paid to TransCanada in July 2013 (FT, FT-SN & STS); a substantial outcry of captive shippers who recognize that the prospects of a satisfactory outcome to “negotiations” with TransCanada have long since passed.

Moreover TransCanada ignores the breadth of the Complaint which focuses upon “recent actions taken by TransCanada including but not limited to cancellation of accepted service requests for new capacity; unjust and unreasonable tolls and conditions of service imposed upon future

access to short haul service on the pipeline as confirmed by TransCanada management and by certain open seasons initiated by TransCanada seeking to carry these unjust and unreasonable tolls and conditions of service into effect”.<sup>1</sup> The impugned open season is only one aspect of that objectionable course of conduct; it is not the sole source of it. Its significance can only be appreciated in conjunction with the balance of TransCanada’s attempts to manipulate access to eastern short haul transportation, including its terms and tolls, through such actions including TransCanada’s premature presumption of approval and completion of the Energy East Project.

### C. The Board’s Jurisdiction

TransCanada’s main submission in response to the request for interim relief brought by the LDCs is that this Board has neither the power to examine the 2015/2016 NCOS nor the power to issue any interim relief pending its examination of the Complaint. TransCanada’s submissions do not withstand scrutiny.

This Board’s jurisdiction is set out in s. 12 of the *National Energy Board Act*, R.S.C. 1985, c. N-7 (the “**NEB Act**”). Section 12 grants this Board full and exclusive jurisdiction to inquire into, hear and determine any matter where it appears to the Board that a person has breached the NEB Act or any order or direction made by the Board. It matters little whether the conduct in question takes the form of a toll, tariff or otherwise. Where it appears to the Board that there has been a contravention of the NEB Act, an order or a direction, it has full jurisdiction to inquire. To the extent that an open season is conducted in a way that appears to the Board to breach the NEB Act, an order or a direction, this Board necessarily has the power to inquire into that open season. Open seasons are not uniquely immune from this Board’s jurisdiction under s. 12 of the NEB Act.

While TransCanada characterizes its open seasons as private commercial matters,<sup>2</sup> they are issued pursuant to NEB approved provisions of the tariff (Transportation Access Procedures) and fit squarely within the definition of “tariff” in s. 58.5 of the NEB Act. The term tariff means a schedule of tolls, terms and conditions, classifications, practices or rules and regulations applicable to the provision of a service by a company. The very purpose of an open season is to establish a toll or toll schedule, terms and conditions, classifications, practices or rules and regulations applicable to the provision of a service by a company.

The Board is expressly permitted to make orders with respect to *all matters relating to* traffic, tolls or tariffs pursuant to s. 59 of the NEB Act. An open season is clearly a *matter relating to* traffic, tolls or tariffs. It follows that s. 59 allows the Board to make an order with respect to an open season. This is consistent with the Board’s view that s. 59:

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<sup>1</sup> Complaint, p. 1.

<sup>2</sup> TransCanada’s position in this regard is also inconsistent with the Board’s recent decision in respect of Suncor Energy Products Partnership’s application regarding Trans Mountain Pipeline ULC’s open season. NEB Decision, Suncor Energy Products Partnership Application Regarding Trans Mountain Pipeline ULC Open Season (17 August 2012), File OF-Tolls-Group1-T260-2012-04 (where the Board granted Suncor’s application to strike a proposed provision from a precedent commercial agreement — notwithstanding that the agreement had not been executed by the parties, and the agreement was not to be submitted to the Board for approval).

...is very broad and extends beyond the mere setting of tolls. The Board's decisions may properly affect private contractual rights provided that the impacts on contract arrangements are incidental to the Board's exercise of its regulatory powers.<sup>3</sup>

TransCanada further submits that the NEB Act does not define or refer to the term "open season". This argument is of no moment. The NEB Act does not define or refer to many terms that are nevertheless within the jurisdiction of the Board.<sup>4</sup>

The LDCs submit that it is absurd to suggest that a binding open season with prescribed fixed tolls – without a recourse tariff rate alternative – designed to lead to contracts is beyond the purview of the NEB. Indeed, the logical implication of TransCanada's submission is that it could, with impunity, launch an open season that unjustly discriminates against a person or locality and that this Board would be powerless to intervene. Of course that can't be the case and TransCanada's submissions on this point are unfounded in law. The LDCs further note that this would not be the first instance where this Board has received complaints and intervened in the course of an open season process launched by TransCanada.<sup>5</sup>

The LDCs have brought a Complaint to this Board on the basis that TransCanada is acting in contravention of the NEB Act and this Board's Decision in RH-3-2011. Manifestly, this Board has the power to inquire into the Complaint even if the conduct complained of takes the form of an open season. Moreover, the relief sought is core to the Board's jurisdiction over just and reasonable terms of access to the pipeline.

TransCanada further submits that the Board's power to issue stays are limited by the terms of s. 47 of the *National Energy Board Rules of Practice and Procedure, 1995*, SOR/95-208 (the "**NEB Rules**").<sup>6</sup> The Board's powers are derived from the NEB Act itself and not from the NEB Rules, which are adopted pursuant to s. 8 of the NEB Act and govern *inter alia* "the procedure for making applications, representations and complaints to the Board". The Board's power to issue the interim relief requested by the LDCs is granted, not by the NEB Rules, but by ss. 11(3), 13 and 59 of the NEB Act.

Subsection 11(3) vests the Board with the powers of a superior court with respect to "other matters necessary or proper for the due exercise of its jurisdiction. As for s. 13, it provides, in very broad terms, that the Board may "order and require any person to do, forthwith, or within or at any specified time and in any manner prescribed by the Board, any act, matter or thing that such person is or may be required to do under this Act, or any regulation, certificate, licence or

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<sup>3</sup> RH-2-95, at 11.

<sup>4</sup> For example: the NEB Act does not define or refer to "open access", "common carrier", "monopoly" and "market power".

<sup>5</sup> See RH-3-2004, at 1-2.

<sup>6</sup> TransCanada's submission in this regard also ignores the fact that the Board has considered applications for stays where no decision or order has been issued. See *e.g.* NEB Letter dated 21 October 2009 regarding Dawn Gateway Pipeline General Partner Inc. Application for Dawn Gateway Pipeline – GAPLO/CAEPLA Notice of Motion to Stay the Board's Consideration of the Dawn Gateway GP Application – Dawn Gateway Notice of Motion for Orders Pursuant to section 73 of the National Energy Board Act – GAPLO/CAEPLA Counter-Motion for Service of section 87 Notices, NEB File OF-Fac-Gas-D159-2009-01 01.

permit, or any order or direction made or given under this Act”. The RH-3-2011 Decision and the Compliance Orders constitute such orders or directions.

Section 47 of the NEB Rules which governs the procedure for staying Board decisions that are under review or that are being appealed is manifestly not intended to exhaust, nor could it legally fetter, this Board’s power under ss. 59, 11(3) and 13 of the NEB Act.

The LDCs recognize that the Board has not dictated the terms of open seasons. That does not mean that the Board cannot do so. The Board has recognized that it may do so if necessary in the circumstances:

However, the Board is of the view that, unless it is necessary in the circumstances, it would not be in the industry’s best interest for the Board to dictate the terms and processes for open seasons, given that, as the Panel noted, an open season is a commercial process.<sup>7</sup>  
[Emphasis added]

As noted above, approximately two-thirds of TransCanada’s shippers (by revenue or firm capacity) have expressed significant concerns about the impacts of TransCanada’s 2015/2016 NCOS continuing. In these unusual circumstances, industry is asking the Board to intervene in an open season process. The LDCs submit that this Board has the jurisdiction to inquire into the issues raised by the 2015/2016 NCOS and the power to issue interim relief necessary for the effective exercise that jurisdiction.

#### **D. The Test for Interim Relief**

The test for interim relief which has previously been applied by this Board<sup>8</sup> is the well-known and well-established tripartite test articulated by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)* (“**RJR**”).<sup>9</sup> In the circumstances, that test requires the LDCs to show that:

1. based on a preliminary assessment, the Complaint raises a serious issue;
2. the LDCs will suffer irreparable harm if such relief is not granted; and
3. the balance of convenience favours granting interim relief.

For the reasons provided below, the LDCs submit that: the complaint raises numerous serious issues; the LDCs (and other shippers and consumers) will suffer irreparable harm if the 2015/2016 NCOS is allowed to proceed before the Complaint is determined; and the balance of convenience favours granting the stay.

TransCanada contends, however, that stays should only be granted in the clearest of cases, the granting of stays is based on judicial discretion that should be applied sparingly and stays should

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<sup>7</sup> GHW-R-1-2007, p. 6.

<sup>8</sup> See MH-1-2009, Appendix II, p. 34.

<sup>9</sup> [1994] 1 S.C.R. 311 (**Attachment 1**). See also: *Manitoba (A.G.) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110.

only be granted in special circumstances. To support these propositions, TransCanada relies on an Ontario Superior Court decision (that was overturned on appeal on other issues) and a Federal Court decision, both of which predate the Supreme Court of Canada's articulation of the test for interim relief.<sup>10</sup> With respect, the LDCs submit that the pre-*RJR* case law relied on by TransCanada is entitled to little or no weight. The applicable test is the tripartite test. Subsequent case law interpreting that test may however be informative.<sup>11</sup>

### 1. The Existence of a Serious Issue

The first part of the tripartite test imposes a low threshold. A preliminary assessment of the merits of the case is required. If, based on that preliminary assessment, the Board is satisfied that the Complaint is neither frivolous nor vexatious, the first part of the test is satisfied – even if the Board is inclined to believe that success after the full hearing of the Complaint is unlikely.<sup>12</sup>

There can be little doubt that a preliminary assessment of the Complaint supports the conclusion that it raises a number of very serious issues for this Board's determination.

