National Energy Board of Canada
Financial Regulation of a Pipeline

Alaska Natural Gas Pipeline Issues
Legislative Budget & Audit Committee
Senate Resources Committee

September 2, 2004
Margery Fowke
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National Energy Board

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Canada

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NEB Mandate and Jurisdiction

- **Inter-provincial / international gas, oil and commodity pipelines**
  - **Certification of facilities**
  - **Tolls and Tariffs**
  - **Construction and Safety (*Onshore Pipeline Regulations*)**
  - **Power to require a pipeline company to provide facilities**
- **Energy trade**
- **International power lines**
- **Exploration and production authorizations on federally-regulated lands**
- **Advice to the Government of Canada**

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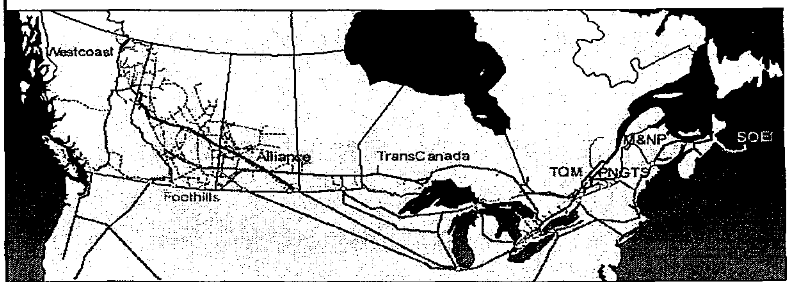
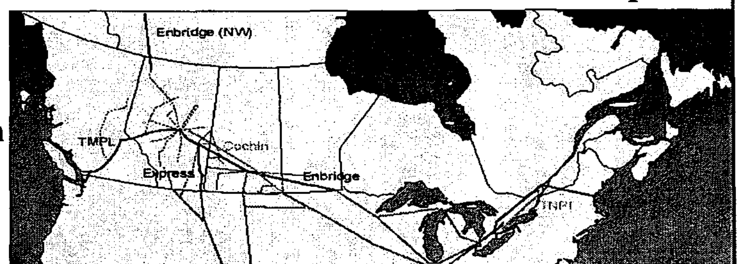


Gas Pipelines

Oil Pipelines



NEB regulates over 45 000 km (27,000 miles) of pipeline

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NEB Process

- Quasi-judicial tribunal
- Board Members
  - Act authorizes nine full-time Members
  - Currently eight Members
- Oral, public hearings for matters where there is a public interest

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Certification of a Pipeline

- Oral, public hearing (s. 24)
- Consider all matters of public interest (s. 52)
- Environment (*Canadian Environmental Assessment Act*)
- Issue a certificate of present and future public convenience and necessity
- FERC/NEB Memorandum of Understanding

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Toll Regulation

- Often considered at certification of a new pipeline
- "Just and Reasonable" tolls (section 62)
  - negotiated tolls/settlements
  - light handed regulation (group 2 companies)
- Frequency of consideration of tolls
  - Group 1 companies – annual or settlements
  - Group 2 companies – complaint basis

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Rolled-in v. Incremental Tolls

- No Board policy or rules
- Not bound by past decisions
- Expansion would be far in future
  - Many variables
    - bullet pipeline v. feeding into existing system
    - compression v. looping
    - level of NEB regulation
  - Changes in regulatory or market conditions

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Rolled-in v. Incremental Tolls
Past Board Decisions

- GH-2-87 (TransCanada PipeLines Limited)
- GH-5-89 (TransCanada PipeLines Limited)
- Westcoast Energy Inc.
  - RH-1-90; GH-1-94; and GH-5-94
- Interprovincial Pipe Line Inc.
  - RH-4-86; RH-3-90; RH-2-91 and OH-2-97
- Trans Mountain Pipe Line Company Ltd.
  - OH-1-87; RH-3-91; RH-3-95

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Rolled-in v. Incremental Tolls Board Considerations in Past Decisions

- Board Considerations
  - Fairness and equity
  - Integral nature of the pipeline system; whether the facilities will be used by all or most shippers
  - Cost causation or "user-pay"
  - Desire to minimize cross-subsidization
  - Just and reasonable standard
  - Definition of traffic
  - Unjust discrimination
  - Economic efficiency
  - Concept of acquired rights has not been accepted

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Power to Order Facilities to be Provided

- Subsection 71(3)
  - Board may order a company to provide adequate and suitable facilities
  - Tests:
    - if Board considers it necessary or desirable to do so in the public interest; and
    - If the Board finds that no undue burden will be placed on the company by requiring the company to do so
  - Infrequently considered

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National Energy Board Act, R.S.C. 1985, c. N-7

Interpretation

. . .

Definitions

2. In this Act,

"**pipeline**" means a line that is used or to be used for the transmission of oil, gas or any other commodity and that connects a province with any other province or provinces or extends beyond the limits of a province or the offshore area as defined in section 123, and includes all branches, extensions, tanks, reservoirs, storage facilities, pumps, racks, compressors, loading facilities, interstation systems of communication by telephone, telegraph or radio and real and personal property and works connected therewith, but does not include a sewer or water pipeline that is used or proposed to be used solely for municipal purposes;

. . .

PART III - CONSTRUCTION AND OPERATION OF PIPELINES

Certificates

Issuance

52. The Board may, subject to the approval of the Governor in Council, issue a certificate in respect of a pipeline if the Board is satisfied that the pipeline is and will be required by the present and future public convenience and necessity and, in considering an application for a certificate, the Board shall have regard to all considerations that appear to it to be relevant, and may have regard to the following:

(*a*) the availability of oil, gas or any other commodity to the pipeline;

(*b*) the existence of markets, actual or potential;

(*c*) the economic feasibility of the pipeline;

(*d*) the financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity of participating in the financing, engineering and construction of the pipeline; and

(*e*) any public interest that in the Board's opinion may be affected by the granting or the refusing of the application.

R.S., 1985, c. N-7, s. 52; 1990, c. 7, s. 18; 1996, c. 10, s. 238.

. . .

PART IV - TRAFFIC, TOLLS AND TARIFFS

Interpretation

Definition of "tariff"

58.5 In this Part, "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 and includes rules respecting the calculation of tolls.

1990, c. 7, s. 24.

Powers of Board

Regulation of traffic, etc.

59. The Board may make orders with respect to all matters relating to traffic, tolls or tariffs.

R.S., 1985, c. N-6, s. 50.

Filing of Tariff

Tolls to be filed

60. (1) A company shall not charge any tolls except tolls that are

(*a*) specified in a tariff that has been filed with the Board and is in effect; or

(*b*) approved by an order of the Board

Compliance

(2) Where the gas or a commodity other than oil transmitted by a company through its pipeline is the property of the company, the company shall file with the Board, on the making thereof, true copies of all the contracts it may make for the sale of gas or commodity and amendments from time to time made thereto, and the true copies so filed are deemed, for the purposes of this Part, to constitute a tariff pursuant to subsection (1).

R.S., 1985, c. N-6, s. 51; R.S., c. 27 (1st Supp.), s. 16; 1980-81-82-83, c. 116, s. 16; 1996, c. 10, s. 241.

Commencement of tariff

61. Where a company files a tariff with the Board and the company proposes to charge a toll referred to in paragraph (*b*) of the definition "toll" in section 2, the Board may establish the day on which the tariff is to come into effect and the company shall not commence to charge the toll before that day.

1977-78, c. 20, s. 41.

Just and Reasonable Tolls

Tolls to be just and reasonable

62. All tolls shall be just and reasonable, and shall always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons at the same rate.

R.S., 1985, c. N-6, s. 52.

Board determinations

63. The Board may determine, as questions of fact, whether or not traffic is or has been carried under substantially similar circumstances and conditions referred to in section 62, whether in any case a company has or has not complied with the provisions of that section, and whether there has, in any case, been unjust discrimination within the meaning of section 67.

1980-81-82-83, c. 116, s. 17.

Interim tolls

64. Where the Board has made an interim order authorizing a company to charge tolls until a specified time or the happening of a specified event, the Board may, in any subsequent order, direct the company

(*a*) to refund, in a manner satisfactory to the Board, such part of the tolls charged by the company under the interim order as is in excess of the tolls determined by the Board to be just and reasonable, together with interest on the amount so refunded; or

(*b*) to recover in its tolls, in a manner satisfactory to the Board, the amount by which the tolls determined by the Board to be just and reasonable exceed the tolls charged by the company under the interim order, together with interest on the amount so recovered.

1980-81-82-83, c. 116, s. 17.

Disallowance of Tariff

Disallowance of tariff

65. The Board may disallow any tariff or any portion thereof that it considers to be contrary to any of the provisions of this Act or to any order of the Board, and may require a company, within a prescribed time, to substitute a tariff satisfactory to the Board in lieu thereof, or may prescribe other tariffs in lieu of the tariff or portion thereof so disallowed.

R.S., 1985, c. N-6, s. 53.

Suspension of tariff

66. The Board may suspend any tariff or any portion thereof before or after the tariff goes into effect.

R.S., 1985, c. N-6, s. 54.

Discrimination

No unjust discrimination

67. A company shall not make any unjust discrimination in tolls, service or facilities against any person or locality.

R.S., 1985, c. N-6, s. 55.

Burden of proof

68. Where it is shown that a company makes any discrimination in tolls, service or facilities against any person or locality, the burden of proving that the discrimination is not unjust lies on the company.

R.S., 1985, c. N-6, s. 56.

No rebates, etc.

69. (1) A company or shipper or an officer, employee or agent of the company or shipper who

(*a*) offers, grants, gives, solicits, accepts or receives a rebate, concession or discrimination, or

(*b*) knowingly is party or privy to a false billing, false classification, false report or other device,

whereby a person obtains transmission of hydrocarbons or any other commodity by a company at a less rate than that named in the tariffs then in force, is guilty of an offence punishable on summary conviction.

1996, c. 10, s. 242.

Prosecution

(2) No prosecution shall be instituted for an offence under this section without leave of the Board.

R.S., 1985, c. N-6, s. 57.

Contracts Limiting Liabilities

Contracts limiting liability of company

70. (1) Except as provided in this section, no contract, condition or notice made or given by a company impairing, restricting or limiting its liability in respect of the transmission of hydrocarbons or any other commodity relieves the company from its liability, unless that class of contract, condition or notice is included as a term or condition of its tariffs as filed or has been first authorized or approved by order or regulation of the Board.

1996, c. 10, s. 243(1).

Board may determine limits

(2) The Board may determine the extent to which the liability of a company may be impaired, restricted or limited as provided in this section.

Terms and conditions

(3) The Board may prescribe the terms and conditions under which hydrocarbons or any other commodity may be transmitted by a company.

R.S., 1985, c. N-6, s. 58; 1996, c. 10, s. 243(2).

Transmission, etc., of Oil or Gas

Duty of pipeline company

71. (1) Subject to such exemptions, conditions or regulations as the Board may prescribe, a company operating a pipeline for the transmission of oil shall, according to its powers, without delay and with due care and diligence, receive, transport and deliver all oil offered for transmission by means of its pipeline.

Orders re transmission of gas, etc.

(2) The Board may, by order, on such terms and conditions as it may specify in the order, require the following companies to receive, transport and deliver, according to their powers, a commodity offered for transmission by means of a pipeline:

(*a*) a company operating a pipeline for the transmission of gas; and

(*b*) a company that has been issued a certificate under section 52 authorizing the transmission of a commodity other than oil

Extension of facilities

(3) The Board may, if it considers it necessary or desirable to do so in the public interest, require a company operating a pipeline for the transmission of hydrocarbons, or for the transmission of any other commodity authorized by a certificate issued unders section 52, to provide adequate and suitable facilities for

(*a*) the receiving, transmission and delivering of the hydrocarbons or other commodity offered for transmission by means of its pipeline,

(*b*) the storage of the hydrocarbons or other commodity, and

(*c*) the junction of its pipeline with other facilities for the transmission of the hydrocarbons or other commodity,

if the Board finds that no undue burden will be placed on the company by requiring the company to do so.

R.S., 1985, c. N-6, s. 59; R.S., c. 27(1st Supp.), s. 17; 1980-81-82-83, c. 116, s. 18; 1996, c. 10, s. 243.1.

Transmission and Sale of Gas

Extension of services of gas pipeline companies

72. (1) Where the Board finds such action necessary or desirable in the public interest, it may direct a company operating a pipeline for the transmission of gas to extend or improve its transmission facilities to provide facilities for the junction of its pipeline with any facilities of, and sell gas to, any person or municipality engaged or legally authorized to engage in the local distribution of gas to the public, and for those purposes to construct branch lines to communities immediately adjacent to its pipeline, if the Board finds that no undue burden will be placed on the company thereby.

Limitation on extension

(2) Subsection (1) does not empower the Board to compel a company to sell gas to additional customers if to do so would impair its ability to render adequate service to its existing customers.

Deemed toll for transmission

(3) Where the gas transmitted by a company through its pipeline is the property of the company, the differential between the cost to the company of the gas at the point where it enters its pipeline and the amount for which the gas is sold by the company shall, for the purposes of this Part, be deemed to be a toll charged by the company to the purchaser for the transmission of that gas.

R.S., 1985, c. N-6, ss. 60, 61.

MEMORANDUM OF UNDERSTANDING
Between
NATIONAL ENERGY BOARD
And
FEDERAL ENERGY REGULATORY COMMISSION

The National Energy Board (NEB) and the Federal Energy Regulatory Commission (FERC), as parties to this Memorandum of Understanding (MOU), hereby acknowledge and declare as follows:

1. The NEB regulates aspects of the energy industry in Canada including the construction and operation of interprovincial and international pipelines; pipeline traffic, tolls and tariffs; the construction and operation of international and designated interprovincial power lines; the export and import of natural gas; the export of oil and electricity; and Frontier oil and gas activities.

2. The FERC regulates aspects of the energy industry in the United States, including the transportation and sale of natural gas for resale in interstate commerce, the transmission of oil by pipeline in interstate commerce, and the transmission and sale of electricity for resale in interstate commerce. It also certificates the construction and abandonment of interstate natural gas pipelines and facilities for the import and export of natural gas; licences and inspects private, municipal and state hydroelectric projects; and administers accounting and financial reporting regulation and conduct of jurisdictional companies.

3. The parties recognize that the conduct of their responsibilities has and will in the future require them to examine, regulate, or otherwise oversee interconnecting facilities or activities.

4. The parties further recognize that appropriate coordination of their efforts could promote the public interest through increased efficiency, expedited and coordinated action on significant energy infrastructure projects, and cost savings to both the public and regulated entities. The parties agree that the regulatory efforts of both the NEB and FERC will benefit from increased communication and cooperation concerning the timing and other procedural aspects of related matters that may be pending before both agencies.

MEMORANDUM OF UNDERSTANDING
Between
NATIONAL ENERGY BOARD
And
FEDERAL ENERGY REGULATORY COMMISSION
(Cont'd)

5. The parties contemplate that coordinated reviews may be considered in cases where related matters are pending before both agencies. The parties further contemplate that the two agencies will, where practicable, coordinate the timing of related decision making, including but not limited to coordinating the submission of evidence, the timing of developing findings of facts and conclusions of law, and the ultimate resolution of the related matters.

6. When either party becomes aware that a proceeding before it involves matters that may also be pending before the other party, it will notify the other party accordingly. For this purpose, such notification to the NEB should be directed to the NEB Secretary and to FERC should be directed to the Chairman with a copy to the FERC Secretary.

7. Nothing in this Memorandum shall be interpreted as requiring either party to take any action that would be contrary to applicable legal authority.

8. This agreement comes into effect upon signing by the parties and will be effective until the same date in 2014 unless reviewed or renewed by mutual consent.

K. Vollman

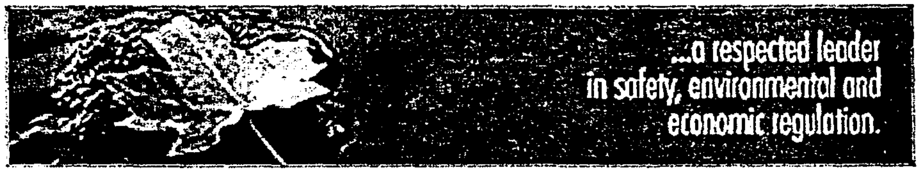
National Energy Board

P. Wood III

Federal Energy Regulatory Commission

2004.05.10
Date

10 May 2004
Date



National Energy Board
Office national de l'énergie

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04/12
For immediate release
10 May 2004

NEB and U.S. Federal Energy Regulatory Commission sign Memorandum of Understanding

HALIFAX, Nova Scotia - Canada's National Energy Board (NEB) and the States of America's Federal Energy Regulatory Commission (FERC) today signed a Memorandum of Understanding to enhance interagency coordination.

NEB Chairman Ken Vollman and FERC Chairman Pat Wood, III signed the MOU in Halifax, Nova Scotia where they were attending the annual conference of the Canadian Association of Members of Public Utility Tribunals.

"This agreement reinforces our existing cooperative relationship and furthers the work of both agencies", said Ken Vollman. "The interests of regulated companies and the public will be better met through enhanced coordination of our agencies' regulatory responsibilities."

"The United States and Canada have a long history of cooperation and trade in energy. This MOU will serve us well as our two countries become ever more interdependent in cross-border energy issues", said Mr. Wood.

Recognizing that the two agencies oversee interconnecting facilities or activities, the MOU will assist both parties to coordinate their responsibilities. It is another step in Canada's commitment to smart regulation and the development of regulatory strategies that protect the health and safety of Canadians and of the environment, while contributing to economic efficiency.

The Federal Energy Regulatory Commission is an independent American agency that regulates the interstate transmission of natural gas, oil and electricity. FERC also regulates natural gas and hydropower projects.

The National Energy Board is an independent federal agency that regulates several aspects of Canada's energy industry. Its purpose is to promote safety, environmental protection and economic efficiency in the Canadian public interest within the mandate set by Parliament in the regulation of pipelines, energy development and trade.

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For or a copy of Memorandum of Understanding between the National Energy Board and the Federal Energy Regulatory Commission [PDF: 293 KB] contact:

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CANADA

NATIONAL ENERGY BOARD

Reasons for Decision

TransCanada PipeLines Limited

Applications for Facilities and Approval
of Toll Methodology and Related Tariff Matters

GH-2-87

July 1988

Table of Contents

Chapter 8
Toll Methodology

8.1 Background

In setting down TransCanada's facilities application for hearing, the Board decided to address at the same time any related toll methodology issues. The decision of the Board in this regard is in keeping with the views expressed earlier by the Board in respect of an application by IPL for new tolls effective 1 January 1987.

In view of its decision to examine toll methodology issues, the Board specified a number of issues which would be addressed at the hearing; these issues included:

(i) the appropriate toll methodology in respect of facilities proposed to serve new export markets and the anticipated domestic market growth;

(ii) the question of whether tolls to be charged for the use of the applied-for facilities, calculated on an incremental basis as opposed to the rolled-in method, would be just and reasonable having regard to section 52 and 52.1 of the Act; and

(iii) the question of whether a toll, rather than a surcharge which would be credited to TransCanada's cost of service, should be set to recover the cost of any facilities on the TransCanada system required to supply natural gas at a delivery pressure higher than that specified in the General Terms and Conditions of TransCanada's tariffs.

The Board requested TransCanada to file its proposed toll design methodology applicable to domestic and export incremental markets, including its justification of such proposals and to submit evidence on the applicable tolls under both incremental and rolled-in methodologies.

In response to the evidence submitted by TransCanada in this regard, the Board further requested TransCanada to examine an alternate toll methodology which would take into account the allocation of the costs of the existing facilities to both existing and incremental volumes and the allocation of the cost of the additional facilities to the incremental volumes only. TransCanada was requested to provide exemplar tolls using this so-called "alternate incremental" methodology.

8.2 Toll Methodologies Considered

The Issue

Under the existing rolled-in methodology, the cost of the new facilities would be added to the existing rate base and the tolls for all traffic, including the new volumes, would be based on the new cost of service for the whole pipeline system including expansion. To the extent that the toll revenues generated by the new volumes are greater (or less) than the costs of owning and operating the new facilities, the new tolls, on a rolled-in basis, will be lower (or higher) than the existing tolls.

Contrasted with the rolled-in method is the incremental method; two approaches to this method were examined. In the first incremental approach, the tolls for the new volumes would be charged with only the costs of the new facilities needed to expand capacity to move them through the system. Under this approach, existing tolls remain unchanged and in effect, no charge is made for the use of existing facilities, although new volumes do make use of them to the extent that spare capacity is available.

Under a second incremental approach, new volumes would be allocated their proportional share of the existing system costs plus all the costs of the new facilities. Using this approach, referred to as the "alternate incremental" toll method, the toll for the existing system would decline due to higher overall throughput but the new volumes would be charged with a higher aggregate toll.

Views of Parties

IGUA proposed that TransCanada's rate base should theoretically be split into two separate rate bases with one for domestic service and one for export service. To achieve this, IGUA suggested that TransCanada's previous capital expansions could be reviewed and allocated to a domestic or export rate base. Each rate base would then operate with its own rolled-in toll. While offering many practical suggestions as to how this might operate, IGUA agreed that its proposal was not fully developed and was presented as a concept for consideration.

It was argued that the IGUA proposal to establish separate rate bases to serve domestic and export markets is discriminatory because there is nothing inherently different between domestic and export markets. While IGUA acknowledged that there is no inherent difference in the nature of the customers in each market, it argued that there are differences in the risks of serving those markets.

TransCanada argued that incremental tolls would be discriminatory and would result in different customers paying different tolls for the same service at the same load factor and at the same delivery point. On the other hand, it argued that under rolled-in tolls, differences in unit costs of transportation only occur as a result of selecting a different quality of service. Shell Canada Limited ("Shell") argued that tolls may discriminate, provided that such discrimination is not unjust. In Shell's view, with respect to TransCanada's proposed facilities expansion, any discrimination in an incremental toll methodology would not be unjust because the new volumes are not moving under substantially similar circumstances. In this regard it pointed to deregulation as a major circumstance that has changed.

The concept of TransCanada as an integrated system was relied upon by proponents of the rolled-in methodology. TransCanada expressed the view that each user of the integrated system benefits from the existence of other users. Rolled-in cost allocation and toll design treats costs and financial benefits in a manner consistent with the operational sharing of facilities and gas flow. TransCanada argued that, in its currently proposed expansion, all new facilities form part of the integrated system and, with the exception of the proposed Iroquois Extension, benefit all users of the pipeline. Shell questioned whether TransCanada's existing customers will benefit from the new facilities in a meaningful way, given that they do not need them and recognizing that there will be no spare capacity on the system after the expansion.

While this facilities expansion has been forecasted to have a negligible impact on existing tolls under the rolled-in methodology proposed by TransCanada, the Board heard testimony that future expansions under the same methodology would result in toll increases for all users. Some parties argued that this would amount to unfair cross-subsidization of the new volumes by the old.

Proponents of incremental tolls, particularly under the alternate approach, recognized that the new volumes would be subject to higher tolls than the existing volumes. They argued that this would be fair because the new volumes should pay for the new facilities required and suggested that the existing facilities somehow belong to, or are dedicated to, the existing shippers. TransCanada argued that cross-subsidization would exist under incremental tolls because the existing shippers would benefit from the increased system security resulting from the new facilities.

As to the existing shippers' rights to existing facilities it was argued that, given the differences between the current netback pricing system and the previous add-on system, it is difficult to say who has really paid for existing facilities. TransCanada expressed the view that facilities are not dedicated to specific customers and that the previous payment of tolls did not confer upon prior tollpayers any rights or privileges beyond the provision of service at that time.

In supporting a continuation of the rolled-in methodology, TransCanada pointed to the Board's past practice, noting the Board's reliance upon the integrated nature of its pipeline system in its 1973 and 1974 rate cases wherein the Board ruled against a TransCanada proposal to split the pipeline into a western and an eastern segment for cost allocation purposes. TransCanada also noted that previous major system expansions in 1972-73 and in 1981-82 were tolled on a rolled-in basis, even though those expansions resulted in higher tolls for all system users.

The witness for ANR who urged the Board to consider the alternate incremental methodology, testified that the rolled-in method is the preferred methodology of the FERC. He did, however, present examples in which the FERC has found the use of incremental tolls to be appropriate.

Consumers noted that the FERC's use of incremental tolls has been primarily restricted to situations when facilities have been installed to provide a custom service to a specific customer or group of customers and in situations when tolls are temporary and subject to review during a company's next rates proceeding.

Compatibility with deregulation and the promotion of industry growth were considered by many to be important factors in the selection of a toll methodology. TransCanada argued that one of the major objectives of deregulation was to enhance the access of supplies to markets, and that incremental tolls would not provide equality of access to the pipeline system. TransCanada further argued that the higher costs under an incremental or alternate incremental toll would discourage market growth and the attendant exploration and economic development. Those arguing for incremental tolls argued that the rolled-in methodology would mask market signals and would not accurately reflect the incremental cost of providing service to new customers.

It was argued that tolls are more stable and predictable under the rolled-in methodology thus allowing market participants, under deregulation, to plan with greater certainty. Concerns were expressed that, under incremental tolls, periods of cheap or expensive expansion could affect decisions on future projects.

There seemed to be general agreement that the rolled-in method is the simplest method to administer and understand. However, it was recognized by those who proposed alternative methodologies that simplicity, although desirable, should not be a major factor in selecting a toll methodology.

ANR suggested that incremental tolls could be developed in an administratively workable manner by grouping this and all subsequent expansions together in a "new vintage" rate base. It argued that this approach would eliminate the problem of having different tolls for each incremental customer and toll fluctuations relating to periods of inexpensive or expensive expansion.

Views of the Board

(i) Practical Considerations

Fairness and Equity

In considering this application, the Board believes that it is important to first consider the legitimacy of the claims of the existing shippers over those of the so-called new shippers. Some parties argued that those who had paid for the existing facilities, in the sense of having been a customer in the past, should be entitled to continue using them without being affected by the addition of new facilities to serve new customers. Because new facilities tend to be more costly than older plant, this entitlement would in reality provide existing shippers with an acquired right to enjoy the use of older facilities at their lower embedded cost. Otherwise, they claim they would be required to cross-subsidize new customers. This theme underpinned a good deal of the arguments presented to the Board in these proceedings. Thus, various approaches were proposed to protect the existing shippers, including the separation of different rate bases for different vintages of shippers based on nothing more than seniority.

While the Board could well understand the motives of some existing shippers in protecting their own interests, acceptance by the Board of the notion of acquired rights would inevitably mean that past tolls were not just and reasonable in the sense of payment for services rendered. Such a notion would require that past tolls somehow also included payment for an option for the future use of the pipeline on preferential terms. Clearly this is not the case. In the Board's view, the payment of tolls in the past conferred no benefit on tollpayers beyond the provision of services at that time. The Board does not equate those who paid for a service with those who paid for the facilities. Accordingly, the Board rejects the notion that shippers who have used the pipeline in the past are somehow entitled to continue using the existing facilities without being affected by new circumstances.

Having thus placed both existing and new shippers on the same footing, the Board considers the next issue to be the relationship between the proposed new facilities and the existing pipeline system.

The Integral Nature of the System

From the outset the Board has viewed and treated all facilities in the TransCanada system, including those of Great Lakes and Trans Quebec and Maritimes Pipeline Inc. ("TQM"), as integrated. As well, spur lines and laterals to Ottawa, Niagara, etc. have been treated as integral parts of the whole system and for this reason the capital cost of these facilities were rolled into one rate base. In the present case, the Board believes that the service provided by the new facilities contributes to the capacity and integrity of the integrated system as a whole, and the Board finds no reason to deviate from this historical treatment. This finding, however, does not prevent other facilities, such as those designed to deliver extra pressure, from being treated either on a rolled-in or an incremental basis.

Complexity / Simplicity

Although given less weight than the previous two considerations, the Board recognizes that the rolled-in approach avoids the toll design complexity inherent in an incremental approach. The Board finds it impractical to require TransCanada to divide the existing system into component parts, as suggested by IGUA, or multiple incremental rate bases, as proposed by others.

Other

The Board finds that many of the other toll methodology criteria suggested by parties, such as compatibility with deregulation, promotion of growth in the natural gas industry, and stability of tolls over time, while laudable, are not primary considerations in arriving at just and reasonable tolls. Notwithstanding this view, the Board notes that the rolled-in approach is not in conflict with these objectives.

(ii) Legal Considerations

The Board's authority flows entirely from the National Energy Board Act. The Board does not possess any inherent jurisdiction and thus, authority for any and all actions taken by it, must be found in the wording of the Act. The Board's mandate in respect of traffic, tolls and tariff matters is found in Part IV of the Act. The Board must abide by certain fundamental standards of tollmaking that are specified in, inter alia, sections 52 and 55 of the Act: all tolls must be just and reasonable (section 52) and no toll shall result in unjust discrimination (sections 52 and 55).

The "Just and Reasonable" Standard

The "just and reasonable" standard of tollmaking is commonly found in legislation governing the regulation of public utilities. Precisely what this standard embodies has been the subject of considerable debate. That the Board has a wide discretion in choosing the method to be used by it and the factors to be considered by it in assessing the justness and reasonableness of tolls has been confirmed by at least three cases dealing with Board decisions.[1]

In determining just and reasonable tolls, one of the approaches the Board has taken is to allocate costs to various services on the basis of cost causation; tolls are then designed to recover the costs of these services from the customers using them. In the Board's view, although each of the methodologies proposed at the hearing differs in the allocation of the new costs of facilities, each takes into account cost causation and is therefore consistent with one of the Board's approaches to setting just and reasonable tolls.

In considering cost causation as an approach to making tolls just and reasonable, the Board notes that in an integrated system as complex as TransCanada's, it is not always practical to determine the precise costs caused by the provision of a specific service. Accordingly, modifications to a strict cost-causation approach to tollmaking are necessary. One such example is the use of toll zones to deal with a multitude of delivery points within a geographical region. If tolled on a strict cost-causation basis, for example point-to-point, a multiplicity of price differences within each region would result. Furthermore, there are situa-

1 See:

British Columbia Hydro and Power Authority v. Westcoast Transmission Company Limited, [1981] 2 F.C. 146, 36 N.R. 33 (C.A.).

Trans Mountain Pipeline Company Ltd. v. *National Energy Board*, [1979] 2 F.C. 118, 29 N.R. 44 (C.A.).