In essence, the Complaint flows from TransCanada's decision to seek to impose, through the 2015/2016 NCOS, tolls for short haul transportation that are equal to the RH-3-2011 derived long haul tolls for the same delivery points (despite the vastly different distances involved) and that are many times higher than the RH-3-2011 derived short haul tolls. By acting in this manner, TransCanada is transparently seeking to recover revenue foregone by reason of volumes being switched from long haul to short haul and/or to discouraging the use of short haul transportation services, as admitted in Mr. Johansson's letter dated June 17, 2013, and attached as Attachment 1 to the Complaint. In the end, TransCanada's 2015/2016 NCOS is but another attempt to shift costs and risk to shippers, particularly vulnerable captive shippers in Eastern markets in a manner that is deliberately incompatible with this Board's Decision RH-3-2011.

Such conduct evidently constitutes:

- Unjust discrimination against short haul shippers in contravention of s. 67 of the NEB Act;
- An attempt to charge unjust and unreasonable rates for short haul transportation in contravention of s. 62 of NEB Act;
- A contravention of the open access principle; and
- A contravention of both the letter and spirit of this Board's Decision RH-3-2011.

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<sup>10</sup> TransCanada Comments, p. 4.

<sup>11</sup> It is also noteworthy that where an injunction is sought to enforce a public right under statute (i.e. compliance with a statutory requirement), rather than an equitable injunction sought between private parties, the courts will be reluctant to refuse it on discretionary grounds: *Maple Ridge (District) v. Thornhill Aggregates Ltd.* (1998), 54 B.C.L.R. (3d) 155 (B.C.C.A.), leave to appeal to S.C.C. refused (**Attachment 2**).

<sup>12</sup> *RJR*, at 403-404.

The Complaint thus takes issue with a blatant abuse of market power by TransCanada. As previously noted by this Board, such actual or apprehended abuses of market power necessarily raise important and serious issues that call for preventive action by the Board:

The Board must intervene to prevent the abuse of market power. In the Board's view, this implies the prevention of discriminatory pricing, of inappropriate barriers to the efficient functioning of the market, and of favourable treatment of affiliates. An implication of this principle is that the tools provided to pipelines to compete should not provide them the tools to compete unfairly.

Market power must not be allowed to be abused, in terms of both substance, which would need to be proven, and, in terms of appearance and perception. All markets, including efficient ones, have elements of market psychology engrained in their day-to-day operation; however, an apprehension that some market players are abusing their power may lead to inefficient outcomes, and the occurrence of expensive and non-productive transactions and interactions. This kind of situation takes away from economic efficiency and needs to be addressed.<sup>13</sup>

[Emphasis added.]

In arguing that the Complaint does not raise a serious issue, TransCanada raises in essence two arguments: (1) there is no such thing as an “open access principle”; and (2) the rates proposed in its 2015/2016 NCOS are not inconsistent with this Board’s Decision RH-3-2011 nor an abuse of market power.

With respect to TransCanada’s submissions on the “open access principle”, this principle underpins s. 71 of the NEB Act and is referenced and defined in numerous decisions of this Board.<sup>14</sup> Indeed, the NEB has long imposed open access requirements on TransCanada.<sup>15</sup> While it may be surprising that TransCanada denies the existence of the “open access principle”, that position does go some way in explaining TransCanada’s behaviour as reflected in the Complaint.

With respect to the argument that the rates proposed in its 2015/2016 NCOS are consistent with RH-3-2011 and not abusive of its market power, TransCanada essentially submits that these rates are aimed at providing a reasonable opportunity of earning revenue necessary to recover costs related to a capital investment in facilities. This argument does not withstand scrutiny.

To begin with, it is evident that in proposing the short haul rates found in its 2015/2016 NCOS, TransCanada has merely cut and pasted the RH-3-2011 derived long haul tolls to apply them to short haul service for the same delivery points. TransCanada offers no explanation as to how

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<sup>13</sup> RH-3-2004, at p. 8.

<sup>14</sup> See for instance : RH-1-88, at pp. 5-6; GH-1-92, at p. vi; RH-1-99, at pp. ix and 27; GH-1-2006, at p. x; MH-2-88, at p. 8; OH-1-2007, at p. 20.

<sup>15</sup> GH-2-87, at 92-93; NEB Letter regarding Northridge Petroleum Marketing, Inc. Application dated 12 December 1988, File Nos: 1562-T1-26, 1540-N48 (18 April 1989), Appendix XIII to RH-1-88.



such manifestly arbitrarily invented rates bear any relation to recovering the costs of a capital investment. Moreover, and as noted earlier, the evidence emanating from TransCanada itself suggests that its aim is not to recover investment costs, but rather to recover revenue foregone by reason of shippers switching from long haul to short haul services.<sup>16</sup>

Indeed, what is clear from Mr. Johansson's letter (amongst other things) is that TransCanada is systematically discouraging firm contract renewal beyond its expected date of the Energy East Project's requirement for Eastern Triangle capacity and then forcing shippers to "choose" a new capacity option to replace the capacity TransCanada wants to remove for the benefit of its affiliate with new and more costly facilities. That conduct by itself is an abuse of monopoly power.

Mr. Johansson's letter makes clear there is no negotiation possible with the monopoly service provider here; no other options are countenanced. Indeed, what is most significant about the so-called private commercial offering is not what has been set forth in the 2015/2016 NCOS, but what is absent. There is no "choice" possible for capacity at recourse rates stipulated by the Board in RH-3-2011 as just and reasonable. To suggest that requiring the new capacity short haul services to be increased to the same level (or even higher) than the long haul tolls recently determined as just and reasonable by the Board in order to recover the capital investment is as patently abusive as it is disingenuous.

The LDCs do not take the view that TransCanada should not recover the costs of capital investments. However, the LDCs believe that "cost recovery" should bear some logical, rational and economic relationship with the investment actually made. In the end, TransCanada's position boils down to the assertion that it can charge what it wants for new service. With respect that position is inconsistent with this Board's Decision RH-3-2011 and a bald exercise of market power by TransCanada.

Ultimately, TransCanada's arguments, which are both weak and are directed entirely to the merits of the Complaint, demonstrate in reality the serious nature of the issues raised by the LDCs. That the Complaint raises serious and fundamental issues is further demonstrated by the positions in support of the request for interim relief taken by all third parties manifesting an interest in the Complaint (see the correspondence received by the Board from Alberta Northeast Gas Limited ("ANE"), the Association of Power Producers of Ontario, the Industrial Gas Users Association and Tenaska Marketing Canada, a division of TMV Corp.).

## **2. Irreparable Harm**

Beyond the irreparable harm in terms of economic inefficiency caused to the market by TransCanada's abuse of its market power<sup>17</sup>, the 2015/2016 NCOS will result in specific irreparable harm to the LDCs.

Simply allowing the 2015/2016 NCOS to proceed will adversely affect the natural gas market and result in inappropriate market and pricing signals. The LDCs are significant participants in that market and will be harmed by that. That harm is irreparable. Irreparable harm "either cannot

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<sup>16</sup> See Mr. Johansson's letter dated June 17, 2003, Complaint, Attachment 1.

<sup>17</sup> Reasons for Decision RH-3-2004, p. 8.

be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.”<sup>18</sup> Irreparable harm also refers to the nature of the harm suffered rather than its magnitude.<sup>19</sup> There is no means by which the LDCs can collect damages or recover the harm they suffer from participating in a market that is not functioning properly due to a monopoly supplier seeking to restrict access to supply in order to insulate itself from risk that it should properly bear by refusing to provide service on reasonable terms. The Board has previously recognized the importance of allowing market participants to make informed supply and market decisions, and the efficient functioning of the natural gas market, in addressing tolls and tariffs issues.<sup>20</sup>

The 2015/2016 NCOS presents the LDCs with a stark choice of declining to bid, thereby impeding their access to essential transportation services and sources of supply or bidding and thereby accepting to participate in a process that will result in arrangements that are contrary to the NEB Act and Board decisions in numerous regards. In either case, whatever choice is made, the LDCs will suffer irreparable harm unless their request for interim relief is granted by this Board.

To begin with, it is manifest that the LDCs will suffer irreparable harm if they choose not to bid on the 2015/2016 NCOS. As noted by ANE, shippers who drop out of the 2015/2016 NCOS as a result of TransCanada’s onerous and unreasonable terms will suffer irreparable harm by permanently losing the opportunity to apply for service in the 2015/2016 NCOS timeframe.

In the case of the LDCs, in particular, security of supply is of critical importance. In accordance with their duty to serve, the LDCs must seek and provide their customers with secure and diverse supplies of natural gas. On the other hand, they are captive shippers to TransCanada. As such, failure to bid in the 2015/2016 NCOS will impede the LDCs’ ability to access alternate supplies of natural gas made available at Dawn, Parkway and Niagara/Chippawa and force them to rely solely on declining supplies from the Western Canadian Sedimentary Basin. Indeed, in some cases, failure to bid may result in an inability to fully meet existing market demand.

Further, inability to access alternative supplies is estimated to result in between \$103 million and \$138 million per year in increased gas costs for Union and Gaz Métro consumers. Such increased costs will cause irreparable harm to the LDC customers, particularly industrials, by compromising their competitive position *vis-à-vis* other geographic locations. Contrary to TransCanada’s submissions, this harm to the LDC customers’ competitive positions cannot be cured by subsequent proceedings before the Board. It is well established that harm to a businesses’ competitive position may constitute irreparable harm.<sup>21</sup>

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<sup>18</sup> *RJR*, at 341.

<sup>19</sup> *Ibid.*

<sup>20</sup> GH-2-87, at 92.

<sup>21</sup> See e.g. *Scantron Corp. v. Bruce* (1996), 20 C.C.E.L. (2d) 260 (Ont. Gen. Div.) (**Attachment 3**) (potential loss of market share through former employees using confidential sales information qualifying as irreparable harm); *Thales Rail Signalling Solutions v. Toronto Transit Commission* (2009), 58 B.L.R. (4th) 236 (Ont. S.C.J. [Commercial List]) (**Attachment 4**) (bidder not compliant with bidding process failing to establish serious issue to be tried but establishing irreparable harm; if bidder had been awarded contract this would have given bidder distinct advantage over others in winning future contracts with defendant).