Consumers' Association of Canada v. *The Hydro-Electric Power Commission of Ontario (No. 1)*, [1974] 1 F.C. 453, 2 N.R. 467 (C.A.).

tions where the cost-causation approach *per se* may not be appropriate. These situations include tolls for one service that reflect its relative value of service in comparison with that of another, rather than its underlying cost. This, in fact, is the basis for the differences among TransCanada's IS-1, IS-2 and FS tolls. Another is a market-oriented approach where competition exists and tolls based on cost causation are not competitive. Such tolls, if implemented, could lead to what is commonly referred to as a "death-spiral" for the company and therefore would not be reasonable.

Unjust Discrimination

Although the Board has a wide discretion in choosing a toll methodology which results in just and reasonable tolls, this discretion is fettered by the requirement (in sections 52 and 55) that tolls shall not be unjustly discriminatory. Section 55 prohibits a company from making any unjust discrimination in tolls against any person or locality. This prohibition is reinforced by section 52 which provides that:

> *"All tolls shall be just and reasonable, and shall always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons at the same rate."*

The use of the words "shall always" in legislation indicates a strong desire on the part of the legislators that there be few, if any, differences in rates charged for the same service. Unless there were a genuine concern, there could have been little point in doing more than require that "all tolls shall be just and reasonable".

Differences in tolls between customers for the same class of service even within one toll zone are, *prima facie*, discriminatory. The prohibitions in sections 52 and 55 are however, prohibitions of unjust discrimination and the question is when is discrimination against any person or locality justified? Section 52 provides some guidance in this regard. Section 52 provides that tolls shall be charged equally to all persons at the same rate in respect of traffic of the same description carried over the same route, under substantially similar circumstances and conditions. By implication, tolls may be charged differently where these tolls are:

(i) in respect of traffic of differing descriptions;

(ii) in respect of traffic carried over different routes; or

(iii) in respect of traffic transported under differing circumstances and conditions.

The word "traffic" is not defined in the Act; in the Board's view however, "traffic" refers to the commodity which is being transported. In equating the word "traffic" with the word "commodity", the Board has regard to the fact that "traffic" is defined to be "passengers or goods" in a section of the *Railway Act*, similar to section 52 of the *National Energy Board Act.* In the case of a pipeline like TransCanada, the commodity is, of course, natural gas and all throughput is therefore "traffic of the same description". This is in contrast to a pipeline like IPL which transports traffic of different descriptions (e.g., light, medium or heavy oil or natural gas liquids). In that case, by applying the cost-causation principle, different tolls may be charged to reflect the cost of providing service to each of the various streams.

The Board agrees with Consumers that the phrase "over the same route" refers to a specific domestic toll zone or a specific export point in the context of TransCanada's system. While it could be argued that gas moving to the Eastern Zone through Great Lakes does not take the same route as gas through the Central Section and on to Toronto or via the North Bay Shortcut to Montreal, the co-mingled nature of the gas streams makes it impossible to determine the exact route taken by particular volumes. Notwithstanding this technical problem, the Board finds that because TransCanada is in an integrated system, all gas reaching the Eastern Zone should be regarded as having moved over the same route.

The meaning of the phrase "under substantially similar circumstances and conditions" is more difficult to ascertain. Taken in the context of the whole of section 52, the phrase "circumstances and conditions" may be regarded as referring to circumstances and conditions of transportation of the gas such as the nature and character of the service provided (i.e., FS or IS) and not to the business motives either of the shipper or the carrier nor to circumstances and conditions created by contract (such as the terms of gas sales or purchase contracts), or by government policy (for example, pre- and post- 31 October 1985).

To the extent that the new facilities form part of the integrated system, the Board agrees with those parties to the hearing who submitted that section 52 precludes the adoption of an incremental toll methodology. Each of the alternate and the incremental methodologies would afford different, segregated treatment to new facilities and cost of service components required to deliver all, or a portion of, the incremental volumes. This would result in different tolls being paid for the same service to the same zone, and even to the same delivery point, and would, in the Board's view, violate section 52 of the Act. To adopt, for example, the alternative incremental approach would inescapably result in FS tolls charged at different rates to different shippers in respect of traffic of the same description moving over the same route under substantially similar circumstances and conditions; such a situation is specifically prohibited by section 52.

A finding, in the circumstances of this case, that the integrated nature of TransCanada precludes the adoption of other than a rolled-in methodology does not, in the Board's view, necessarily mean that *all* new facility additions must be treated in a similar fashion. When identifiable facilities which do not increase the throughput capacity on the integrated system are installed to provide a custom service to a specific user or group of users, then such discrete facilities might not form part of the integrated system. In such cases, these facilities can, in the Board's view, be the subject of a separate toll, calculated on the basis of either a rolled-in or incremental methodology; this would not constitute a contravention of section 52 of the Act.

Decision

Except where set out in Section 8.3 of these Reasons, all costs of all those facilities either approved under section 44 or exempted under section 49 of the Act, in this proceeding, will be rolled-in to the TransCanada rate base.

8.3 Delivery Pressure Toll

In its 9 June 1987 application, as amended, TransCanada proposed to install facilities to provide at Niagara Falls and Iroquois a minimum delivery pressure in excess of that specified in its General Terms and Conditions.

According to TransCanada, the provision of a guaranteed pressure higher than that stipulated in the General Terms and Conditions is a service which is distinct and different from the other transmission services rendered on its system. Accordingly, TransCanada proposed the imposition of an incremental delivery pressure charge at Iroquois.

TransCanada took the position that the incremental delivery pressure at Niagara Falls should be "grandfathered", even though the contractual obligation to provide incremental pressure on a firm basis would not commence until 1 November 1988. It argued that since the Board had approved, pursuant to section 35(2) of the *National Energy Board Part VI Regulations*, an amendment to the Boundary contract which specified the incremental pressure obligation at Niagara Falls, it would be consistent for the Board to grandfather such obligation.

Noting the different toll treatments of the costs of providing additional pressure at Iroquois, Niagara Falls and other delivery points, the Board decided to review delivery pressure tolls as a generic issue. Accordingly, the List of Issues was amended to include the following:

> "IV-4 *The question of whether a toll, rather than a surcharge which should be credited to TransCanada's cost of service, should be set to recover the costs of any existing or proposed facilities on the TransCanada System which are required to supply natural gas, at existing or proposed delivery points, at a minimum delivery pressure higher than that specified in the General Terms and Conditions. Also, the appropriate methodology to determine the toll or surcharge.*"

CANADA

National Energy Board

Reasons for Decision

TransCanada PipeLines Limited

GH-5-89

November 1990

Volume 1
Tolling and Economic Feasibility

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Chapter 2

Toll Treatment of Capital and Operating Costs of Proposed Facilities

2.1 Toll Treatments Proposed

The Board had before it the issue of the toll treatment of the capital and operating costs of the proposed facilities including an examination of rolled-in and incremental methods.

Under the rolled-in method, the capital and operating costs of new facilities are added to those of the existing facilities and the total costs are then allocated on a volume-distance basis. To the extent that the costs of the new facilities are greater or lower than the corresponding costs of the existing facilities, on a per unit of capacity basis, the rolled-in toll for all shippers will be higher or lower. TransCanada calculated that the addition of the proposed facilities would result in an increase in the Eastern Zone firm service toll of approximately $0.10/GJ.

The Canadian Petroleum Association ("CPA") proposed a method whereby new shippers would pay a rolled-in toll and would also be required to make capital contributions as a direct payment to offset 50 percent of the additional capital burden attributable to the expansion. The additional capital burden was defined as the difference between the present value of constructing and operating the expanded pipeline, and the present value of the maximum capital expenditure which would not cause an increase in the base case rolled-in tolls. The new rolled-in tolls would then be calculated by adding one-half of the additional capital burden to TransCanada's existing rate base. The other half of the additional capital burden would be recovered from the new shippers as a capital contribution. On a per unit basis the capital contribution was calculated to be $0.26/GJ.

IGUA expressed the view that the proposed facilities as well as facilities approved in GH-2-87, GH-4-88 and GH-1-89, would amount to a new pipeline system from Empress, Alberta to Iroquois, Ontario designed to serve a new, regionally distinct United States of America ("U.S.") northeast market. Consequently, it proposed that the cost of all new facilities required to serve the northeast market be included in a separate rate base, distinct from the "traditional rate base". Recognizing that certain parties had already made contractual commitments assuming rolled-in tolls, IGUA proposed that contracts for the transportation of volumes to the U.S. northeast market signed before 12 February 1990, the date of the Federal Court's decision requiring that toll methodology be added to the GH-5-89 List of Issues, would be "ring-fenced". That is, the facilities related to the ring-fenced contracts would be included in the traditional rate base for the duration of the contracts. When the contracts expired the assets related to the ring-fenced contracts would be transferred to the northeast rate base at their original cost net of depreciation to the date of transfer. The ring-fence feature of IGUA's proposal was designed to temporarily insulate certain parties, who had relied on the continuation of the rolled-in methodology, from the impact of toll changes on volumes destined for the U.S. northeast. Ring-fencing would not protect parties who had signed contracts after 12 February 1990 because from that date on all parties should have been aware of the possibility that the rolled-in method might be changed. The assignment of costs to each rate base would be based on a ratio of the shipper volume/distance units for each market. While rate base items would be divided between two cost pools, the actual operations would be integrated with all system operating and maintenance costs shared on a volume-distance basis.

In response to the Board's position that the toll treatment for previously certificated facilities was not an issue in the GH-5-89 proceedings, IGUA applied to the Federal Court for an order clarifying the Court's earlier decision requiring the Board to consider the issue of toll methodology as part of the GH-5-89 proceedings. In a decision delivered on 17 August 1990, the Federal Court confirmed that the Board need consider toll methodology only in respect of the applied-for facilities in the GH-5-89 proceedings. In response to this decision, IGUA revised its toll methodology proposal to include only the applied-for GH-5-89 facilities. However IGUA took the position that the issue of whether traffic to the U.S. northeast through facilities certificated prior to GH-5-89 should be subject to the toll methodology proposed by IGUA, is a matter which needs to be considered by the Board but not necessarily decided when considering the IGUA proposal.

The Consumers' Gas Company Limited ("Consumers") proposed a method by which all shippers would pay a rolled-in toll and new shippers would also pay a demand surcharge. This method recognized that benefits would accrue to the existing shippers as a result of the addition of the proposed facilities. The benefits would be reflected in the calculation of the demand surcharge by means of a benefit factor referred to as a "b-factor". The determination of the b-factor would require the exercise of judgment by the Board. The b-factor would work to reduce the level of the surcharge from what it would be in the absence of benefits accruing to existing shippers. Under Consumers' proposal, the rolled-in tolls for a given test year would be calculated on the revenue requirement for the test year less the total surcharge revenue for the test year. Demand and commodity tolls would be calculated using the cost allocation and toll design methods currently used on TransCanada's system.

Union Gas Limited ("Union") supported a continuation of the current rolled-in toll design methodology with a modification to reduce the risk of under-utilization of the new facilities proposed to serve the export markets. It suggested that tolls could be set based on a forecast of export volumes to the U.S. northeast market with no revenue deferral account to cover any variances between the forecasted and actual volumes. To the extent that contracted volumes to that market vary, TransCanada would bear the resulting loss or retain the additional profit. Union proposed that TransCanada should have the right to flex its rates downward if necessary to retain volumes and to flex rates upward in limited circumstances where permitted by contract.

Figure 2-1, shown on page 5, provides a comparison of the estimated impact on tolls of the proposed methodologies. The cost in 1993 of moving gas from Empress to the Eastern Zone, versus to the northeast United States, has been selected as a basis for comparison although the proposals do have significant consequences for other deliveries.

2.2 Views of Interested Parties

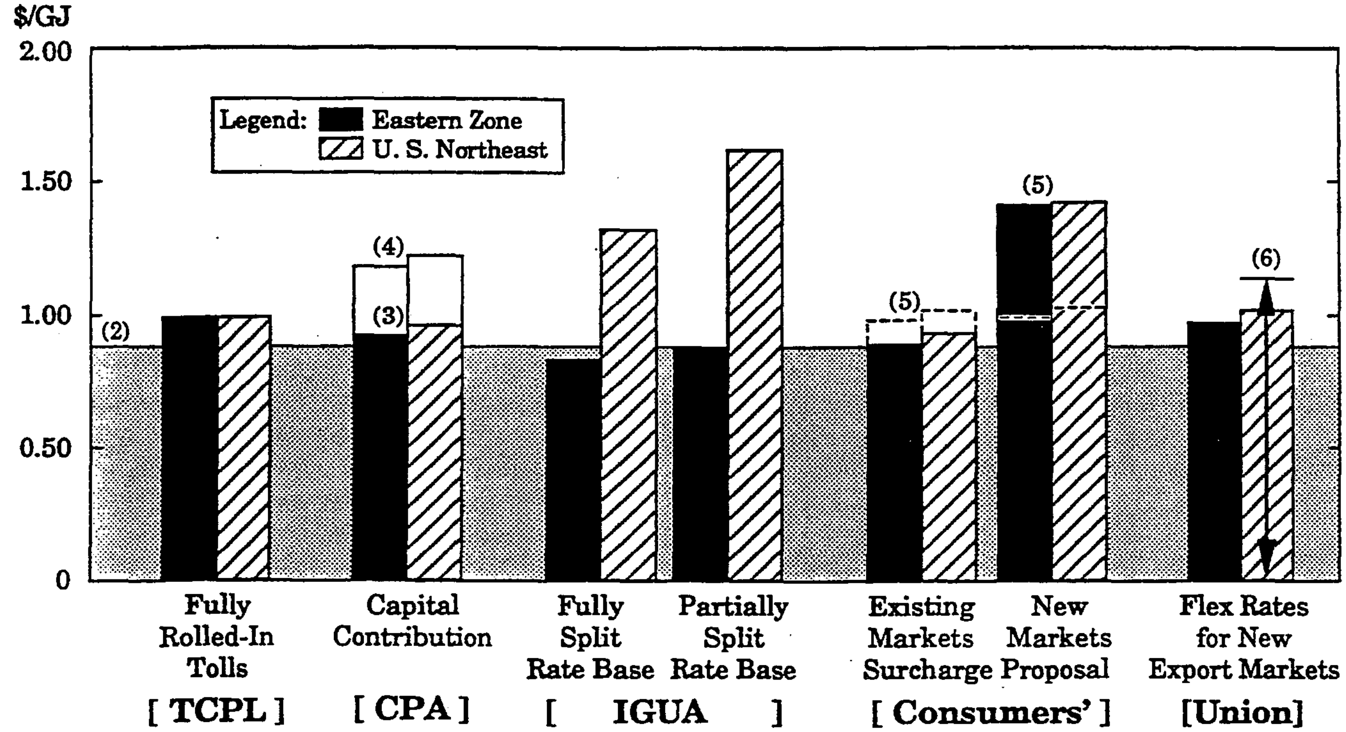
2.2.1 Magnitude of the Proposed Expansion

A common concern of those proposing or supporting alternative toll methodologies was the magnitude of the proposed expansion and its impact on tolls. They submitted that these costs amount to an exceptional circumstance justifying a change in the Board's current tolling methodology. It was also argued that the costs of the expansion are a relevant matter to be considered by the Board in determining whether traffic is being carried under substantially similar circumstances and conditions because if the traffic and circumstances are different, so should be the toll treatment.

IGUA noted that the $2.6 billion cost of the expansion would double TransCanada's rate base and that by 1993 the rate base, when combined with the costs of facilities previously approved but not yet completed, would swell to approximately $6.3 billion. This expansion would double the annual cost of service to approximately $1.8 billion by 1993. The Minister of Energy for Ontario ("Ontario") argued that the magnitude of the expansion was unprecedented. Natural Gas Pipeline Company of America ("Natural") further argued that, on a per unit of throughput basis, this would be the most expensive expansion to date aside from the 1981/82 North Bay shortcut expansion. However, Natural submitted that this was not a typical expansion because the cost considerations in that expansion were secondary to the overriding government policy that gas markets in eastern Canada must be served.

TransCanada argued that the costs of the expansion are not exceptional. The expansion, as applied for, would result in an increase of 77 percent in net plant value and a resulting increase of 19 percent in throughput which, it argued, compares favourably with the 1981/82 expansion of 93 percent increase in net plant and a resulting 16 percent increase in annual deliveries. Furthermore, TransCanada submitted that to put the applied-for expansion in perspective it was necessary to recognize the impact of inflation. TransCanada calculated that if the existing system were rebuilt today (using improved technology) it would cost approximately $10.3 billion. In that context the applied-for

Figure 2-1: TransCanada's 1993 Tolls (1) Under Alternative Methodologies



Notes:
(1) Tolls at 100% load factor, excluding fuel.
(2) Eastern Zone toll without GH-5-89 expansion.
(3) Adjusted rolled-in toll paid by all system users.
(4) Includes effect of capital contribution payable for incremental volumes.
(5) Level of surcharge depends on b-factor. Solid outline represents b=1.0, dashed b=1.5.
(6) Unlimited ability to flex rates down, 15% cap on upward flexing.

expansion of $2.6 billion represents an increase of approximately 25 percent in net plant cost to give the 19 percent increase in throughput capacity.

TransCanada estimated that this expansion would result in an increase in the 1992/93 Eastern Zone toll of approximately $0.10/GJ using the rolled-in tolling methodology. This would represent a 1.5 percent increase in the residential retail price of gas in the Eastern Zone, and a 2.9 percent increase in the industrial price. AEC Oil and Gas Company, a Division of Alberta Energy Company Ltd. ("AEC") stated that a $0.10/GJ toll increase is the equivalent of about a $0.60 increase in the price of a barrel of oil which, in its view, is hardly significant in today's circumstances.

2.2.2 *Riskiness of U.S. Northeast Market*

The proponents of incremental tolling held the view that the assignment of risk to those parties who benefit from an expansion is a desirable objective of a toll methodology.

Consumers' argued that the rolled-in methodology would assign too much of the risk associated with the expansion to the existing shippers and not enough to the new shippers. IGUA maintained that its proposal to treat the facilities serving the U.S. northeast as a separate pipeline, with a separate rate base, would address this issue by assigning the risk of the U.S. northeast market to the shippers on that separate notional pipeline. Union's proposal for flexible rates, combined with the elimination of revenue deferral accounts, was aimed primarily at assigning risk to volumes destined to the U.S. northeast.

Consumers' submitted a study of the U.S. northeast demand for Canadian gas prepared for it by Jensen Associates Inc. ("Jensen"). The study identified competition from other pipelines, the use of the new gas supplies for electric power generation and additional regulatory risk as the three principal reasons for viewing this market to be riskier than TransCanada's traditional market. Union, while acknowledging that the U.S. northeast is a good market, pointed to the extent of competition and TransCanada's lack of presence in the market as reasons why it views that market as being riskier.

Enserch Development Corporation ("Enserch") argued that none of the risks of the U.S. northeast market alleged in the Jensen Report were substantiated or quantified and that no extraordinary risk was established for this market. Alberta Northeast Gas Export Project ("ANE") noted that there was no evidence presented on the riskiness of existing markets for the purpose of comparison. Enserch also pointed out that it was freely acknowledged that the demand projections for the U.S. northeast market set forth in the Jensen report would likely be exceeded. JMC Selkirk, Inc. ("Selkirk") and MASSPOWER Joint Venture ("MASSPOWER") argued that the willingness of the new projects to sign long-term contracts is evidence that the new market is good. It argued that if a project is risky, the Board should deny authorization for facilities and that it is not appropriate to attempt to deal with market risk by means of toll methodology.

2.2.3 Cost Causation

A number of parties argued that the shippers who are responsible for causing a facilities expansion should also be responsible for paying the costs of the expansion. However, there was disagreement between parties supporting rolled-in tolls and parties supporting some form of an incremental toll as to which parties are responsible for the expansion.

Parties supporting the rolled-in toll methodology argued that TransCanada is an integrated system operated for the benefit of all system users. The need for expansion of the system arises when the total demand for firm transportation service exceeds the existing capacity. Responsibility for causing an expansion should not be assigned to those shippers requesting new firm service ("FS"). It was argued that existing users of the system can be considered equally responsible for causing an expansion since, if they were to reduce their levels of use, capacity would be freed up and less expansion would be necessary.

PanCanadian Petroleum Limited ("PanCanadian"), which advocated rolled-in tolls, cited a regulatory decision of the New York State Public Service Commission ("NYSPSC") which stated that the marginal cost of use imposed on a system is the same for all users (per unit of capacity for equivalent service) and, hence, the responsibility for a pipeline system expansion should be borne equally by existing and new users of the system. This view of cost causation was supported by TransCanada, the Alberta Petroleum Marketing Commission ("APMC"), the Independent Petroleum Association of Canada ("IPAC"), Selkirk-MASSPOWER, ProGas Limited ("ProGas"), Esso Resources Canada Limited ("Esso") and Western Gas Marketing Limited ("WGML").

Conversely, those parties who supported some form of incremental toll methodology argued that the shippers requesting new long-term FS cause the need for expansion on TransCanada. The CPA recognized that all users are responsible for the expansion in the sense that if existing users were to reduce their demands, capacity would be freed up for new users. It also stated that it did not believe that a firm transportation contract in any way conferred a right of ownership of capacity on the system to existing shippers. However, it noted that many existing users are currently committed to long-term sales contracts and long-term transportation contracts on TransCanada and, because of these commitments, they are not free to leave the system. The CPA argued that it is only new shippers who are faced with a decision to use or not to use the system. Hence, it argued that a common sense interpretation of cost causation is that the new users are responsible.

Consumers' argued that existing shippers who do not reduce their levels of demand should not be considered as causing the need for expansion. The reason for this is that pipeline facilities were originally installed to satisfy the long-term market demands served by existing shippers and, when these facilities were installed, there was an expectation that this market demand would continue for the economic life of the facilities.

IGUA argued that the purpose of the construction of the majority of the applied-for facilities is to satisfy requests for long-term FS to serve a regionally distinct new market, i.e., the U.S. northeast. Given the size of this market, and given that it is not a market that has been traditionally served by TransCanada, IGUA contended that the facilities required to serve this market would essentially comprise a new pipeline system.

IGUA recognized that the new facilities would be physically integrated with the existing facilities but argued that most of the new facilities were being constructed to serve a new export market and, hence, should be considered to be separate from the existing system. Given this characterization of the new facilities, IGUA argued that the shippers requesting long-term FS to the U.S. northeast are responsible for causing most of the applied-for expansion and therefore should be responsible for bearing the associated costs. IGUA argued that a separate cost pool should be established for all traffic to the U.S. northeast and tolls for transportation service to this market should be calculated based on the costs allocated to this separate pool.

2.2.4 Distributional Impacts

The cost of the proposed facilities additions and the impact on rolled-in tolls, estimated to be $0.10/GJ, were referred to by IGUA, the CPA and Consumers' as their major concerns prompting them to propose alternative toll methodologies. They argued that the rolled-in toll would not reflect the real cost of providing service to the new shippers and that the toll increase would in fact be a subsidy by the existing shippers to the new shippers. IGUA estimated the amount of the potential subsidy as approximately $100 million per year and expressed concerns about the probable impact this increase could have on the continued use of gas by industrial markets in the Eastern Zone. ICI Canada Inc. ("ICI") testified that, under rolled-in tolls, its annual costs would increase by an additional $1.3 to $1.4 million per year. Similarly, General Chemical Canada Inc. ("General Chemical") calculated that its costs would increase by about $600,000 per year under rolled-in tolls. IGUA submitted that this burden is unjust and unfair and could result in lower energy costs for U.S. northeast industries which compete with IGUA members. The CPA and Consumers' also argued that existing shippers would be subsidizing new shippers.

Consumers' retained Econanalysis & Associates to assess the distributive effects of the proposed expansion under rolled-in tolls. Their study concluded that the net present value of the burden to existing shippers of the entire expansion under rolled-in tolls would be $877 million, with domestic customers bearing $524 million and export customers bearing $353 million. At Consumers' request, the study was done working from the basic assumption that none of the toll increase would be absorbed by the producers. Consumers' submitted that gas-on-gas competition at the Alberta border will be the primary driver of gas prices for the majority of the eastern Canadian market throughout the forecast period.

Union submitted that the distributive effects of the toll increase should not affect decisions on toll methodology. Union and TransCanada argued that, pursuant to Part III of the Act, the Board will examine, as important and legitimate public interest considerations, the distributional impacts of increased tolls on the utilization of the system.

The proponents of rolled-in tolls took the view that the new shippers are not being subsidized by the existing shippers. They argued that, to the extent that the rolled-in toll is lower than the marginal cost of service, all shippers are benefitting from a form of subsidy which results from a sharing of the benefit of depreciation and the lower historical cost rate base. PanCanadian, WGML and others argued that the recognition of a subsidy by one group of tollpayers to another would be tantamount to recognition of acquired rights.

2.2.5 Discrimination

Many advocates of rolled-in tolls argued that the incremental toll proposals advanced would produce discriminatory tolls which would not be in compliance with the requirements of the NEB Act. IPAC, PanCanadian, Gaz Métropolitain, inc. ("GMi") and the APMC in particular submitted extensive legal arguments which were used as the basis for asserting that different circumstances with respect to timing, price elasticity, costs and end-use are not sufficient reasons to justify discriminatory tolls. It was argued that the CPA and Consumers' proposals create two classes of shippers and that the IGUA proposal discriminates on the basis of market.

The CPA submitted that unjust discrimination is a matter of judgment. In its view, its proposal to allocate the added costs equally to the existing shippers and the new shippers would result in just and reasonable tolls which do not discriminate unjustly against any party. Consumers' argued that a different toll treatment is justified and would not be discriminatory, let alone unduly so, because the new shippers, who caused the need for expansion, are different from the existing shippers. IGUA maintained that its proposal was not discriminatory because it viewed gas moving to different markets to be different traffic. Consumers' and IGUA added that it would be discriminatory to treat two unlike parties the same.

General Chemical and ICI argued that in making a finding on discrimination, the Board is not restricted to its previously stated view that the terms of access for new shippers should be consistent over time. Rather they argued that new shippers are non-shippers until they commence shipping and that "to extend the concept of undue discrimination from the NEB Act to persons who are not shipping gas on a regulated pipeline is not justified."

2.2.6 Acquired Rights

Proponents of rolled-in tolls were of the view that the incremental methodologies proposed imply the existence of prior rights for existing shippers or some claim by them to the lower embedded costs associated with existing facilities relative to the higher costs of new facilities. The proponents of the incremental methodologies denied that their proposals were based on the notion of prior rights. The CPA submitted that once the additional capital payment was made everybody would be treated equally. Consumers' acknowledged that existing shippers have no particular rights to existing capacity and agreed that under its surcharge proposal there would be a differentiation between the customers who, in its view, caused the need for the expansion and those who did not. However, Consumers' did not see this distinction as a recognition of any special rights for existing shippers. It merely reflects the fact that there is no room on the existing pipeline and it must be expanded to accommodate the new customer.

IGUA testified that there was nothing in its proposal that would suggest that a shipper serving the traditional market, either an existing shipper or a new shipper, would have any prior rights beyond what is in the tariff or in the contract. IGUA argued that the distinction upon which one must focus is between an existing shipper that already has an operative contract for service and a prospective shipper that does not yet have an operative contract for such service because capacity must be added to serve that prospective shipper.

2.2.7 Operational Integration

The Board heard the argument by those who supported rolled-in tolls that, on an integrated system such as TransCanada's, it is not possible to say that any particular facilities are used to provide service to a particular customer and therefore the only tolls compatible with such a system are rolled-in tolls. IGUA, however, argued that the existence of operational integration cannot, in and of itself, preclude the adoption of a tolling methodology other than the fully rolled-in method.

TransCanada argued that the new facilities would provide increased system efficiency, operational flexibility and reliability for the integrated system and thus benefit all system users. This point was advanced by all parties arguing in favour of rolled-in tolls and there was general agreement from IGUA, the CPA, and Consumers' that the new facilities would provide some benefits to the integrated system. However, they argued that the additional benefits are either not required or not worth the additional cost.

TransCanada acknowledged that the prospective benefits to existing shippers would not equal the costs.

2.2.8 *Consistency with Deregulation and Free Trade*

Many parties supporting rolled-in tolls argued that the process of deregulation, as embodied in the 31 October 1985 Agreement on Natural Gas Markets and Prices ("the Agreement"), envisaged greater access to markets as a trade-off for deregulated gas prices. PanCanadian pointed to the wording of the second paragraph of the Agreement as support for this position:

> *"Access will be immediately enhanced for Canadian buyers to natural gas supplies and for Canadian producers to natural gas markets ...."*

A view commonly held by proponents of rolled-in tolls is that incremental tolls are a barrier to trade. Trans Québec & Maritimes Pipeline Inc. ("TQM") argued that the imposition of higher tolls on new shippers wishing access to an existing shipper's market, as contemplated under the CPA or Consumers' proposals, would constitute an artificial regulatory barrier for new shippers while at the same time conferring a competitive advantage upon the existing shipper.

In contrast, the CPA argued that, as the utilization of the pipeline changes, so should the terms of access. According to the CPA, an incremental toll would more closely reflect the price of transportation which would emerge in a competitive market and, hence, would be more compatible with a deregulated market for gas than the rolled-in toll methodology.

IGUA argued that producers seeking access to a new market area have no right to obtain access at the expense of other tollpayers. In its view, incremental tolls would require participants in the market to pay the full cost of transporting gas to the market.

Many parties, GMi in particular, argued that the Agreement did not contemplate the deregulation of transportation, nor should the Board adopt a proposal such as the CPA's which would require that the Board withdraw from regulating transportation.

Consumers' held that the scope and impact of the changes resulting from deregulation were not known at the time of the 31 October 1985 Agreement.

The proponents of incremental methodologies maintained that their proposals were congruent with the Free Trade Agreement ("FTA"). Their views were consistent with the view expressed by General Chemical that it failed to see how the FTA could be construed to require existing shippers to subsidize gas consumers in export markets. IGUA argued that its methodology would not contravene the FTA because its reasons for proposing different treatments were founded on a principled basis, not nationality. It also advanced the idea that with the advent of the FTA, the doctrine of reciprocity should be given more importance. In this regard it maintained that in the U.S., different traffic, such as that to the U.S. northeast, would attract incremental tolls. Union argued that its proposal would not contravene the FTA because it proposed no differentiation in treatment based on nationality, it promoted the movement toward a new market and could not result in the imposition, but rather the negotiation of a higher price. On the other hand, proponents of rolled-in tolls took the view that rolled-in tolls are congruent with the FTA, but that the incremental proposals are not because they are directed primarily at the export market. PanCanadian argued that incremental tolls would contravene article 902, paragraph 4, of the FTA to avoid "... undue interference with or distortion of pricing, marketing and distribution arrangements in the other Party".