Moreover, failure to bid on the 2015/2016 NCOS is likely to be dressed-up by TransCanada as evidence of lack of demand for additional capacity on the Parkway-to-Maple segment and the rest of the Eastern Triangle. TransCanada will no-doubt seek to use such purported lack of demand in support of its yet to be applied for oil conversion project. The retirement of Mainline assets for purposes of redeployment and easier approval of oil conversion will evidently cause irreparable harm to shippers.

In short, TransCanada is clearly seeking to advantage its oil conversion project by using semi-depreciated assets that are fully used by the Eastern gas industry and minimizing the actual real demand for these assets. TransCanada expects that the resulting, deliberately created, scarcity of capacity will allow it to take advantage of its market power by imposing prices and conditions on captive shippers that are utterly at odds with the rates approved by this Board. While the LDCs have no desire to force TransCanada to build new infrastructure at prices that do not make economic sense for TransCanada, the LDCs will be irreparably harmed if capacity actually used and needed to serve their customers is removed (for potential oil conversion) – threatening their ability to serve peak demand – and replaced by new, more expensive infrastructure in a fashion that bypasses this Board’s Decision RH-3-2011.

On the other hand, should the LDCs decide to bid, they will become participants in TransCanada’s unjust discrimination against users of short haul transportation and the contravention of ss. 62 and 67 of the NEB Act. Moreover, any bid by the LDCs will further assist TransCanada in its attempt to contravene the open access principle and avoid this Board’s Decision RH-3-2011. As noted by ANE, participation in the 2015/2016 NCOS will serve as a basis for TransCanada to apply its Restricted Access Policy more broadly resulting in irreparable harm to TransCanada’s wider base of shippers.

Finally, in the event that the LDCs bid in the 2015/2016 NCOS and are subsequently required to contract for short haul services on such onerous and commercially unreasonable terms, their combined cost of acquisition and transportation of natural gas will necessarily increase and will inevitably be passed on to the LDCs’ customer base. Indeed, the LDCs estimate that the terms demanded by TransCanada in its 2015/2016 NCOS will increase costs to consumers by up to \$2 billion. This extraordinary cost increase will irreparably harm the customers of the LDCs by compromising their competitive position *vis-à-vis* other geographic areas. Again, contrary to TransCanada’s submissions, the resulting harm to the competitive position of customers of the LDCs cannot be cured by subsequent proceedings before the Board.

TransCanada argues that there can be no irreparable harm because this Board has the power to address whatever issues arise from the 2015/2016 NCOS when disposing of the merits of the Complaint or in subsequent proceedings before the Board. TransCanada’s argument ignores this Board’s fundamental role in preventing and not simply curing abuses of market power.<sup>22</sup>

Overall, TransCanada’s behaviour has created an environment of significant market disruption where shippers have become uncertain of their ability to adequately serve the needs of existing customers in the near term. This uncertainty necessarily harms the ability of the LDCs to attract

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<sup>22</sup> RH-3-2004, p. 8.

new industrial customers whose operations are dependent on significant secure supplies of natural gas. Such harm cannot be repaired by subsequent Board proceedings.

It is evident that whether the LDCs decide to bid or not bid on TransCanada's 2015/2016 NCOS they will suffer irreparable harm unless interim relief is granted staying the 2015/2016 NCOS and delaying any required responses to it pending this Board's decision on the merits of the Complaint.

### **3. Balance of Convenience**

The balance of convenience clearly favours the granting of interim relief. There is simply no sound reason to compel the LDCs to participate precipitously in a process of such doubtful legality. Rather, the logical, efficient and sound solution is for this Board to exercise its statutory authority and rapidly, but appropriately consider the issues raised by the 2015/2016 NCOS. Resolving the issues raised by the Complaint up front is fairer and more efficient since it avoids the expense, effort and time of preparing and reviewing a detailed application based on flawed assumptions. Indeed, such an application may not even be forthcoming since none of the options favoured by shippers are on offer.

Once such a determination is made, should the Complaint be dismissed, TransCanada may proceed with the 2015/2016 NCOS as drafted. On the other hand, should the Complaint be allowed, TransCanada will simply be required to follow such direction as this Board may issue. The resulting brief delay will in no way prejudice TransCanada.

Indeed, TransCanada does not even suggest in its submissions that it will be harmed in any way by the requested interim relief. Rather, it baldly states that the balance of convenience favours "allowing the market to work". TransCanada offers no explanation as to why the market must work "now" and cannot work "later" once the Board has determined whether the market is being allowed to work in a manner that complies with the NEB Act and its Decision in RH-3-2011.

There can be no prejudice whatsoever to TransCanada or, for that matter, the market, in briefly holding off on the 2015/2016 NCOS until this Board can rule on the issues raised by the 2015/2016 NCOS. To the extent that such delay causes any inconvenience to TransCanada, it is of TransCanada's own making. Indeed, TransCanada alone decided to cancel precedent agreements for capacity awarded in its previous open season in petulant reaction to this Board's Decision in RH-3-2011.

In reality, the only harm that can be suffered is by shippers such as the LDCs who are being presented with the stark choice of participating in an unlawful, unfair and discriminatory process or foregoing necessary access to secure and diverse supplies of natural gas.

That shippers representing virtually all the short haul service on the system also demand a stay to the 2015/2016 NCOS is a strong signal. Captive shippers are faced with a monopolist seeking purely and simply to impose its raw will upon them. This aspect of TransCanada's abusive behaviour must stop, at least on an interim basis until the merits of the Complaint are determined. Accordingly, the LDCs submit that the parties' interests, including that of TransCanada, and the public interest is best served by staying the 2015/2016 NCOS in order to

permit this Board to exercise its jurisdiction and rule on the issues raised by the 2015/2016 NCOS in a comprehensive and appropriate fashion.

Sincerely,

**Union Gas Limited**

**Société en commandite Gaz Métro**

**Enbridge Gas Distribution Inc.**

Per Original Copy Signed By

Mark Isherwood  
Vice-President

Per Original Copy Signed By

Patrick Cabana  
Vice-President

Per Original Copy Signed By

Malini Giridhar  
Vice-President

cc: C. Kemm Yates, Q.C., Blake, Cassels & Graydon LLP (TransCanada)  
Eric Dunberry, Norton Rose (Gaz Métro)  
L. E. Smith, Q.C., Bennett Jones (Union)  
D. Crowther, Dentons (EGD)

**Attachments:**

1. *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311
2. *Maple Ridge (District) v. Thornhill Aggregates Ltd.* (1998), 54 B.C.L.R. (3d) 155 (C.A.)
3. *Scantron Corp. v. Bruce* (1996), 20 C.C.E.L. (2d) 260 (Ont. Gen. Div.)
4. *Thales Rail Signalling Solutions v. Toronto Transit Commission* (2009), 58 B.L.R. (4th) 236 (Ont. S.C.J. [Commercial List])



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Ms. Sheri Young  
Secretary of the Board  
National Energy Board  
444 – 7<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 0X8

July 15, 2013

Filed Electronically

Dear Ms. Young:

**RE: Tolls and Tariff Complaint by Union Gas Limited (Union), Gaz Métro Limited Partnership (Gaz Métro) and Enbridge Gas Distribution Inc. (EGD) regarding TransCanada PipeLines Limited (TransCanada) – (The LDC's Complaint)  
File OF-Tolls-Group1-T211-2011-04 05**

In response to the National Energy Board (Board) letter dated 11 July, 2013 inviting comments in respect of the stay portion of the LDC's Complaint, Tenaska Marketing Canada, a division of TMV Corp. (Tenaska) would like to provide the following comments.

Tenaska is a natural gas marketer and a large exporter of natural gas from Alberta, holding firm capacity on TransCanada's Mainline system, as well as managing capacity on behalf of its customers.

Tenaska fully supports the LDC's request for an immediate stay of the 2015/2016 NCOS pending the resolution of the LDC's Complaint.

Tenaska is very concerned with TransCanada's recent actions that show a complete disregard for the terms and conditions contained within its Board approved Mainline Tariff. TransCanada must not be allowed to continue to unilaterally vary provisions of its Tariff and force shippers to file complaints in order for the Board to consider very significant and far reaching changes to the terms and conditions of service on the Mainline, or in the case of the LDC's complaint some fundamental changes to terms and conditions of access to the Mainline.

The immediate stay of the 2015/2016 NCOS is an appropriate and required step in order to restore an orderly and proper process for significant changes to a Tariff of a Group 1 Pipeline regulated by the Board with considerable and in some cases unfettered market power.

The LDC's Complaint  
Tenaska's Comment Letter

2 of 2

July 15, 2013

Tenaska respectfully requests that the Board grant the LDC's request for an immediate stay of the 2015/2016 NCOS.

Should the Board decide on a further process to deal with the remainder of the LDC's Complaint, Tenaska may provide additional comments.

Respectfully submitted,

*Original signed by*

Tomasz Lange  
Director Marketing, Tenaska Marketing Canada

cc: Mark Isherwood – Union Gas Limited  
Patrick Cabana – Société en commandite Gaz Métro  
Malini Giridhar – Enbridge Gas Distribution Inc.  
Bernard Pelletier – TransCanada  
M. Catharine Davis – TransCanada  
Gordon Cameron – Blake, Cassels & Graydon LLP  
C. Kemm Yates, Q.C. – Blake, Cassels & Graydon LLP

**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #7**

**Reference:** Section 6.0, lines 15-26, page 6 of 6

- Request:**
- a) TCPL states a \$150 million shortfall may be a potential consequence to Ontario gas users. How is this figure derived? Please show the rate impact by service type and path for all TCPL services and the point in time this would be effective. Please provide all calculations.
  - b) Prior to the NEB decision in RH-003-2011, how would the quoted number of \$150 million been dealt with? After the fixed tolls period, how will the issue be dealt with?
  - c) Has TCPL considered in the above calculation, the significant gas cost savings to customers in Ontario and Quebec that result from the proposed facilities.

**Response:**

- a) Please refer to the response to CME 1.
- b) Depending on how circumstances develop, the disposition of the \$150 million might be the same post-RH-003-2011 as before that decision. Before the decision, the \$150 million would have been recovered from shippers. The decision states that the \$150 million will accrue to the TSA deferral account, which is also to be recovered from shippers at the end of the fixed tolls period unless TransCanada has realized fundamental risk, in which case TransCanada's recovery of its revenue requirement will be in issue.
- c) The \$150 million referenced in the question represents the lost transportation revenue to the Mainline from Union and Gaz Métro decontracting long-haul service and replacing it with short-haul service. Please refer to the response to CME 1(d) and (e) for analysis which includes gas cost savings.



**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #8**

**Reference:** Section 6.0, page 6, lines 16-21

**Preamble:** TCPL contends that de-contracting TCPL long-haul by Union and Gaz Métro will increase TCPL tolls. Union seeks to understand if TCPL or any of its affiliates are actively competing with their own long-haul capacity.

**Request:** a) Has or is TCPL, or any of its affiliates, marketing US-based supplies and short haul transportation options to Eastern Ontario shippers that would compete with Empress-based TCPL long haul capacity?

**Response:**

- a) Yes. TransCanada, as well as Union, has marketed access to U.S. based supplies to Eastern Ontario customers. TransCanada has been willing to provide additional capacity either through a build or in the most efficient manner that it determines, to make additional short-haul capacity available for the market which desired the short-haul capacity. The alternative was for TransCanada to be bypassed in the eastern market. TransCanada participated in the OEB Natural Gas Market Review and in other hearings in which it has addressed the impacts of the market wanting to convert long-haul capacity to short-haul capacity, one of which is higher tolls. TransCanada's recent actions are a result of the March 2013 NEB RH 003-2011 Decision and do not change its position on marketing supplies from the U.S.

TransCanada is aware that in the past its U.S. affiliates have promoted the merits of bringing U.S. supply into Eastern Canada. TransCanada is not aware of the current status of those efforts.

**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #9**

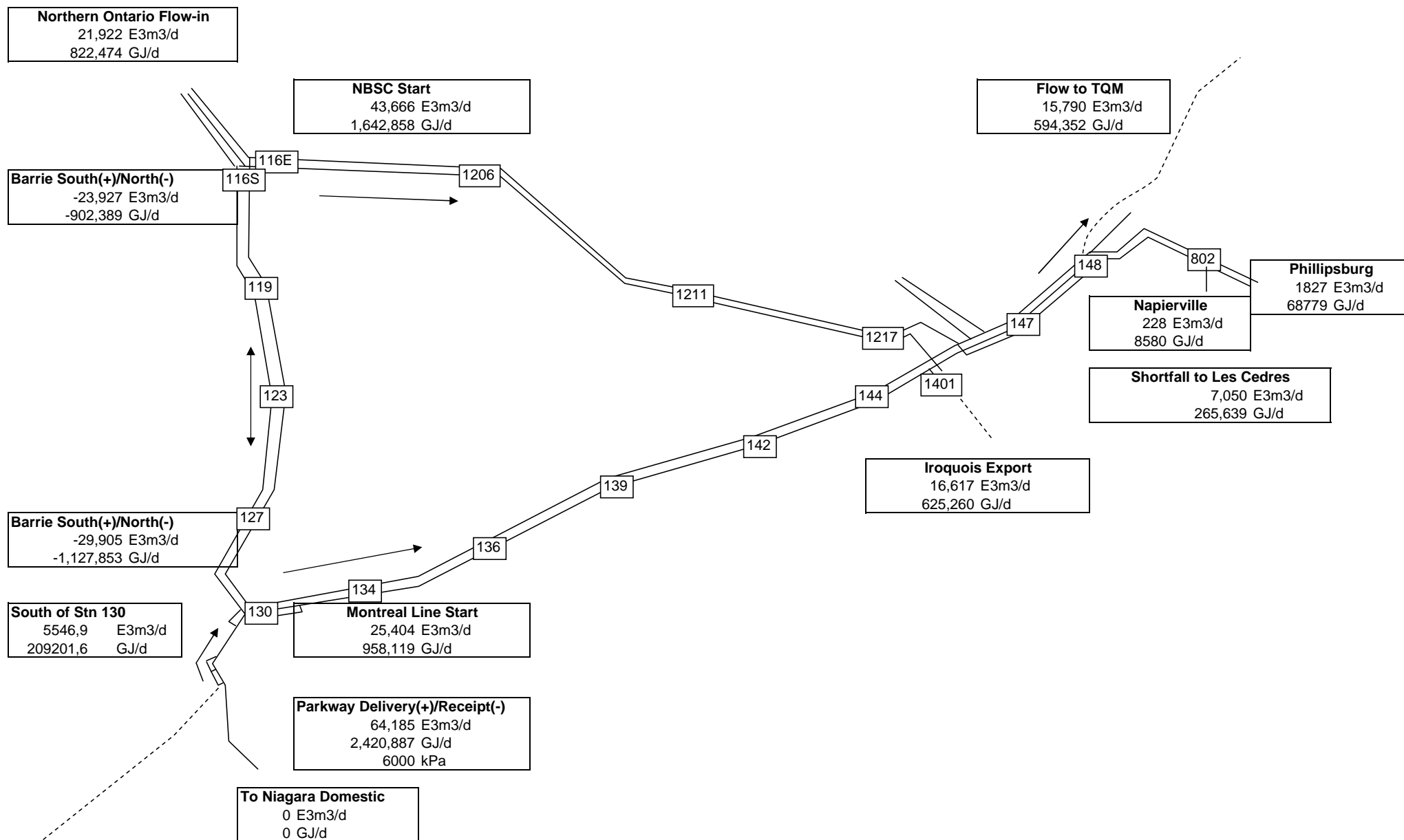
**Reference:** Section 4.0, Page 3 of 6, Lines 20-22:

**Preamble:** “TransCanada intended to utilize its share of capacity on the new Segment A and new TransCanada facilities from Albion to west of Maple (TransCanada’s King’s North project) to satisfy the capacity requirements in the precedent agreements with Union and Gaz Métro.”

**Request:** a) Please provide 2015/2016 operating year versions of the peak design day flow schematic provided in TCPL’s 2012 Eastern Mainline Expansion Section 58 application, Appendix 3-4, page 1, showing the operation of the eastern triangle (i) before and (ii) after the King’s North and GTA projects are constructed.

**Response:**

a) Please refer to Union 9 Attachment 9A and Union 9 Attachment 9B.



#### Compressor Station Data in E6m3/d

STN	116S	116E	119	123	127	130	1206	1211	1217	134	136	139	142	144	147	148	802	1401
MWA	38.99	24.70	OFF	44.93	30.44	17.56	29.47	30.07	29.91	11.39	6.46	4.34	6.47	4.35	10.89	21.05	2.81	44.41
MWR	0.00	19.25	OFF	0.00	15.70	17.56	0.00	9.45	0.00	3.66	0.00	0.00	0.00	0.00	4.53	2.77	0.32	13.17
P Suc.	4953	4952	OFF	5714	3989	3774	6387	5982	5740	3983	5619	5530	5458	5442	5275	6196	6707	5447
P Dis.	6894	6895	OFF	5712	6000	4546	6385	6322	5740	5800	5619	5530	5458	5442	6300	7068	7290	9930
Ratio	1.38	1.38	OFF	1.00	1.49	1.20	1.00	1.06	1.00	1.45	1.00	1.00	1.00	1.00	1.19	1.14	1.09	1.81
Fuel	0.000	0.141	OFF	0.000	0.124	0.016	0.000	0.075	0.000	0.000	0.000	0.000	0.000	0.000	0.045	0.027	0.003	0.095
Flow	0.000	44.592	OFF	24.330	24.924	55.309	43.648	43.209	42.825	7.368	5.933	4.829	2.346	1.221	17.871	15.455	3.126	15.556
TS/TD	15/15	4/29	OFF	9/9	13/25	19/38	9/9	5/19	6/6	10/40	7/7	5/5	5/5	5/5	4/20	9/20	6/13	5/5