2.2.9 *Price Signals and Economic Efficiency*

Several parties argued that the economic efficiency implications of alternative toll methodologies should be a relevant criterion in choosing the appropriate toll methodology.

The discussion on economic efficiency considerations was largely expressed in terms of choosing a toll methodology which would send the correct price signals to shippers on the system.

Most parties who commented on the issue agreed that economic efficiency would be attained if shippers were charged a toll which reflected the real marginal cost of providing incremental service on TransCanada; i.e., a toll which reflected marginal cost would send the correct price signal to shippers. Parties agreed, however, that it would not be possible to charge a marginal cost toll to all shippers because marginal cost exceeds the rolled-in toll and, consequently, TransCanada would over-recover its cost of service. Therefore, a choice must be made between various "second best" options. In general, the choice would be between rolled-in tolls and some form of incremental tolls.

Many parties agreed that, if the rolled-in toll understated the marginal cost of expansion, it would send an incorrect price signal to shippers and, hence, it would not lead to the economically efficient result. It was argued that shippers would respond to this toll by selling more gas into markets served by TransCanada than if they had to pay a toll which reflected the real incremental cost of service. The concern expressed by some parties was that this could result in uneconomic expansions of the TransCanada system.

The CPA and Consumers' argued that an incremental toll methodology would be more efficient than the rolled-in toll methodology because it is more important that shippers who are contemplating new sales see the correct price signal than for existing shippers to be charged the correct price signal. Their reasoning was that shippers who are already committed to long-term gas transportation and sales contracts cannot change past decisions in response to changes in tolls. Shippers will only be responsive to the level of tolls at the time they are making a decision on whether or not to enter into new sales agreements. Therefore, the CPA and Consumers' maintained that considerable efficiency gains could be obtained by charging some form of incremental toll for all incremental shipments because the shippers would be very sensitive to the toll charged. At the same time, the fact that the toll charged for existing sales would be further from marginal cost than the rolled-in toll would not result in any significant efficiency losses on these sales because existing sales would be insensitive to changes in the tolls.

IGUA argued that an incremental toll should be charged for sales to the U.S. northeast market in order that shippers better see the real costs of accessing this market.

Most parties who supported the continuation of the rolled-in toll methodology disagreed with the CPA's and Consumers' claim that an incremental toll would lead to more economically efficient results than would occur under rolled-in tolls, but only PanCanadian and TransCanada submitted extensive evidence on this issue.

PanCanadian and TransCanada agreed that, if there were significant differences between the price sensitivity of demand in different markets, economic efficiency could, in theory, be enhanced by charging a toll closer to marginal cost in the more price-sensitive markets. TransCanada also stated that, in cases where an expansion included a larger proportion of proposed sales to an export market than the existing volumes being sold in that market, as is the case for this application, efficiency gains could theoretically be obtained by charging an incremental toll for all incremental sales. However, for a number of reasons, both PanCanadian and TransCanada argued that, in practice, rolled-in tolls would be more efficient.

First, they noted that to enhance economic efficiency by charging different tolls to different market segments, one must estimate the relative price sensitivity of demand in the various markets and then match the tolling scheme to these differing elasticities. Given that demand elasticities are difficult to measure and that they change over time, PanCanadian and TransCanada both suggested that it would be most unlikely that a correct matching could be obtained. They also noted that demand is likely more price-sensitive in industrial markets than in residential and commercial markets, but there is no reason to believe that demand is, on average, more price-sensitive in the export market than in the domestic market. Thus, any scheme which proposed charging an incremental toll for all new sales, regardless of the market to be served, would not likely result in enhanced efficiency.

Secondly, TransCanada and PanCanadian both argued that incremental tolls could distort end-users' decisions to use natural gas or alternate fuels. Further, existing shippers who had access to transportation capacity at the lower rate could profit by selling this space through unapproved brokering on a "black market". In addition, charging more than one price for the same service would not be compatible with the principles of a competitive market.

Finally, PanCanadian argued that, if one believes that the applied-for facilities will be fully utilized for their useful economic life, the rolled-in toll is a good approximation of the levelized incremental toll. Therefore, PanCanadian was of the view that, for this application, the rolled-in toll will send the appropriate price signal to all shippers on the TransCanada system.

2.2.10 Practicality, Stability and Administrative Simplicity

In terms of practicality and administrative simplicity, TransCanada argued that alternative toll methodologies would be significantly more complex. It noted that a proper incremental toll is not calculated on the basis of only an incremental rate base, but rather on the basis of an incremental analysis of each distinct component of the cost of service. It believed that the administrative complexity of incremental tolling methodologies would increase over time. GMi argued that the difficulty of calculating the "b-factor" would make the Consumers' proposal unworkable. ProGas argued that the IGUA separate rate base proposal would lead to difficulties in determining which rate base applied to which volumes. There were also general concerns about the need for longer, more complex hearings and the difficulties posed for prospective shippers in forecasting their probable costs. Proponents of incremental methodologies argued that, in fact, none of the alternative methodologies presented to the Board involved the level of complexity envisaged by TransCanada.

From an historical perspective, TransCanada and Canadian Hunter Exploration Ltd. ("Canadian Hunter") pointed out that tolls have been set on a rolled-in basis for 32 years and that the Board has upheld this methodology in several prior decisions including rate cases in 1973, 1974, its 1981 decision to roll in TQM costs, and most recently in GH-2-87. Others, including Natural, argued that most of this history is not particularly relevant since the Board has actively regulated tolls only since 1973 and that prior to 1985, prices were administered. It was argued that the question of toll methodology has had significance only in the past five years.

GMi suggested that stability is an important objective of toll design because historical precedent is an important factor in guiding parties' investment decisions. It argued that, if the Board adopts a new tolling methodology, it should have some prospect of meeting the same the Board adopts a new tolling methodology, it should have some prospect of meeting the same test of time. It was argued that consistency in regulatory decision-making can add value to Canadian gas exports and New England Power Company ("NEPC") stated that the history of regulatory stability was one of its reasons for seeking a Canadian gas supply.

2.3 Views of the Board

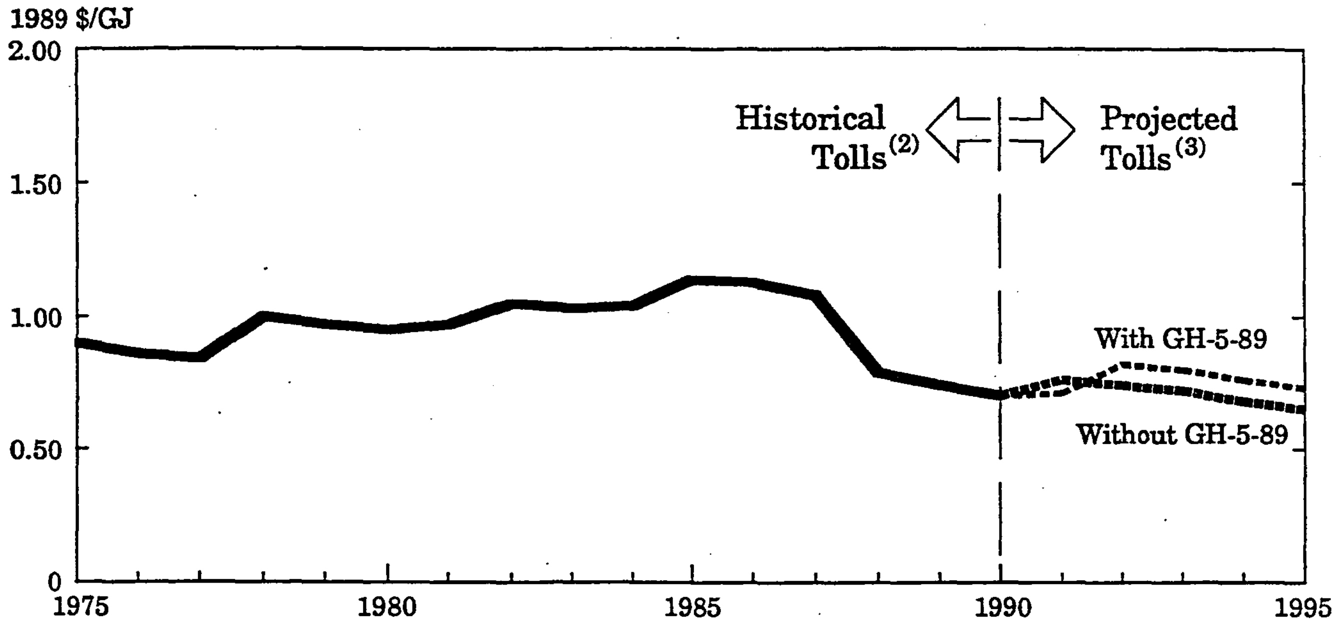
The Board does not agree with those submittors who argue that the size of this particular proposed expansion is a circumstance justifying a change in toll methodology. With regard to cost, the Board notes TransCanada's submission that to rebuild the existing pipeline system at today's costs using current technology would cost approximately $10.3 billion. In this context, the Board does not consider the proposed 25 percent increase at a cost of $2.6 billion for a 19 percent increase in capacity to be exceptional. The pipeline system has experienced relatively constant growth since its inception over thirty years ago and this increase is seen as a normal result of the continuing growth of the natural gas industry in Canada.

With respect to the cost to shippers, the Board notes that the forecast 1993 Eastern Zone toll will increase by $0.10/GJ over the toll without the expansion and that in comparison to the current 1990 toll of $0.73 the increase will be $0.24 or 33 percent. However, when compared to the historical toll for the Eastern Zone of $0.989/GJ set in July 1987, the forecast 1992/93 toll of $0.97/GJ is actually somewhat lower even without adjusting for the effects of inflation.

In this regard, the Board believes it is more appropriate to compare historical tolls in constant dollars. Figure 2-2 (next page) shows the level of the Eastern Zone toll at 100 percent load factor since 1975 in constant 1989 dollars. It can be noted that even with the toll impact of the proposed GH-5-89 facilities included, the toll in 1995 would be lower in real terms than it was two decades ago.

The Board considers that the effect of alternatives to the current toll design methodology which were presented by intervenors is to shield existing shippers from some or all of the additional costs associated with the new facilities.

Figure 2-2: Historical and Projected TransCanada Tolls(1) to the Eastern Zone



Notes:
(1) Tolls at 100% load factor, excluding fuel, expressed in constant 1989 dollars.
(2) Consumer Price Index from Statistics Canada.
(3) Inflation between 1990 and 1995 assumed to be 5% p.a.

In this regard, the Board agrees with those who submitted that the payment of tolls confers no future benefit on tollpayers beyond the provision of service. In other words, previous tollpayers have no acquired rights. Therefore, they cannot expect to be exempted from a toll increase simply because they have paid tolls in the past. In this proceeding parties have not laid claim to any acquired rights, *per se*. Rather, the proponents of alternative toll methodologies have asserted that the sheer size and cost of the proposed facilities together with the impact on tolls and the nature of the market to be served, are unique circumstances which justify some level of toll protection for the existing shippers. While factors such as the size, cost or impact on tolls of the proposed facilities may be relevant to the Board's decision on whether to authorize the construction of facilities, they do not in this case justify discriminating among shippers on the basis of when they commenced, or will commence, paying tolls and receiving service.

Both the CPA proposal for a capital contribution and the Consumers' proposal for a demand surcharge make a distinction based on vintages of shippers. This implies the existence of certain rights for existing shippers which, in the Board's view, they do not have. In addition, the requirement of a capital contribution or a demand surcharge would serve as a barrier to entry for new participants in the marketplace, would limit competition and would give existing shippers an undue competitive advantage.

Similarly, though the Board will examine market characteristics when considering the economic feasibility of the proposed facilities, it does not consider that shippers to the U.S. northeast market should pay a different toll merely because they are shipping to that market.

The IGUA proposal to treat the portion of the new facilities required to serve exports to the U.S. northeast as a separate rate base depends partly upon the notion of the U.S. northeast as a new, regionally distinct market relative to TransCanada's current domestic and export market. The Board does not view the U.S. northeast market to be new since Canadian gas has been flowing to that market since 1984, nor to be a distinct market relative to Ontario, Quebec, or U.S. midwest markets. All markets have their own individual characteristics but the Board fails to see any features in the U.S. northeast market which would require a distinct toll treatment on the TransCanada system. To consider the new facilities to the U.S. northeast as the equivalent of a separate pipeline would be a denial of the realities of the integrated system. The facilities cannot be physically separated.

In the Board's opinion, when the new facilities are completed they will become an integral part of TransCanada's pipeline system and will not be associated with or dedicated to any individual shipper's gas. While it is possible to notionally associate the cost of certain facilities with certain gas volumes, it would not be a true reflection of how the Board views the way the system operates.

Given the Board's views on the characteristics of the U.S. northeast market as they are relevant to toll methodology and on the integrated nature of the system, it would not be appropriate to authorize the use of flexible tolls only for certain volumes.

With regard to the debate as to who caused the need for the new facilities, the Board is persuaded by the argument that it is the aggregate demand of all shippers that gives rise to the need for additional pipeline capacity.

Since the deregulation process began in 1985, the Board has brought about many changes to TransCanada's tariff to implement open access to the pipeline. Tolls that are just and reasonable and non-discriminatory will, undoubtedly, have contributed to this process. However, the Board does not believe that facilitating the deregulation process, *per se*, is a legitimate consideration for toll methodology.

Given the information and data-processing technology available today, simplicity in toll design is not as important a factor in the administration of tolls as it once was. Nevertheless, the ease with which a toll methodology can be understood and the practical problems of administration are factors which the Board considers. However, the Board did not reject any of the proposals before it on the basis of impracticality or lack of simplicity.

With respect to arguments about the economic efficiency aspects of alternative toll methodologies, the Board agrees with the CPA and Consumers' that there is some theoretical support for the idea that charging an incremental toll to the most price-sensitive customers served by TransCanada would achieve economic efficiency results superior to those that would be obtained under rolled-in tolls. The Board also agrees with the CPA and Consumers' that it is likely that the price sensitivity of demand for transportation service on TransCanada of shippers who are currently committed to long-term transportation and sales contracts is less than the price sensitivity of demand of shippers who are contemplating new sales.

However, the Board also agrees with PanCanadian and TransCanada that, in practice, it would be very difficult to assign incremental tolls only to the most price-sensitive markets. The Board notes that there are no data available on the relative price sensitivities of demand in the markets served by TransCanada. Further, the Board is of the view that shippers who are renewing their contracts and industrial gas users in the domestic market may be equally sensitive to the toll charged on TransCanada as are new shippers. None of the proposals for incremental tolls suggested that an incremental toll be charged to industrial users on short-term contracts nor that an incremental toll be charged to renewals. Finally, the Board notes that there was no empirical evidence submitted which demonstrated that an incremental toll methodology would yield economic efficiency improvements over the rolled-in toll methodology.

In summary, the Board is not persuaded that the implementation of any of the proposed incremental toll methodologies would yield significant economic efficiency improvements over the rolled-in tolling methodology.

Decision

All facilities, either approved under section 52 or exempted under section 58 of the Act in this proceeding, will be rolled in to TransCanada's rate base for toll purposes.

CANADA

National Energy Board

Reasons for Decision

Westcoast Energy Inc.

GH-5-94

February 1996

Facilities

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Chapter 7

Financial Matters

7.1 Toll Treatment for the Proposed Facilities

In its application, Westcoast requested that the tolls for services to be provided through the proposed facilities be determined on a rolled-in basis. The service agreements which underpin the expansion project are conditional on the applied-for facilities being tolled on a rolled-in basis.

Under the rolled-in method, the capital cost, operating costs, and the incremental contractual demand of the proposed facilities are grouped with those of the existing facilities so that one set of tolls, that are applicable to all customers, is developed based on the approved toll design. Under the stand-alone, or incremental toll design, the capital costs, operating costs, and incremental contractual demand of proposed facilities are tolled separately from existing facilities. Stand-alone tolls would be applicable only to customers using the proposed facilities.

In support of the rolled-in toll method, Westcoast stated that, because shippers behind all plants receive the same gathering or processing services, it would not be fair to charge different tolls based on the location or vintage of the facilities. Westcoast also stated that shippers who renew capacity are just as responsible for expansions as are the expansion shippers.

Westcoast added that rolled-in tolls are consistent with the principle that users of the system pay only for the service provided and do not acquire rights to old facilities with their lower embedded cost and associated lower tolls because of past use of facilities or payment of tolls. Westcoast submitted that applying rolled-in tolls in this case would not cause rate shock, because the resulting tolls are not expected to be significantly higher than the tolls for the existing facilities and, in the case of raw gas transmission, the tolls are expected to be lower.

Westcoast also submitted that rolled-in tolls provide consistent price signals to all shippers on the system. Given that allocative efficiency requires that consumers of a product be faced, to the extent possible, with the long-run marginal cost of the product and recognizing that rolled-in tolls may not be equal to marginal cost, Westcoast contended that, under rolled-in tolls, at least, all parties making decisions to continue using the service or using it for the first time will be faced with the same price signal. On the other hand, under incremental tolling, shippers using old vintage facilities face tolls which are much lower than marginal cost while shippers using new vintage facilities face tolls which are considerably higher than marginal cost, with the result that users of old vintage facilities are encouraged to over-consume the services produced by pre-expansion facilities.

Westcoast also submitted that rolled-in tolls are consistent with other existing policies and regulations in the sense that they are more consistent with a competitive gas market than incremental or vintage tolls. Further, rolled-in tolls would not prevent or limit further expansions to the system, would encourage attachments of new gas supply and promote competition amongst gas sellers.

Finally, Westcoast submitted that rolled-in tolls are easily understood and administratively simple, whereas incremental tolls are impractical because they would result in significant administrative complexity and yield a multi-price system for the same services.

Regarding the facilities, Westcoast took the position that the proposed facilities are integrated with the existing system. It explained that the proposed RGT facilities are either loops or extensions of existing pipelines in the Fort St. John system and that the proposed Aitken Creek plant will replace the existing Aitken Creek plant while providing greater sour gas processing capacity. Similarly, the compressor station additions are either expansions or replacements of existing compressor facilities.

Further, Westcoast explained that the flow pattern in the existing Fort St. John RGT system will be changed by the project. Westcoast elaborated that, at the present time, only gas from the Laprise and Sojer areas is processed at the existing Aitken Creek plant, with all other raw gas being delivered to the McMahon plant. After the expansion, the new Aitken Creek plant and the McMahon plant will be operationally and contractually integrated in the sense that both plants could process all of the gas from the Fort St. John supply area. Westcoast submitted that the proposed Aitken Creek plant can be viewed as an expansion of the McMahon plant, where the proposed processing plant is equivalent to adding two processing trains at the McMahon plant.

COFI et al stated that it is not opposed to the construction of the facilities, but is concerned about the associated toll impact and financial risk. COFI et al views the project as a stand-alone undertaking and, accordingly, suggested that either the project proponents or Westcoast itself should assume the associated financial risk and cost burden. To achieve this end, COFI et al suggested two courses of action. Its preferred option is to have the gathering and processing functions separated from the transmission functions and excluded from the regulated rate base. Its second option is to have the processing plant and related facilities tolled on a stand-alone basis. COFI et al also suggested that, at the next opportunity, the Board should treat the other plants and related gathering systems similarly by approving plant-specific and separate gathering area tolls.

COFI et al submitted that stand-alone tolls would approximate the conditions facing a competitive plant in the same area. The cost of production in the area would match the toll in the area, which, in turn, would foster greater competition. It also claimed that stand-alone tolls should apply in this case. In the past, for special facilities that served an identifiable and separate group of shippers, the Board often looked at the separate costs of the discrete facilities providing service to that group and tried to match the costs to the tolls charged. COFI et al stated that, in its opinion, gathering and processing facilities cannot be viewed as common facilities in the same manner that transmission pipelines can.

COFI et al was also concerned that by rolling-in the cost of the applied-for facilities, the tolls charged for the area would not match the gathering and processing costs for the Fort St. John area. This mismatching would send the wrong price signals and lead to economic inefficiencies. COFI et al added that the averaging of costs tends to conceal inefficiencies that would be apparent if processing plants were tolled separately.

Regarding Westcoast's reasons for proposing rolled-in tolls, while COFI et al agreed that the expansion is caused by aggregate demands in the Fort St. John area, it disagreed that the argument is valid when comparing the McMahon area with other plants such as Fort Nelson, Sikanni and Pine River, because there is no physical integration between any of these plants. Regarding the encouragement of efficiency, COFI et al agreed with Westcoast that a reference to the same price signal makes sense in the case of transmission facilities, but not in the case of physically distinct gathering and processing areas. COFI et al questioned the applicability of the Board's decision in Order GH-5-89[1] to the circumstances of this application because the facilities involved in that hearing were sales gas transmission facilities, not raw gas transmission and processing facilities. Finally, COFI et al stated that it believes separate area tolls will not involve significant changes to Westcoast's current cost tracking system.

The EUG took the position that it should not be required to bear the massive costs associated with the proposed facilities. It suggested that, if these facilities are to be built, they should be built by an unregulated entity. The EUG also claimed that an increase in rate base of the magnitude proposed by Westcoast would exacerbate Westcoast's inability to compete with other pipelines that can serve the EUG's markets.

The EUG elaborated that Westcoast's existing gathering and processing tolls make natural gas purchased on the Westcoast system increasingly uncompetitive relative to other sources of gas. Further, the EUG does not believe that the problem can be solved by the use of special, alternative tolling methodologies and stated that it is opposed to rolled-in tolls for gathering and processing. The EUG stated that, should the facilities be built by an unregulated entity, costs would not be automatically passed on to all existing users of the Westcoast system. Further, it suggests that the sizing and timing of construction of facilities might also be different.

The Aitken Creek Group supports rolled-in tolls. It explained that all shippers will benefit from the project because the proposed Aitken Creek plant and McMahon plants will be operated on an integrated basis for the Fort St. John catchment area. With this integration of facilities, the Aitken Creek Group feels that different tolls based on the vintage of the facilities would be inappropriate.

The Aitken Creek Group also highlighted the Board's statements from the GH-5-89 Reasons for Decision that the size of an expansion is not a factor to be considered in justifying a change in tolling methodology; that payment of tolls by existing tollpayers do not confer future benefits or acquired rights; that vintaging of facilities is not justified, particularly on an integrated system; and that the aggregate demand of all users, including renewals, gives rise to the need for the new capacity. In the view of this group, the situation of the proposed facilities parallels that considered by the Board in the GH-5-89 proceeding.

BC Gas was of the opinion that the project should not be built as part of Westcoast's regulated operations and that the Board should not authorize construction of the facilities. However, if the Board were to decide to approve the facilities, BC Gas would want them tolled on a stand-alone basis so that those parties gaining incremental benefits from the proposed facilities would become responsible for all incremental costs.

BC Gas stated that it believes the applied-for gathering and processing facilities are distinct and separate and provide an additional service, and that, as such, the associated costs should not be pooled with those of other facilities. It submitted that parties requiring the requested facilities, are identifiable and clearly the beneficiaries. It added that the proposed Aitken Creek plant is designed to serve a

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[1] The application that led to the issuance of this Order had been filed by TransCanada PipeLines Limited on 29 June 1989. The Board's decision in the GH-5-89 proceeding were release in a three-part Reasons for Decision that was released in November 1990 and April 1991.

specific geographic area, that the proposed plant will be operated as a separate entity, and that the raw gas to be processed is differentiable as to H_2S content and liquids.

BC Gas also questioned whether the raw gas transmission facilities should be considered integrated as some of the loops, namely the Milligan-Peejay and the Tommy Lake Loops, would have to be built irrespective of whether all the applied-for facilities are approved.

If tolls are set on a stand-alone basis, BC Gas asserts that several toll design criteria would be satisfied. The tolls would be fair and promote equity because producers owning reserves and contracting for capacity would pay the costs of treating their gas for sale at a separate and distinct cost-related toll. Further, existing customers would not be required to cross-subsidize producers behind the new plant, and the costs and benefits would be matched rather than bearing a permanent cross-subsidy. Finally, barriers to entry caused by rolled-in tolls would be replaced with the possibility of competitive alternatives now and in the future.

BC Gas also claimed that the criteria of rate stability would be met because existing customers would pay appropriate tolls without having to cross-subsidize the proposed plant. Separate and distinct tolls for these additional plants would provide predictable rates without subsequent distortions caused by the rolling-in of the costs of future facility additions.

Stand-alone tolls would convey the proper price signals and achieve economic efficiency because, with costs and benefits matched, producers would receive the proper allocation of costs to process their specific reserves. BC Gas added that, if market forces dictate the price, revenue sufficiency and stability would be assured for appropriately timed, sized and sited processing plants. The criteria of practicality, administrative simplicity, general acceptance, and consistency with other policies and regulation would also be met.

On the other hand, BC Gas is opposed to rolled-in tolls because such methodology would result in: (a) a direct cross-subsidy by the customers of BC Gas to the benefit of those parties contracting for service on the proposed facilities; (b) consequential exclusion of other companies competing to construct gathering and processing facilities in British Columbia, since those other companies cannot shift costs to others through a rolled-in tolling methodology; (c) a "socializing" of the costs of inefficient and efficient gathering and processing operations into one pool of costs, thereby thwarting appropriate pricing signals; and (d) the bestowing of residual risks of market, supply or operating plant failures onto customers like BC Gas who are largely captive to Westcoast.

If the costs were rolled-in, BC Gas contended that users of its own facilities would face dramatic increases in gas prices. Further, in the opinion of BC Gas by Westcoast's own calculations, customers using existing facilities would permanently subsidize the proposed Aitken Creek plant by up to $168.5 million over the next ten years.

In final argument, BC Gas indicated that the circumstances of Westcoast's application are different from those faced by parties in the TransCanada GH-5-89 proceeding. Firstly, that decision dealt with a pipeline expansion that could not have been undertaken by anyone other than TransCanada. In contrast, the processing facilities in Westcoast's application could be built by many parties other than Westcoast. Secondly, processing and gathering facilities in British Columbia can be constructed outside the Board's jurisdiction, which is not the case for TransCanada's transmission facilities. Finally, in GH-5-89, the Board was convinced that the facilities resulted from the aggregate demand of a proceeding to examine the regulation of Westcoast's gathering and processing facilities.

The Board agrees that it is beneficial to set tolls, as far as possible, equal to marginal cost so as to convey, as suggested by BC Gas, the proper price signals to shippers and to achieve economic efficiency through better matching of costs of new facilities with their benefits. However, based on the record of this proceeding, the Board notes that both the rolled-in and incremental toll design methodologies could yield tolls that are different from long run marginal cost. In the case of rolled-in tolls, at least parties making decisions to continue or start receiving service would face the same price signals, but with the risk that the price signals might not be the desirable ones from an economic efficiency point of view.

From the standpoint of promoting the development of a properly functioning gas market, the Board recognizes that allowing rolled-in toll treatment in this case may allow B.C. producers, who have invested significant sums in the development of gas reserves in northeastern B.C., to gain market shares in traditional markets and expand to new market areas. Accordingly, competition among producers for markets would be enhanced. On the other hand, the Board is cognizant of the position of certain parties that incremental toll treatment would more closely reflect gathering and processing costs and, therefore, be more compatible with a properly functioning market. In the Board's view, economic efficiency and consistency with properly functioning markets are not determinative factors supporting either rolled-in or incremental toll treatment in this proceeding.

Having considered all the evidence before it, the Board is persuaded that tolling the applied-for facilities on a rolled-in basis would be appropriate. In reaching this conclusion, the Board has placed significant weight on the extent to which the proposed facilities would be integral to the Westcoast facilities serving the Fort St. John catchment area.

Parties referred to TransCanada's GH-5-89 decision as putting forward principles in favour of the roll-in of the costs of new facilities. Although the Board supports the principles set forth in the GH-5-89 decision, the Board believes that the appropriateness of a tolling methodology is a matter that is project-specific and that every application should be assessed independently.

In view of the foregoing, the Board approves Westcoast's request that the tolls for the services to be provided through the applied-for facilities be determined on a rolled-in basis.

7.2 Financing

In its application, Westcoast stated that it intends to finance the $397.6 million cost of the Fort St. John Expansion project initially through internally generated funds and the drawdown of short term credit facilities. It was Westcoast's intention to secure more permanent financing through issuance of long term debt and equity, the timing of which would depend on market conditions and cash requirements.

CANADA

National Energy Board

Reasons for Decision

Cyanamid Canada Pipeline Inc.

GH-3-86

December 1986

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Chapter 8
Disposition

As set out in the previous chapters of these Reasons for Decision, the Board examined all of the evidence and took into account all matters that appeared to it to be relevant. The Board has found that it has the jurisdiction, pursuant to the *Constitution Act, 1867* and the *NEB Act,* to consider and rule on this application by CCPI.

Concerning the merits of CCPI's proposed bypass, the Board is confident that the project is both technically and environmentally feasible and that there are suitable short-term arrangements in place for gas supply. However, the Board believes that it is in the public interest that scarce resources be used efficiently and therefore, generally, is not favourably disposed to proposals which duplicate existing facilities. The most efficient use of resources in this instance would occur if parties reacted to this application in a way that made the CCPI project privately unprofitable because of appropriate adjustments to rates for the use of the facilities already in place.

However, taking into account all matters relevant to the circumstances of this case, the Board has concluded that the message embodied in the CCPI application, from the market to the parties concerned, should not be impeded. Therefore, the Board finds that the project is in the public interest and has decided to grant exemptions from Sections 26(l)(a), 26(2), 27, and 28 of the Act. Board Order XG-13-86 and the associated terms and conditions are set out in Appendix IV.

In addition to complying with the Board's standard technical and environmental requirements, CCPI is also required, pursuant to condition 1 of the order, to file certain technical information with the Board prior to the commencement of construction. If the Applicant is unable to submit option agreements signed by affected private landowners, a formal review of the pipeline route, requiring Board approval, will be held prior to the commencement of construction, pursuant to condition 2. In that case, the Applicant would be required to submit plans, profiles and books of reference for the pipeline and the Board would adopt the procedures set out in Sections 29.1 to 29.6 of the Act for the formal review process. As is the Board's standard practice, the Applicant is not exempted from the requirements of Sections 26(l)(b) and 38 of the Act. The facilities will be required to comply with the Board's leave-to-open requirements.