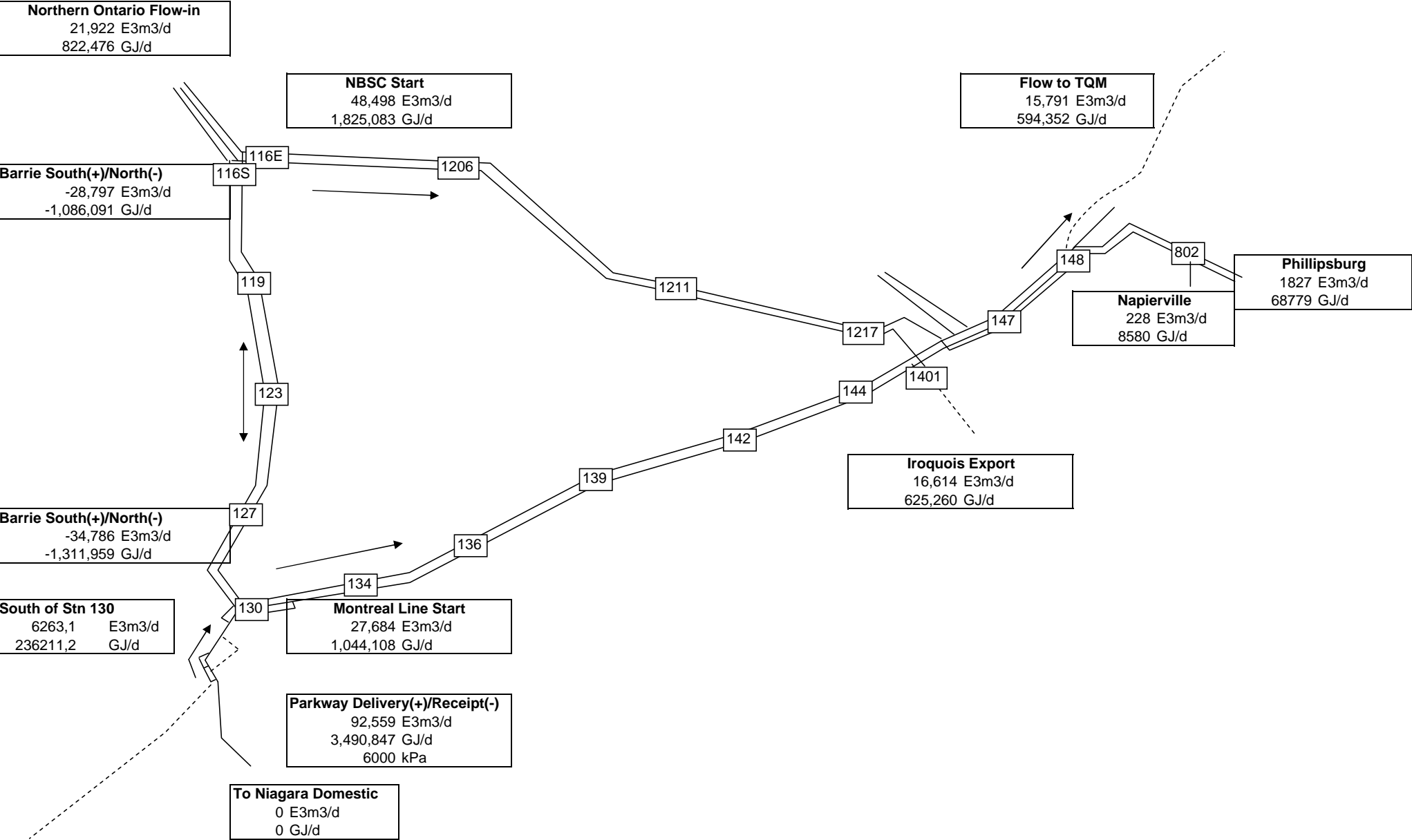


#### Eastern Ontario Triangle Flow Schematic

Parkway to Les Cedres Capability without  
 Proposed Facilities  
 Peak Winter Day with LOU  
 Operating Year: 2015/2016


7/18/2013

Page 1/1



Compressor Station Data in E6m3/d

STN	116S	116E	119	123	127	130	1206	1211	1217	134	136	139	142	144	147	148	802	1401
MWA	39.77	24.70	OFF	44.93	30.55	17.56	29.47	31.01	29.91	11.29	6.46	4.34	6.47	4.35	11.21	21.02	2.82	44.41
MWR	0.00	25.85	OFF	0.00	17.47	17.56	0.00	14.82	0.00	5.06	1.75	0.00	0.00	0.00	7.15	6.05	0.33	12.71
P Suc.	4571	4569	OFF	5686	3983	4051	6251	5702	5904	3972	5470	5805	5645	5566	5305	6244	6698	5554
P Dis.	6894	6895	OFF	5684	6100	4734	6248	6603	5903	5800	6000	5805	5645	5566	6450	7069	7290	9930
Ratio	1.50	1.50	OFF	1.00	1.52	1.16	1.00	1.16	1.00	1.45	1.10	1.00	1.00	1.00	1.21	1.13	1.09	1.77
Fuel	0.000	0.180	OFF	0.000	0.134	0.016	0.000	0.102	0.000	0.000	0.000	0.000	0.000	0.000	0.067	0.050	0.003	0.092
Flow	0.000	49.424	OFF	29.201	29.795	62.470	48.480	48.014	47.631	9.648	8.213	7.109	4.626	3.501	24.944	22.506	3.126	15.552
TS/TD	15/15	4/36	OFF	11/11	14/27	20/36	11/11	5/24	8/8	11/42	9/22	6/6	5/5	5/5	4/22	11/27	7/14	5/5

**TransCanada**  
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**Eastern Ontario Triangle Flow Schematic**

Peak Winter Day with LOU  
Operating Year: 2015/2016

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**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #10**

**Reference:** Section 4.0, Page 4 of 6, Lines 18-19

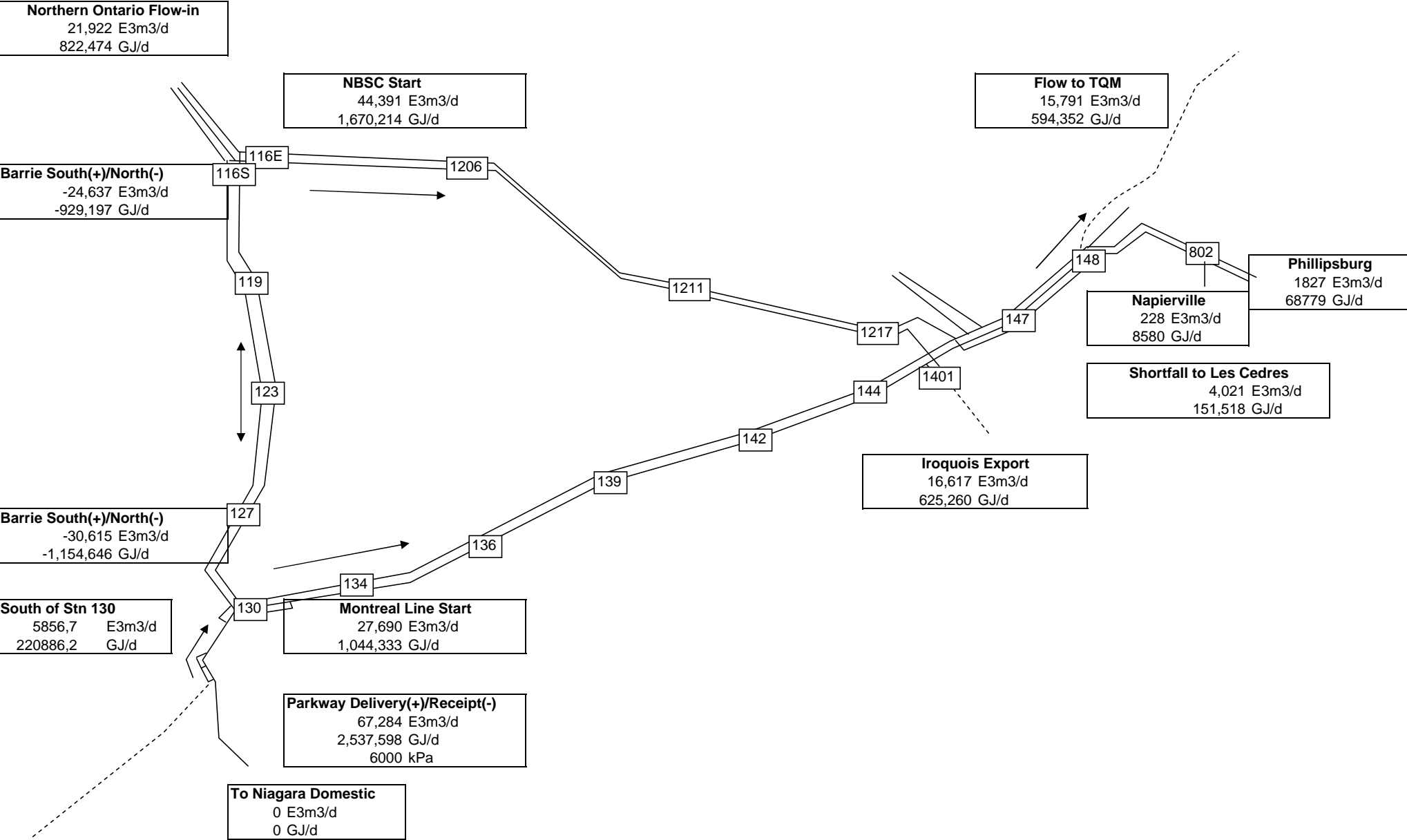
**Preamble:** “Under design day conditions, TransCanada will be utilizing its full allotment of the capacity (50%) to meet its contractual obligations.”

- Request:**
- a) If TCPL fully utilized compression in the Eastern Triangle, and assuming unrestricted demand at TQM, how much gas could be transported from Parkway to Maple and along the Eastern Triangle system to the various delivery areas. Please update the two schematics provided in the previous question assuming; (i) current facilities as well as (ii) with the TCPL Kings North and the GTA projects in service.
  - b) What is the capacity of the Eastern Triangle to the various delivery areas under TCPL’s 2015/2016 design day conditions?

**Response:**


- a) Please refer to Union 10 Attachment 10A and Union 10 Attachment 10B.
- b) The design condition for the Eastern Ontario Triangle is Winter Peak Day with loss of critical unit. The table below shows the firm requirements for the EDA and the CDA. TransCanada assumes that any FT or STS contracts that expire more than six months in the future will be renewed. Additional capacity from Parkway is zero except for capacity contracted through a new capacity open season. The additional capacities from North Bay assume no upstream or downstream constraints and use Les Cedres (TQM) as the delivery point for the EDA and Parkway as the delivery point for the CDA.