The approval of CCPI's Section 49 application by the Board would have no significance if the Board were not prepared to order TCPL to connect its system to the CCPI pipeline. The Board finds that the pipeline interconnection is in the public interest and that no undue burden would be placed on TCPL, if ordered to provide the interconnection. Accordingly, the Board has decided to order TCPL to connect its system to the CCPI pipeline, pursuant to Section 59(3) of the Act. Board Order MO-63-86 is set out in Appendix V.

CANADA

National Energy Board

Reasons for Decision

North Canadian Oils Limited

MH-2-88

May 1989

Tariff and Traffic

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North Canadian Oils Limited's Subsection 71(2) and 71(3) Applications

NCO's application pursuant to subsection 71(2) of the Act was based on two principal arguments. First, that in providing service to TCPL and denying it to NCO, Foothills discriminated unjustly against NCO. Second, the capability presently exists for Foothills to contract for greater volumes of gas and further capacity will be added with the addition of Station 393. In either case, NCO claimed to be entitled to the capacity it requested as it was the only one that could meet the access criteria for that capacity.

The subsection 71(3) application was an alternative form of relief requested from the Board by NCO in the event that the subsection 71(2) order was not granted.

3.1 Background

The evidence indicates the following events occurred:

- In its letter of 12 January 1988, TCPL notified Foothills of its election for the available capacity of 2.8 x $10^6 m^3/d$ (100 MMcf/d) commencing 1 November 1989 or such earlier date as may be agreed to between the two parties;

- On 29 April 1988, NCO requested service of two years and thirteen years, commencing 1 November 1988 for the initial two-year period. By letter dated 9 May 1988, Foothills advised NCO that TCPL had exercised its contractual rights under the 1980 Agreement to the remaining spare capacity commencing 1 November 1989 and that discussions were underway toward the provision of earlier service pursuant to the terms of the 1980 Agreement;

- On 17 May 1988, NCO reconfirmed its request for service for a two-year and thirteen-year period and moved up the initial commencement to 1 July 1988;

- In its letter of 26 May 1988, Foothills stated that TCPL had been informed that it would be expected to meet the same criteria as any other prospective shipper in order to exercise its option earlier than 1 November 1989 and that, if TCPL were unable to meet the criteria by 1 July 1988, Foothills would offer the spare capacity of 2.8 x $10^6 m^3/d$ (100 MMcf/d), available until November 1989, to other interested parties; and

- During cross-examination, Foothills stated that TCPL did not request service for 1 November 1988 until a meeting with its agent WGML on 17 March 1988. Foothills also stated that no formal written request was made until 15 June 1988 for the 1 November 1988 start date when TCPL executed the amendment to Appendix A of the 1980 Agreement. Foothills did not execute the amendment until October 1988.

3.2 Unjust Discrimination

NCO argued that Foothills discriminated in the provision of service by its treatment of TCPL's request to increase its capacity under its service agreement from 0 to 2.8 x $10^6 m^3/d$ (100 MMcf/d). In particular, NCO complained that the criteria for access which were applied to other potential shippers and NCO were not applied to TCPL. NCO further argued that such discrimination was unjust and contrary to section 67 of the NEB Act, but more importantly, section 68 of the NEB Act places the onus on Foothills to prove that such discrimination is not unjust. According to NCO, Foothills failed to discharge that onus.

The 1980 Agreement between Foothills and TCPL was discussed extensively during the debate on this issue at the hearing. Foothills and WGML maintained that the 1980 Agreement gave TCPL special rights and, therefore, any special treatment given to TCPL in accordance with those rights was not unjust. These companies held the view that TCPL's special rights were in consideration for the risks TCPL undertook for the financial backstopping of the prebuild facilities.

NCO's view was that the rights of TCPL under the 1980 Agreement were, as a result of the operation of Article 2.1 of that agreement, subject to the provisions of Foothills' applicable rate schedules and the General Terms and Conditions in Foothills' tariff. NCO believed that the access criteria that Foothills was applying to other requests for capacity should have been equally applicable to TCPL's request as those criteria were, implicitly or otherwise, necessarily an extension of Foothills' General Terms and Conditions. Once the criteria were adopted, NCO argued that they should have applied to all existing shippers as well as to potential shippers.

As an example of the different treatment given to TCPL, NCO pointed to the fact that, while Foothills testified that the criteria would apply to existing shippers who wished to increase their capacity, TCPL was exempted from the application of the criteria when it elected to increase its existing capacity from 0 to 2.8 x $10^6 m^3/d$ (100 MMcf/d). NCO considered TCPL's election to increase its capacity as being no different from a request by an existing shipper to increase its capacity.

The evidence at the hearing showed that Foothills treated TCPL's request as two separate requests:

- an election to commence service on 1 November 1989; and
- a request to commence one year earlier on 1 November 1988.

Foothills stated that it did not apply the access criteria to the 1 November 1989 request because TCPL had a contractual right to elect for spare capacity on 18-months' notice. On the other hand, Foothills treated the request by TCPL to commence service on 1 November 1988 as a request for new service for one year because abridging the 18-month notice period required Foothills' agreement. Accordingly, Foothills decided to apply the same access criteria as it did for requests by other potential firm shippers.

Foothills' 26 May 1988 letter to NCO explained that TCPL had until 1 July 1988 to meet the criteria, failing which, the space would be offered to others. One of those criteria, as discussed previously in these Reasons, required that downstream arrangements be in place. TCPL did not have firm downstream arrangements on the Northern Border pipeline. According to Foothills, there were no other shippers requesting that same capacity for that time period, therefore, TCPL's interruptible downstream arrangements were accepted as fulfilling that criterion. In view of such acceptance, Foothills agreed in October 1988 to the contract amendment which gave effect to the 1 November 1988 commencement date.

By not applying the access criteria to TCPL's election for service beginning 1 November 1989 and by applying more flexible criteria to TCPL's request to commence service on 1 November 1988, NCO maintained that Foothills gave TCPL preferential treatment. According to NCO, such treatment was not given to other potential shippers nor did Foothills communicate to potential shippers that a similarly flexible application of the criteria for access would be considered.

NCO maintained that it had met the criteria and is therefore entitled to the capacity ahead of any other potential shipper. It was also entitled to priority over TCPL by virtue of NCO being able to meet the criteria before TCPL.

Foothills countered that TCPL's rights arose by virtue of the 1980 Agreement and Foothills was obligated to accept TCPL's election on 12 January 1988. Foothills claimed to have a legal opinion which supported this view of the 1980 Agreement. That opinion was not filed. Instead, Foothills argued that the 1980 Agreement speaks for itself. In particular, Foothills maintained that the second paragraph of Article 1.1(a) of the 1980 Agreement provided TCPL with the right to elect any spare capacity on the system upon giving 18-months' notice. This election had priority over any request for spare capacity by other potential shippers or by existing shippers. WGML was in agreement with this view.

Foothills and WGML argued that the access criteria which were applied by Foothills to requests for capacity were not part of Foothills' tariff or General Terms and Conditions. Therefore, Article 2.1 of the 1980 Agreement did not apply to those criteria. Foothills further argued that the 1980 Agreement "...is an enforceable obligation on Foothills unfettered by any direct or indirect order of the Board."

Foothills also took the position that access policy is not a tariff matter within the meaning of section 60 of the Act. The better view, according to Foothills, is that access policy may be regulated under the Board's general powers under section 59. It was Foothills' view, that if an access policy is approved by the Board, those criteria would then be used in deciding whether a subsection 71(2) order should be issued.

In argument, Foothills stated that, as a result of the evidence presented during the proceedings, it was able to decide that NCO did not meet Foothills' criteria. In evidence during the proceedings, Foothills stated that it had not assessed whether NCO met the criteria. Foothills argued that, in any event, if the Board were to find that TCPL was not entitled to the capacity, then such capacity must be made available to other potential shippers in Foothills' queue. Foothills did not believe NCO was entitled to priority simply because it had filed a subsection 71(2) application. Foothills' queue list, as filed in the proceedings, showed NCO in the eighth position.

WGML's position was that there was no unjust discrimination because, at the time of NCO's request, there was no capacity available. The capacity which had been available was acquired by TCPL several months earlier as a result of TCPL's election. Conversely, at the time of TCPL's election, there was available capacity but no other requests.

Views of the Board

Providing Service Starting 1 November 1989

For the provision of service commencing 1 November 1989, Foothills accepted TCPL's election under its 1980 Agreement without requiring TCPL to meet any access criteria. Whether or not this was unjust depends on several matters, including whether:

i) the 1980 Agreement gave TCPL the right, upon 18-months' notice, to elect for the spare capacity that existed at the time of the election;
ii) that right had priority over any other requests for some or all of the same capacity;
iii) that right was subject to TCPL satisfying the access criteria applicable to other requests for capacity, whether or not the criteria were formally incorporated into Foothills' tariff or General Terms and Conditions; and
iv) the election was in effect before NCO made its request to Foothills for service.

The Board finds it unnecessary to determine the answer to these questions in view of its decision, as discussed in Section 3.3, that there will be sufficient capacity to accommodate both TCPL's and NCO's volumes. However, the Board has decided that such rights to capacity should not be provided to any shipper on Foothills' system. By its decision in Section 2.4, the Board has decided that Foothills should develop its criteria for access and include them in its tariff. Furthermore, no shipper may be exempt by contract from the application of those criteria. Therefore, any rights which TCPL may have pursuant to the 1980 Agreement will be subject to those tariff provisions.

Providing Service Starting 1 November 1988

All parties agreed that the contract did not give TCPL priority to capacity for the twelve-month period commencing 1 November 1988. Foothills decided that TCPL's request to commence service on 1 November 1988 should be treated as any other request for capacity because that start date was short of the 18-month notice period required by the 1980 Agreement to make an election. However, the evidence shows that, even after that decision was made, TCPL was given different treatment. Having shown that Foothills discriminated in the provision of service to TCPL, the burden then shifts, pursuant to section 68 of the Act, from NCO to Foothills to prove that such discrimination was not unjust.

At the time Foothills terminated its firm service queue on 31 December 1987, the criteria were applied more stringently than was the case when TCPL's request for service at an earlier commencement date was considered. The evidence shows that this willingness to be flexible was a change which Foothills instituted in early 1988 and was not generally communicated to potential shippers other than TCPL. The Board does not think it was reasonable, as was suggested by Foothills, that Foothills expect prospective shippers to continually communicate with the company for the purpose of determining any changes in its application of its previously distributed access criteria.

Foothills provided no reasonable explanation of why other prospective shippers were not offered the space that was available up to 1 November 1989 until TCPL had attempted to meet the access criteria by 1 July 1988. At the hearing, Foothills argued that no other shipper, including NCO, asked for capacity for that duration. It was not reasonable for Foothills to have expected NCO to ask for capacity for the period up to 1 November 1989 when Foothills' letter of 26 May 1988 clearly indicated that the capacity would only be available to others if TCPL were unable to meet the firm service criteria by 1 July 1988. During cross-examination, NCO stated that if the space had been offered to it, NCO would have taken it.

Although Foothills states that the queue was cleared on 31 December 1987, the queue list filed at the hearing shows that Foothills carried the requests from 1987 and 1988 forward for inclusion in the most up-to-date queue. Furthermore, Foothills testified that prospective shippers maintain their position in the queue indefinitely. Therefore, the Board does not accept WGML's view that there were no other requests for spare capacity at the time TCPL advised Foothills of its election for service commencing 1 November 1989. Moreover, the Board notes that the last paragraph of Foothills' 26 May 1988 letter to NCO states: "As to your request for service starting July 1, 1988 to November 1, 1989 we would apply the above criteria to offering such service and should inform you that other parties have also indicated an interest in becoming firm shippers." Therefore, the Board is not convinced that there were no other parties interested in the capacity for the period up to 1 November 1989.

The Board finds that in relation to the capacity available for the period up to 1 November 1989, TCPL's request for service was treated differently than previous requests from potential shippers and than the request from NCO. However, it is unnecessary for the Board to decide on whether Foothills has proven that the different treatment of requests for firm service with respect to this period was not unjust discrimination in view of the fact that NCO is requesting that Foothills provide service starting 1 November 1989. For the period 1 November 1989 and beyond, the Board has decided, for the reasons set out in Section 3.3, that there will be sufficient capacity to accommodate NCO's volumes.

Finally, the Board is not persuaded by Foothills' argument that, if a company other than TCPL is entitled to capacity, the capacity should be given to a company in the queue other than NCO. The Board must rely on the evidence presented at the hearing. Foothills' queue list provides evidence that Foothills received requests for service but it does not assist the Board in establishing priorities. Although the Board clearly set out in its list of issues for this hearing that it intended to examine who should be given priority, no party other than NCO and TCPL, through its agent WGML, provided evidence or asserted a claim to the capacity in question. TCPL is already on the system. NCO is the only other party that put forward evidence at the hearing on its ability to meet the access criteria and on its claim to priority.

3.3 Foothills' Capability to Transport NCO's Volumes

During the proceedings, there was considerable evidence presented regarding the capacity of Foothills' Zone 9 pipeline and whether the existing system could accommodate the NCO volumes. The evidence focussed on: system capability with and without Compressor Station 393; Foothills' security philosophy; the criteria for determining contractable capacity; seasonal design criteria; and existing tariff and contractual provisions of Foothills and Northern Border.

The Foothills Zone 9 facilities consist of 258.97 kilometres of 1 067-millimetre O.D. pipeline and 3 compressor stations. (See map in Appendix III). The stated capability of the system is 30.45 x $10^6 m^3/d$ (1075 MMcf/d). In August 1988, during a shutdown for scheduled maintenance and inspection, Foothills discovered a cracked seal in the compressor unit at Station 392. Foothills stated that had it not been detected, a major failure of the unit would have occurred. Foothills also stated that industry experience with a major failure of this particular type of unit resulted in the unit being down for six months while waiting for repairs. As a result of protracted maintenance and inspection at Station 392, Foothills curtailed its firm shippers' nominations for 25 days. In October 1988, Foothills applied for approval to construct Station 393 near Val Marie, Saskatchewan as a security unit for the Zone 9 facilities during scheduled or unscheduled shutdowns of any of the three existing stations. On 9 February 1989, Foothills received approval from the Northern Pipeline

Agency for an amendment to their system design manual which made provision for Station 393. Further authorization to construct was not required because the station was part of the original certificate.

Station 393 was originally intended to be in service in November 1989 for the 1989/90 heating season. Foothills has stated that the addition of the station provides no possibility of increasing the declared firm contractual capacity of Zone 9 above the current 30.45 x $10^6 m^3/d$ (1075 MMcf/d), after giving due consideration for unit outages. However, Foothills indicated that the station will result in a higher annual deliverability because of increased reliability and accordingly, greater opportunity for interruptible deliveries. Table 4.1 summarizes the Zone 9 capacities under various scenarios for the Foothills/Northern Border integrated system. The results are based on an analysis of flow diagrams provided by Foothills. The flow diagrams considered compressor station temperature limitations, compressor wheel curve limitations and their related impacts on throughputs as discussed during the hearing. The results show that the Zone 9 capacities are higher in the winter period than in the summer period and that, with the addition of Station 393, the capacities are even higher.