Delivery Area	Firm Requirements (TJ/d)	Additional Capacity From North Bay (TJ/d)	Total Capacity (TJ/d)
CDA	2068	3386	5454
EDA	1431	549	1980



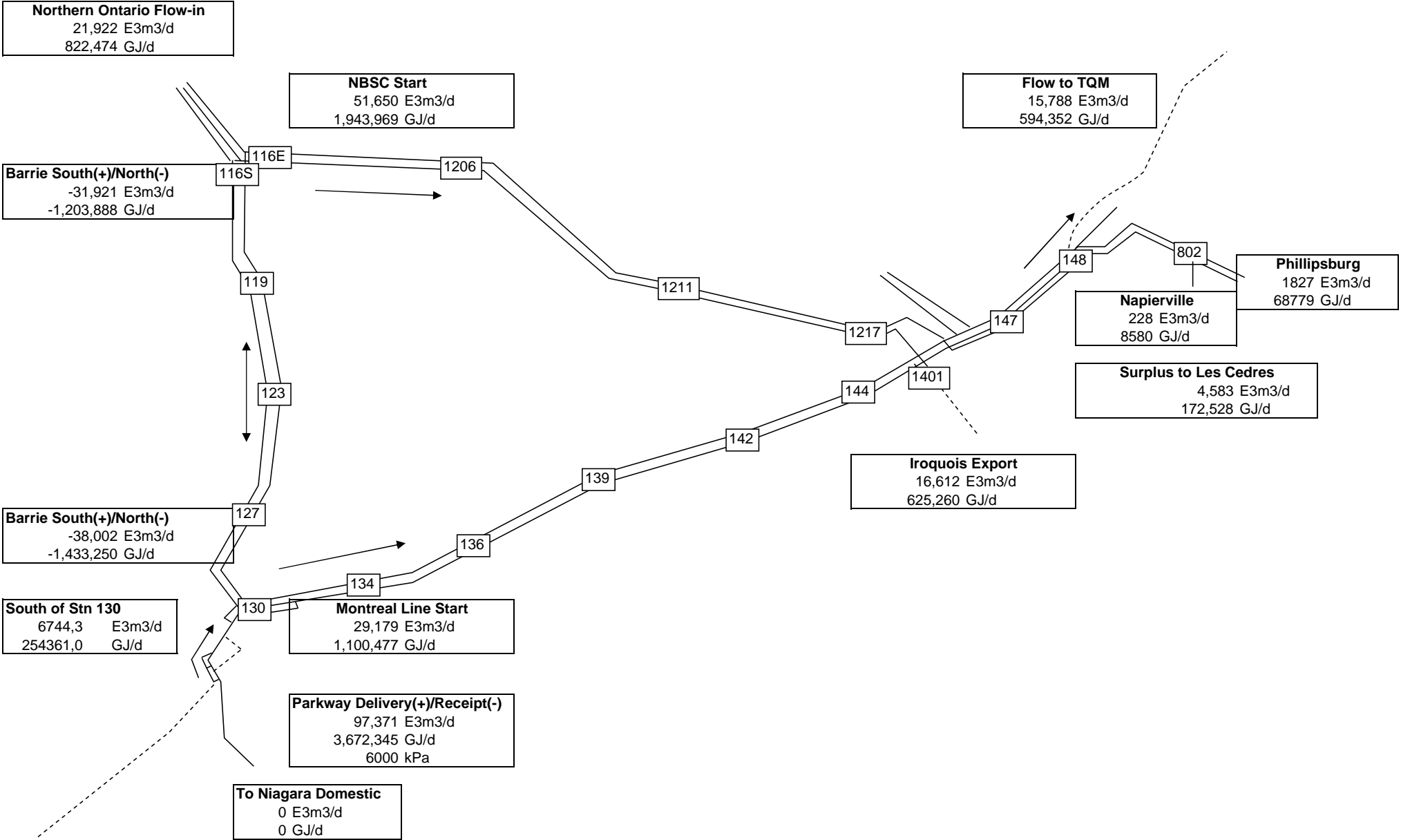
Compressor Station Data in E6m3/d

STN	116S	116E	119	123	127	130	1206	1211	1217	134	136	139	142	144	147	148	802	1401
MWA	38.47	24.70	OFF	44.93	30.37	27.89	29.47	30.32	29.91	11.37	6.46	4.34	6.47	4.35	10.23	21.07	2.81	44.34
MWR	0.00	16.80	OFF	0.00	15.64	27.89	0.00	10.40	0.00	5.39	1.65	0.00	0.00	0.00	3.33	3.15	0.32	10.83
P Suc.	5130	5129	OFF	5906	4182	3451	6374	5951	6260	3972	5546	6224	6075	6003	5776	6312	6708	5993
P Dis.	6894	6895	OFF	5905	6200	4755	6372	6810	6260	5875	6400	6223	6075	6003	6450	7068	7290	9930
Ratio	1.34	1.34	OFF	1.00	1.47	1.37	1.00	1.14	1.00	1.47	1.15	1.00	1.00	1.00	1.11	1.12	1.09	1.65
Fuel	0.000	0.126	OFF	0.000	0.123	0.026	0.000	0.080	0.000	0.000	0.000	0.000	0.000	0.000	0.035	0.030	0.003	0.083
Flow	0.000	45.318	OFF	25.041	25.635	58.305	44.374	43.930	43.546	9.654	8.219	7.115	4.631	3.507	20.902	18.484	3.126	15.555
TS/TD	15/15	4/27	OFF	10/10	16/26	18/48	8/8	5/20	7/7	13/46	9/22	6/6	5/5	5/5	4/14	8/18	6/12	5/5


**TransCanada**  
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**Eastern Ontario Triangle Flow Schematic**  
Parkway to Les Cedres Capability without  
Proposed Facilities  
Peak Winter Day without LOU  
Operating Year: 2015/2016

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Compressor Station Data in E6m3/d																		
STN	116S	116E	119	123	127	130	1206	1211	1217	134	136	139	142	144	147	148	802	1401
MWA	39.00	24.70	OFF	44.34	30.24	27.89	29.47	31.29	30.29	11.17	6.46	4.34	6.47	4.35	10.54	20.81	2.82	44.41
MWR	0.00	20.98	OFF	9.59	15.59	27.89	0.00	0.00	23.01	6.00	2.97	0.00	0.00	0.00	6.36	6.18	0.33	12.29
P Suc.	4982	4980	OFF	5028	3978	3720	6179	5535	4580	3963	5342	6183	5956	5822	5440	6000	6701	5794
P Dis.	6894	6895	OFF	6201	5600	4889	6176	5534	6199	5800	6450	6182	5956	5822	6300	7070	7290	9930
Ratio	1.38	1.38	OFF	1.23	1.40	1.31	1.00	1.00	1.35	1.45	1.20	1.00	1.00	1.00	1.16	1.18	1.09	1.70
Fuel	0.000	0.151	OFF	0.104	0.123	0.026	0.000	0.000	0.017	0.000	0.000	0.000	0.000	0.000	0.065	0.058	0.003	0.090
Flow	0.000	52.576	OFF	32.324	33.022	67.181	51.633	51.269	50.715	11.142	9.708	8.604	6.120	4.995	29.530	27.084	3.125	15.550
TS/TD	15/15	3/27	OFF	11/5	18/26	19/45	9/9	5/5	3/30	13/45	10/29	7/7	5/5	5/5	8/21	11/25	7/14	14/5

**TransCanada**  
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**Eastern Ontario Triangle Flow Schematic**  
Parkway to Les Cedres Capability with Proposed Facilities  
Peak Winter Day without LOU  
Operating Year: 2015/2016

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**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #11**

- Reference:** Section 5.0, page 6, lines 4-6
- Preamble:** TCPL states they intend to apply to the NEB for approval to construct the King's North Project.
- Request:**
- a) What is the status of the Environmental Assessment for the King's North project? When does TCPL expect the Environmental Report to be finalized? If the report is already finalized please provide a copy of the report.
  - b) Please provide a map showing the proposed route of the King's North pipeline.

**Response:**

- a) The Environmental Assessment for the King's North project is in the planning phase. The expected completion of the Environmental Report is Q3 2014.
- b) TransCanada met with Enbridge and Union in its joint facilities meeting on April 15, 2013 in which it shared its proposed routing for the King's North pipeline. Due to the route not being finalized, and stakeholder consultation not having taken place, the actual route is not known.



**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #12**

**Reference:** Section 5.0, page 6, lines 4-6

**Preamble:** TCPL states they intend to apply to the NEB for approval to construct the King's North Project.

- Request:**
- a) What is the proposed diameter of the King's North Pipeline?
  - b) What is the proposed capacity of the King's North Pipeline and what is the impact on the design day flows on the Eastern Triangle?
  - c) What is the MOP of the King's North pipeline?
  - d) Is TCPL proposing any compression facilities along the route of the King's North pipeline?
  - e) If no compression is proposed, how can TCPL ensure that gas from the King's North pipeline can be received into the Parkway to Maple system?
  - f) What contracts on TCPL will support the King's North project? How were these contracts secured ( i.e through an open season or other) and when? Who are the shippers?
  - g) How are revenues generated to support the project calculated?
  - h) What is the targeted in-service date for the project?

**Response:**

- a) Please refer to the response to Energy Probe 2 a) (iii).
- b) Please refer to the response to Energy Probe 2 a) (ii).
- c) The maximum allowable operating pressure of the King's North pipeline is 6,450 kPa.
- d) No compression facilities are proposed on the Kings' North pipeline.
- e) TransCanada's capacity on Enbridge's Segment A combined with TransCanada's King's North pipeline effectively provides a loop of TransCanada's existing pipeline system. As with any looped section of a pipeline the flow in each of the individual pipes is not actively controlled but is dictated by the condition that the pressure at the common end points will be the same. Loops add capability to existing systems by allowing the flow of gas in the looped section of the existing pipe(s) to be reduced and flow in the loop facilities. This results in less pressure drop between the two end

points of the looped section than the pressure drop in the system without the loop. This allows for increased pressure drop in the unlooped portions of the system and therefore increased flow overall in the system. In the case of the proposed facilities under design conditions the flow in the King's North Pipeline is 800 TJ/d and the increase in capacity from Parkway will be 315 TJ/d.

- f) Dawn receipt contracts on TransCanada's system that currently use the Union Dawn to Dawn service and the Great Lakes backhaul would now be supplied via the transportation on Segment A and Kings North. These contracts resulted from various open seasons (both existing capacity and new capacity open seasons). Shippers with Dawn contracts are listed in Attachment 2A, BOMA 2.
- g) The revenues that will be generated to support the King's North Project are those from the Parkway to Bram West contract that EGD will hold on the Mainline in accordance with the MOU. This revenue is approximately \$26 million per year based on current tolls ( 800 TJ/d X 8.75 ¢/GJ X 365 days).
- h) Please refer to the response to Staff L.11 c).

**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #13**

**Reference:** Section 3.0, page 2, line 6

**Preamble:** TCPL states Union and Enbridge proposed their “Parkway Extension” project to bypass the TransCanada Mainline.

**Request:** a) Please confirm that where a transmitter is unwilling or unable to provide capacity requested by the market, it does not represent a bypass for a customer to build on the same or similar path when there is no other transportation option.

**Response:**

a) Not confirmed. TransCanada considers any third party facilities that result in a loss of billing determinants to be a bypass of its facilities. However, the question is not relevant in this case. TransCanada notes that it is both willing and able to provide the capacity requested, and that the Eastern Canadian Shippers do have other transportation options.

**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #14**

**Reference:** Section 3.0, page 2, line 12

**Preamble:** TCPL states Union and Gaz Métro bid successfully into TransCanada's open season.

**Request:** a) Please describe what the term "successful" means, having regard to the subsequent delay and then cancellation of the project.

**Response:**

- a) When a shipper bids successfully it means they are awarded capacity in the open season. Successful Bidder is a defined term in TransCanada's Transportation Access Procedure and is defined as "a Service Applicant who has been allocated any New Capacity".

**TransCanada PipeLines Limited Response to  
Union Gas Limited Interrogatory #15**

**Reference:** Section 5.0, page 5, line 7

**Preamble:** The TSA relies on a forecast of throughput on the Mainline for the Fixed Tolls Period.

**Request:**

- a) Please confirm that TCPL filed an updated forecast in their 2012-2013 Mainline Tolls Application (RH-003-2011) in June 2012.
- b) Please provide a copy of the forecast as filed.
- c) How often does TCPL update this forecast? Please provide a copy of TCPL's most recent forecast.
- d) Please provide all internal presentations and correspondence including emails that deal with TCPL's throughput forecast since June 2012.
- e) Please confirm that volumes awarded in the TCPL 2012 Firm Transportation new capacity open season are not included in the 2012 forecast. If not, why not?

**Response:**

- a) Confirmed.
- b) Please see Union 15 Attachment 15A.
- c) and d)

TransCanada has not updated the referenced forecast. An updated throughput forecast is not required to determine tolls under the Mainline's current multi-year fixed toll model. In addition, TransCanada declines to provide any internal materials with respect to throughput projections on the grounds such projections are commercially sensitive.

- e) Confirmed. Agreements for this open season were in the process of being finalized during the time that the referenced 2012 forecast was being prepared.

**TRANSCANADA PIPELINES LIMITED**

**BUSINESS and SERVICES RESTRUCTURING**

**and**

**MAINLINE 2012-2013 Tolls**

**Application**

**APPENDIX C1: MAINLINE THROUGHPUT STUDY**

**2012 THROUGHPUT STUDY UPDATE**

**June 29, 2011**



Revised June 29, 2012

## ATTACHMENT A

### Case 1 - Western Canada Flow Balance \* Part A (Bcf/d)

Year	WCSB Supply (Unconventional and Conventional)	WCSB Net Storage	Total Supply	Western Canadian Demand	Western Canadian Exports
2000	16.3	0.2	16.5	4.2	12.4
2001	17.0	-0.3	16.7	4.0	12.7
2002	16.8	0.1	16.9	4.1	12.9
2003	16.4	0.0	16.4	4.2	12.2
2004	16.6	-0.1	16.5	4.3	12.2
2005	16.7	0.0	16.7	4.1	12.5
2006	16.8	-0.3	16.5	4.3	12.1
2007	16.4	0.0	16.4	4.4	11.9
2008	15.7	-0.1	15.6	4.6	11.0
2009	14.7	-0.1	14.7	4.7	9.9
2010	14.2	0.0	14.3	4.7	9.6
2011	14.4	-0.2	14.1	5.0	9.0
2012	13.5	0.1	13.5	5.1	8.4
2013	13.9	0.0	13.9	5.3	8.6
2014	14.3	0.0	14.3	5.5	8.8
2015	14.9	0.0	14.9	5.7	9.2
2016	15.6	0.0	15.6	6.0	9.6
2017	16.2	0.0	16.2	6.1	10.0
2018	16.6	0.0	16.6	6.3	10.3
2019	16.9	0.0	17.0	6.4	10.5
2020	17.0	0.0	17.0	6.6	10.4

**Note:**

- Numbers may not add due to rounding.



Revised June 29, 2012

## ATTACHMENT A

### Case 1 – WCSB Exports \* Part B (Bcf/d)

Year	Western Canadian Exports	Northern Border @ Monchy, SK Flows	GTN @ Kingsgate, BC Flows	Alliance @ Elmore, SK Flows	NWP @ Sumas, BC Flows	Mainline Western Receipts Flows	Flows to BC LNG Exports
2000	12.4	2.2	2.3	0.2	0.9	6.8	
2001	12.7	2.1	2.3	1.5	0.9	6.0	
2002	12.9	2.1	2.0	1.5	0.9	6.4	
2003	12.2	2.1	1.8	1.6	0.9	5.9	
2004	12.2	2.1	2.0	1.6	0.9	5.7	
2005	12.5	1.9	1.7	1.6	0.8	6.3	
2006	12.1	1.9	1.9	1.6	0.7	6.1	
2007	11.9	1.9	2.0	1.6	0.7	5.7	
2008	11.0	1.6	1.8	1.6	0.8	5.2	
2009	9.9	1.3	1.9	1.6	0.8	4.3	
2010	9.6	1.9	1.9	1.6	0.8	3.4	
2011	9.0	1.8	1.6	1.6	0.8	3.2	
2012	8.4	2.0	1.7	1.6	0.8	2.4	
2013	8.6	1.8	1.7	1.7	0.8	2.6	
2014	8.8	1.8	1.7	1.7	0.8	2.8	
2015	9.2	1.8	1.7	1.6	0.9	3.1	
2016	9.6	1.8	1.7	1.7	0.9	3.6	
2017	10.0	1.8	1.7	1.7	0.9	3.9	
2018	10.3	1.7	1.8	1.7	0.9	3.9	0.4
2019	10.5	1.5	1.7	1.7	0.8	3.7	1.0
2020	10.4	1.4	1.7	1.7	0.8	3.6	1.3

**Note:**

- Numbers may not add due to rounding.





Revised June 29, 2012

## ATTACHMENT A

### Case 1 – TransCanada Alberta and Foothills System Balance \* Part C (Bcf/d)

Year	TC Alberta System Receipts <sup>1/ 2/</sup>	Intra-Alberta Deliveries and Net Storage <sup>1/ 2/</sup>	Deliveries to A/BC Border	Deliveries to McNeill Border	Deliveries to Empress Border	Deliveries to BC LNG Exports <sup>3/</sup>
1999/00	12.4	1.6	2.4	2.2	6.3	
2000/01	11.4	1.4	2.4	2.1	5.5	
2001/02	11.3	1.5	2.1	2.1	5.6	
2002/03	10.8	1.5	1.8	2.1	5.3	
2003/04	10.6	1.7	2.0	2.1	4.9	
2004/05	10.9	1.8	1.9	2.0	5.3	
2005/06	11.4	2.0	2.0	2.0	5.5	
2006/07	11.0	2.1	2.0	1.9	5.0	
2007/08	10.5	2.3	2.0	1.6	4.7	
2008/09	9.8	2.5	1.9	1.5	3.9	
2009/10	9.4	2.5	2.0	1.8	3.1	
2010/11	9.6	3.0	1.7	1.8	3.0	
2011/12	10.1	4.1	1.8	2.1	2.2	
2012/13	10.0	4.1	1.7	1.8	2.3	
2013/14	10.4	4.2	1.8	1.8	2.5	
2014/15	11.0	4.5	1.8	1.8	2.9	
2015/16	11.7	4.7	1.8	1.9	3.3	
2016/17	12.4	4.9	1.8	2.0	3.7	
2017/18	12.6	5.0	1.8	1.9	3.7	0.2
2018/19	12.7	5.1	1.8	1.7	3.5	0.5
2019/20	12.7	5.3	1.8	1.6	3.4	0.6

**Note:**

1. Includes pipeline fuel.
  2. Includes ATCO Integration post 2011/12.
  3. Portion of volumes on TC Alberta System assumed to be delivered to BC LNG Export project.
- \* Numbers may not add due to rounding.



Revised June 29, 2012

## ATTACHMENT A

### Case 1 – TransCanada Eastern Market Flows \* Part D (Bcf/d)

Year	Mainline Western Receipts	TC Flow into Ontario (NOL & TC TBO on GLGT)	Non-TC Flow into Ontario	Ontario Demand served by TC <sup>1/</sup>	Quebec Demand served by TC <sup>1/</sup>	Ontario Demand served by Non-TC <sup>1/</sup>	Quebec Demand served by Non-TC <sup>1/</sup>	TC Exports/Imports @ Chippawa	TC Exports/Imports @ Niagara	TC Exports/Imports @ Waddington
2000	6.8	5.0	0.3	1.6	0.6	1.3		0.3	0.8	0.8
2001	6.0	4.5	0.7	1.5	0.5	1.0		0.3	0.7	0.8
2002	6.4	4.6	0.8	1.6	0.6	1.2		0.2	0.9	0.9
2003	5.9	4.2	1.3	1.6	0.5	1.2		0.2	0.8	0.9
2004	5.7	4.0	1.2	1.6	0.5	1.1		0.2	0.8	0.9
2005	6.3	4.5	1.0	1.6	0.5	1.2		0.2	0.9	1.0
2006	6.1	4.4	1.0	1.5	0.5	1.1		0.2	0.8	1.0
2007	5.7	3.8	1.6	1.4	0.6	1.3		0.2	0.8	1.0
2008	5.2	3.4	1.8	1.4	0.5	1.3		0.2	0.8	0.9
2009	4.3	2.4	2.4	1.3	0.5	1.4		0.2	0.4	0.8
2010	3.4	1.7	2.4	1.3	0.5	1.3		0.2	0.2	0.6
2011	3.2	1.2	3.0	1.3	0.5	1.5		0.1	0.1	0.5
2012	2.4	1.0	2.8	1.2	0.5	1.4		0.0	0.0	0.5
2013	2.6	1.1	2.5	1.3	0.5	1.4		0.0	-0.2	0.5
2014	2.8	1.1	2.3	1.2	0.5	1.3		0.0	-0.2	0.5
2015	3.1	1.1	2.3	1.2	0.5	1.3		0.0	-0.2	0.5
2016	3.6	1.3	2.3	1.2	0.5	1.4	0.01	0.0	-0.2	0.5
2017	3.9	1.4	2.1	1.2	0.5	1.4	0.02	0.0	-0.2	0.5
2018	3.9	1.4	2.4	1.3	0.6	1.4	0.04	0.0	-0.2	0.5
2019	3.7	1.3	2.2	1.3	0.6	1.4	0.05	0.0	-0.3	0.5
2020	3.6	1.3	2.3	1.5	0.5	1.5	0.08	0.0	-0.5	0.5

**Note:**

1. Includes pipeline fuel

\* Numbers may not add due to rounding.



Revised June 29, 2012

## ATTACHMENT A

### Case 2 - Western Canada Flow Balance \* Part A (Bcf/d)

Year	WCSB Supply (Unconventional and Conventional)	WCSB Net Storage	Total Supply	Western Canadian Demand	Western Canadian Exports
2000	16.3	0.2	16.5	4.2	12.4
2001	17.0	-0.3	16.7	4.0	12.7
2002	16.8	0.1	16.9	4.1	12.9
2003	16.4	0.0	16.4	4.2	12.2
2004	16.6	-0.1	16.5	4.3	12.2
2005	16.7	0.0	16.7	4.1	12.5
2006	16.8	-0.3	16.5	4.3	12.1
2007	16.4	0.0	16.4	4.4	11.9
2008	15.7	-0.1	15.6	4.6	11.0
2009	14.7	-0.1	14.7	4.7	9.9
2010	14.2	0.0	14.3	4.7	9.6
2011	14.4	-0.2	14.1	5.0	9.0
2012	13.5	0.1	13.5	5.1	8.4
2013	13.9	0.0	13.9	5.3	8.6
2014	14.3	0.0	14.3	5.5	8.8
2015	14.9	0.0	14.9	5.7	9.2
2016	15.6	0.0	15.5	6.0	9.6
2017	16.2	0.0	16.2	6.1	10.0
2018	16.6	0.0	16.6	6.3	10.3
2019	16.9	0.0	16.9	6.5	10.5
2020	17.0	0.0	17.0	6.7	10.3

**Note:**

- Numbers may not add due to rounding.



Revised June 29, 2012

## ATTACHMENT A

### Case 2 – WCSB Exports \* Part B (Bcf/d)

Year	Western Canadian Exports	Northern Border @ Monchy, SK Flows	GTN @ Kingsgate, BC Flows	Alliance @ Elmore, SK Flows	NWP @ Sumas, BC Flows	Mainline Western Receipts Flows	Flows to BC LNG Exports
2000	12.4	2.2	2.3	0.2	0.9	6.8	
2001	12.7	2.1	2.3	1.5	0.9	6.0	
2002	12.9	2.1	2.0	1.5	0.9	6.4	
2003	12.2	2.1	1.8	1.6	0.9	5.9	
2004	12.2	2.1	2.0	1.6	0.9	5.7	
2005	12.5	1.9	1.7	1.6	0.8	6.3	
2006	12.1	1.9	1.9	1.6	0.7	6.1	
2007	11.9	1.9	2.0	1.6	0.7	5.7	
2008	11.0	1.6	1.8	1.6	0.8	5.2	
2009	9.9	1.3	1.9	1.6	0.8	4.3	
2010	9.6	1.9	1.9	1.6	0.8	3.4	
2011	9.0	1.8	1.6	1.6	0.8	3.2	
2012	8.4	2.0	1.7	1.6	0.8	2.4	
2013	8.6	1.9	1.8	1.7	0.9	2.4	
2014	8.8	2.0	1.8	1.7	0.9	2.4	
2015	9.2	2.0	1.9	1.7	0.9	2.6	
2016	9.6	2.0	2.0	1.7	0.9	2.9	
2017	10.0	2.0	2.2	1.7	0.9	3.2	
2018	10.3	2.0	2.1	1.7	0.9	3.2	0.4
2019	10.5	1.9	2.0	1.7	0.9	2.9	1.0
2020	10.3	1.8	1.8	1.7	0.9	2.8	1.3

**Note:**

- Numbers may not add due to rounding.



Revised June 29, 2012

## ATTACHMENT A

### Case 2 – TransCanada Alberta and Foothills System Balance \* Part C (Bcf/d)

Year	TC Alberta System Receipts <sup>1/ 2/</sup>	Intra-Alberta Deliveries and Net Storage <sup>1/ 2/</sup>	Deliveries to A/BC Border	Deliveries to McNeill Border	Deliveries to Empress Border	Deliveries to BC LNG Exports <sup>3/</sup>
1999/00	12.4	1.6	2.4	2.2	6.3	
2000/01	11.4	1.4	2.4	2.1	5.5	
2001/02	11.3	1.5	2.1	2.1	5.6	
2002/03	10.8	1.5	1.8	2.1	5.3	
2003/04	10.6	1.7	2.0	2.1	4.9	
2004/05	10.9	1.8	1.9	2.0	5.3	
2005/06	11.4	2.0	2.0	2.0	5.5	
2006/07	11.0	2.1	2.0	1.9	5.0	
2007/08	10.5	2.3	2.0	1.6	4.7	
2008/09	9.8	2.5	1.9	1.5	3.9	
2009/10	9.4	2.5	2.0	1.8	3.1	
2010/11	9.6	3.0	1.7	1.8	3.0	
2011/12	10.1	4.1	1.8	2.1	2.2	
2012/13	10.0	4.1	1.8	2.0	2.1	
2013/14	10.3	4.3	1.9	2.0	2.2	
2014/15	11.0	4.5	2.0	2.1	2.3	
2015/16	11.6	4.8	2.1	2.1	2.6	
2016/17	12.3	5.0	2.3	2.2	2.9	
2017/18	12.6	5.0	2.2	2.1	3.0	0.2
2018/19	12.6	5.2	2.1	2.1	2.8	0.5
2019/20	12.7	5.4	2.0	2.0	2.7	0.6

**Note:**

1. Includes pipeline fuel.
  2. Includes ATCO Integration post 2011/12.
  3. Portion of volumes on TC Alberta System assumed to be delivered to BC LNG Export project.
- \* Numbers may not add due to rounding.



Revised June 29, 2012

## ATTACHMENT A

### Case 2 – TransCanada Eastern Market Flows \* Part D (Bcf/d)

Year	Mainline Western Receipts	TC Flow into Ontario (NOL & TC TBO on GLGT)	Non-TC Flow into Ontario	Ontario Demand served by TC <sup>1/</sup>	Quebec Demand served by TC <sup>1/</sup>	Ontario Demand served by Non-TC <sup>1/</sup>	Quebec Demand served by Non-TC <sup>1/</sup>	TC Exports/Imports @ Chippawa	TC Exports/Imports @ Niagara	TC Exports/Imports @ Waddington
2000	6.8	5.0	0.3	1.6	0.6	1.3		0.3	0.8	0.8
2001	6.0	4.5	0.7	1.5	0.5	1.0		0.3	0.7	0.8
2002	6.4	4.6	0.8	1.6	0.6	1.2		0.2	0.9	0.9
2003	5.9	4.2	1.3	1.6	0.5	1.2		0.2	0.8	0.9
2004	5.7	4.0	1.2	1.6	0.5	1.1		0.2	0.8	0.9
2005	6.3	4.5	1.0	1.6	0.5	1.2		0.2	0.9	1.0
2006	6.1	4.4	1.0	1.5	0.5	1.1		0.2	0.8	1.0
2007	5.7	3.8	1.6	1.4	0.6	1.3		0.2	0.8	1.0
2008	5.2	3.4	1.8	1.4	0.5	1.3		0.2	0.8	0.9
2009	4.3	2.4	2.4	1.3	0.5	1.4		0.2	0.4	0.8
2010	3.4	1.7	2.4	1.3	0.5	1.3		0.2	0.2	0.6
2011	3.2	1.2	3.0	1.3	0.5	1.5		0.1	0.1	0.5
2012	2.4	1.0	2.8	1.2	0.5	1.4		0.0	0.0	0.5
2013	2.4	0.8	2.7	1.2	0.5	1.4		0.0	-0.2	0.5
2014	2.4	0.8	2.6	1.2	0.5	1.3		0.0	-0.2	0.5
2015	2.6	0.8	2.6	1.2	0.5	1.3		0.0	-0.2	0.5
2016	2.9	0.8	2.6	1.2	0.5	1.4	0.01	0.0	-0.2	0.5
2017	3.2	0.9	2.5	1.2	0.5	1.4	0.02	0.0	-0.2	0.5
2018	3.2	0.9	2.7	1.3	0.6	1.4	0.04	0.0	-0.3	0.5
2019	2.9	0.9	2.5	1.3	0.6	1.4	0.05	0.0	-0.5	0.5
2020	2.8	0.9	2.6	1.5	0.5	1.5	0.08	0.0	-0.5	0.5

**Note:**

1. Includes pipeline fuel

\* Numbers may not add due to rounding.



Revised June 29, 2012

## ATTACHMENT A

### Case 3 – Mainline Throughput Reduction (Bcf/d)

Year	Relative to Case 1	Relative to Case 2
2013	0.4	0.1
2014	0.5	0.2
2015	0.9	0.4
2016	1.1	0.4
2017	1.2	0.4
2018	1.1	0.4
2019	1.2	0.4
2020	1.1	0.4

TransCanada has also updated its Throughput Study Case 3. The throughput changes for Case 3 relative to Case 1 and Case 2 are shown above. The values have been applied in the same manner as was done the original throughput cases. Please refer to Appendix C1: Throughput Study (Exhibit B5 – 13, page 7 of 79) for a description of this methodology.