The original design of the Foothills system was based on a system-wide security philosophy. Under this security philosophy, a spare compressor at Jenner, Alberta, together with a by-pass of the stripping plants at Empress, Alberta, were used as back-up for an outage at any of the three compressors in Zone 9. Foothills has recently changed to a zonal security philosophy (i.e., individual zone-by-zone security) because of its concerns regarding the reliability of Station 392. In constructing Station 393 as a back-up unit for Station 392, the unit also acts as the zonal security unit for Zone 9.

At the hearing, the concerns regarding Station 392 focussed on the reliability of this industrial turbine and those of the aero-derivative turbines in Zone 9, including the Station 393 addition. Foothills' witnesses indicated that the aeroderivative units are very reliable and that they do not expect to have major problems with them. If there is a major failure, such as a problem with the gas generator, Foothills could replace it within one or two days. On the other hand, a failure of the industrial turbine unit at Station 392 would have major consequences. Based upon experience in the industry, a major failure of the unit could take up to six months to correct. As a result of the detection of the defect at Station 392, Foothills plans to implement a more rigourous annual inspection and maintenance of the unit. Although Station 391 becomes the most critical unit as a result of the switch to the zonal security philosophy, an outage at Station 392 is more critical if the outage is prolonged.

Table 4.1
Seasonal Capacities of Foothills' Zone 9 Stations With and Without Station 393 During Station Outages
$10^6 m^3/d$ (MMcf/d)

Zone 9 capacity * - without station 393			Zone 9 capacity * - with station 393		
Station outage	**July**	**January**	**Station outage**	**July**	**January**
NONE	29.40 (1038)	33.12 (1169)	NONE	31.09 (1098)	33.15 (1170)
391	19.74 (697)	22.99 (812)	391	26.82 (947)	30.33 (1071)
392	21.16 (747)	26.11 (921)	392	29.39 (1038)	33.11 (1169)
394	22.81 (805)	28.41 (1003)	393	29.40 (1038)	33.15 (1169)
			394	27.51 (971)	30.51 (1077)

* Foothills' capacity calculations are based on an integrated Foothills/Northern Border system

In relation to its zonal security philosophy, Foothills stated that the contractual capacity must not exceed the capacity of the system with all units operating. In particular, it should not exceed the capacity of the Foothills/Northern Border integrated system with all units operating. Generally, a flow loss caused by a unit outage in Zone 9 should not exceed ten percent of the contractable capacity. Foothills indicated that Northern Border used the same ten percent philosophy in its design.

However, Foothills has relaxed the ten percent criterion to twelve percent in the case of a Station 391 outage. In its evidence, Foothills stated that the criteria for determining contractable capacity is not intended to be absolutely or rigidly adhered to at all times, as some judgment is always necessary. Having relaxed its criteria, it is Foothills' judgment that any departure from the criteria would become too large if a contractable capacity greater than 30.45 x $10^6 m^3/d$ (1075 MMcf/d) were declared.

In addition, it was noted that the ten-percent factor is related to provisions in Foothills' tariff which provide for a billing abatement or refund of a portion of the demand charges if Foothills is unable to move more than ninety percent of a shipper's monthly nominations. If Foothills is unable to receive all of a shipper's nominations and such a deficiency is less than ten percent, the shipper is allowed to make up the receipt deficiencies in a later period. Foothills stated that, when Station 392 was out of service in August 1988, Foothills was within the ten percent parameter and the shippers were entitled to make up the receipt deficiencies.

NCO filed a study prepared on its behalf by Can-Eng Projects Inc. The study contained additional flow studies of Foothills' Zone 9 pipeline capacity using July, November and January ambient conditions. It was used by NCO to explore the validity of Foothills' data as well as to cross-examine of Foothills' interpretation of its pipeline capability data.

Although Foothills' design criteria is based on July ambient condition, NCO believed that Foothills' contractable capacity would be higher if it used January rather than July ambient conditions for its criteria. Both NCO and Foothills identified pipeline companies which use January or winter criteria and others which use July or summer criteria. Foothills argued that contracting on a January criteria would restrict Foothills' ability to meet its contractual firm requirements every month of the year except January and would affect the rights of existing shippers.

NCO noted that its contract with Northern Border provides for the shipment of 100 percent flows in the winter, 95 percent in the shoulder months and 90 percent in the summer. Therefore, NCO questioned the necessity of designing the Foothills' system to carry the full contract volumes all year round. In response, Foothills noted that the Northern Border tariff only provides for the lower quantities during planned maintenance and scheduled shutdowns. The remainder of the time, Northern Border is obliged to carry up to the contractual limits. Foothills therefore argued that it must still be capable of carrying the full contract volumes throughout the year.

NCO also questioned Foothills' witnesses regarding its ability to carry more gas through Zone 9 by relying on higher compression in Zone 6, if Foothills retained its system-wide security philosophy. Foothills argued that it could not carry more gas because, before Alberta gas can exit the province, the gas is required to go through stripping plants and must be decompressed in order to enter the plants.

In argument, NCO stated that it believed sufficient capacity currently exists to move its gas on the Foothills system and that the addition of Station 393 will add further capacity. NCO also indicated that any access order could be timed to the date of the commissioning of Station 393.

Views of the Board

The Board is not convinced by Foothills' evidence that it would not be able to transport the NCO volumes. Taking into consideration the existing firm and interruptible contracts and the nomination procedures on Foothills and Northern Border, there is no reason to believe that Foothills could not carry NCO's volumes at the present time. The Board also notes that during cross-examination Foothills indicated that during the past year it could have accommodated the NCO volumes.

In addition, the Board notes that when Foothills agreed to provide firm service to TCPL from

1 November 1988 to 1 November 1989, that decision was made with the knowledge that Station 393 would not be in service during that time period. The results of Table 4.1 show that, when Station 393 is added, the capacity and reliability will be increased by an amount which is greater than the volume which NCO wishes to ship. If Foothills is prepared to contract for the capacity with TCPL during that period when the capacity is lower, then the question which arises is why Foothills believes it cannot contract for additional volumes when Station 393 comes on stream and when the system capacity will be higher. Under these circumstances, the Board has not been persuaded by Foothills that there is no capacity available to accommodate the NCO volumes.

The Board also recognizes that, during the summer months, the ambient conditions result in lower pipeline capacities during that period. However, the Board also notes that shippers normally tend to have lower throughputs during these months as well. The experience on the Foothills system tends to support that general conclusion. Although it has been noted that the throughputs in July over the last two years have been at high load factors, the evidence tends to indicate that this is likely due to the increased sales by the firm shippers, in particular by Pan-Alberta Gas Ltd. under its settlement with United Gas PipeLine Company which expires at the end of June 1989, and as a result of increased interruptible sales in the export market.

During cross-examination, Foothills indicated that it expected the high level of sales to continue. However, the witness also admitted that Foothills does not prepare detailed analyses and forecasts of anticipated throughputs on its system. In view of this, the Board cannot rely on Foothills' expectation that the high level of volumes during July will continue in the manner of the past two years.

For these reasons, the Board has concluded that NCO's requested volumes could be accommodated on the Foothills Zone 9 pipeline with minimal risk or difficulty after the installation of Station 393. The Board also recognizes that, should the installation of Station 393 be delayed beyond the planned November 1989 in-service date, the delay would occur during the winter season when the pipeline capacity is somewhat higher than it would be during July.

In the event that a constraint occurs such that Foothills is unable to carry all the firm nominations, the applicable terms and conditions in the Foothills tariff shall apply equally to all firm shippers.

3.4 Term of the Subsection 71(2) Order

NCO requested an order commencing 1 November 1989 and continuing for a period of two years, followed by another period of thirteen years; or, alternatively, for a period of only two years initially. During that initial two-year period NCO would:

i) obtain the necessary regulatory approvals; and
ii) enter into the requisite gas sales contracts to demonstrate long-term markets.

Once these conditions are satisfied, NCO suggested that the Board could issue a further order for the balance of the fifteen years.

NCO's contract on the Northern Border pipeline is for 15 years which commenced in November 1988. NCO suggested that any mismatch of terms between the order and its Northern Border contract could be remedied by extending the Northern Border contract.

Views of the Board

The Board would much prefer to have continuing access to transportation on the Foothills system accomplished by means of a service agreement rather than by an order.

The Board set out in Chapter 2 what it believes are the appropriate criteria to be applied to requests for existing capacity. It is those criteria that are applicable to NCO's request for capacity. Given this, the Board is confident that Foothills and NCO will be able to enter into a long-term service agreement in the near future. This would subsequently render the subsection 71(2) order unnecessary. Therefore, the Board believes that an initial subsection 71(2) order with a two-year term is sufficient to accomplish this purpose. If, within the term of this order, NCO and Foothills execute a service agreement, either party may apply to have the order rescinded. If a service agreement is not executed, NCO may apply before the expiry of the order to have the term extended.

3.5 Decision

NCO has met the access criteria which the Board has found reasonable for requests for existing capacity and the Board is satisfied that sufficient capacity will exist with the installation of Station 393 to accommodate the requested volumes.

Consequently, on 10 April 1989, the Board decided to issue Order No. TG-3-89, requiring Foothills to receive, transport and deliver up to $1.4 \times 10^6 m^3/d$ (50 MMcf/d) of gas on behalf of NCO for a period of two years commencing 1 November 1989. In view of the Board's decision on the subsection 71(2) application, the Board also decided that an order pursuant to subsection 71(3) was not necessary.

The Board decided to issue its decisions in advance of these Reasons for Decision because the timing of the Board's decisions on the NCO applications could have affected the ability of NCO to respond to Foothills' requirements for expansion capacity and could have affected the potential shippers which may or may not be included in Foothills' expansion plans. A copy of the Board's letter of 10 April 1989 to the solicitors for NCO and a copy of Order No. TG-3-89 with the terms and conditions are contained in Appendix I of these Reasons for Decision.

CANADA

National Energy Board

Reasons for Decision

TransCanada PipeLines Limited

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Chapter 8

Northland Power Section 71

By application, dated 1 August 1991, Northland applied:

(a) pursuant to subsection 71(2) of the Act, for an Order of the Board requiring TransCanada to receive, transport and deliver 1 983.0 $10^3m^3/d$ (70.0 MMcfd) of gas for Northland on a firm basis for a twenty-year period, commencing 1 November 1993, from Empress, Alberta to the point of interconnection of the TransCanada and Centra Ontario systems for delivery to Northland's proposed Iroquois Falls, Ontario 350 MW power project ("the Iroquois Falls Project"); and

(b) pursuant to subsection 71(3) of the Act, for an Order of the Board requiring TransCanada to provide adequate and suitable facilities for receiving, transmitting and delivering the gas offered by Northland for transmission from Empress, Alberta to Northland's proposed Iroquois Falls Project.

Northland has made gas supply arrangements with seven western Canadian producers for a maximum daily volume of 2 593 $10^3m^3/d$ (91.5 MMcfd) over 20 years with a total term commitment of 15 889 10^6m^3 (561 Bcf).

Northland indicated that it had commenced negotiations with TransCanada in early 1991 with the aim of being included in the 1992-93 Facilities Application, although the service requested would not commence until the 1993-94 contract-year. Northland explained that the request for assured capacity, so far in advance of the in-service date of the Iroquois Falls Project, resulted from the Canadian Imperial Bank of Commerce's ("CIBC") position that no funds would be available for the Iroquois Falls Project without the approval the Board of the necessary TransCanada capacity. Northland added that, without the necessary CIBC funding, it could not commence construction. Northland testified that the CIBC's financing position stemmed both from the fact that Northland's size and stature gives it little financial clout to borrow the large sums of money required to finance these types of projects, and from the CIBC's need for additional assurances that the project would proceed. Northland had not approached other financial institutions to discuss project financing. However, its experience with other projects led Northland to expect a similar response from other institutions.

Northland noted that TransCanada's overriding reason for rejecting its service request was the absence of an executed agreement between Northland and Ontario Hydro for the purchase of the electricity to be produced by the Iroquois Falls Project.

Northland argued that throughout its negotiations with TransCanada, it had diligently and expeditiously tried to finalize all regulatory approvals and contractual arrangements, including Ontario Hydro's best available commitment to purchase the Iroquois Falls Project electric power output. Northland submitted that it does not view the absence of an executed Power Purchase Agreement as critical to the success of its project, given the strong letters of commitment it had received from Ontario Hydro at the time TransCanada was ready to file its 1992-93 Facilities Application in June 1991.(1)

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(1) Under covering letter dated 28 August 1991, Northland filed an executed binding Letter Agreement, dated 14 August 1991, between Northland and Ontario Hydro, whereby Northland has accepted the rates and commercial terms offered by Ontario Hydro for the power to be generated at Northland's Iroquois Falls Project.

Subsequent to the hearing, Ontario Hydro announced on 7 February 1992 that due to the success of demand management programs and a lower demand for electricity, it was deferring any non-utility generation that is not required. Ontario Hydro specifically identified Northland's Iroquois Falls project as one that was being placed on hold. Northland provided comments by letter dated 4 March 1992 in respect of the Ontario Hydro announcement.

In its response, Northland stated that subsequent to Ontario Hydro's announcement, Northland had initiated discussion with Ontario Hydro regarding a number of issues for which agreement had been previously reached. Northland acknowledged that if changes have to be made to its project to accommodate Ontario Hydro's new strategy, a delay of six months is possible. Northland stressed that from a "commercial necessity" viewpoint, it is of critical importance to Northland to obtain Board approval of its section 71 application for both financing reasons and in order to meet certain contractual dates to maintain its current gas supply arrangements.

Views of the Board

In the light of the recent announcement by Ontario Hydro to delay its purchase of electricity from the Northland Power Iroquois Falls Project, the Board is not satisfied that Northland has demonstrated the need for the requested facilities at this time. Therefore, the application pursuant to subsection 71(2) and 71(3) of the Act is denied. The Board notes that Northland is in third position in TransCanada's 1993-94 facilities application queue and will be brought forward by TransCanada at a future Part III proceeding if TransCanada is satisfied that Northland's project represents a sufficiently assured market for transportation services.

Decision

The Board denies Northland's application filed pursuant to subsection 71(2) and 71(3) of the Act.

Chapter 9
Disposition

The foregoing chapters constitute our Decisions and Reasons for Decision in respect of the applications heard by the Board in the GH-4-91 proceedings. The Board has found that the proposed facilities are and will be in the present and future public convenience and necessity. Therefore, the Board will recommend to the Governor in Council that a certificate be issued. The certificate will be subject to the conditions outlined in Appendix II.

Upon issuance of a certificate the Board will exempt the facilities, pursuant to section 58 of the Act, from paragraphs 31(c) and 31(d) and section 33 of the Act subject to the condition outlined in Appendix II.

R. Priddle
Presiding Member

J.-G. Fredette
Member

C. Bélanger
Member

CANADA

National Energy Board

Reasons for Decision

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Chapter 7

Renaissance Energy Ltd.'s Section 71 Application

By application dated 14 May 1996, Renaissance applied to the Board, pursuant to subsections 71(3) and 71(2) of the NEB Act for orders of the Board requiring TransCanada:

(a) to provide adequate and suitable facilities for Renaissance to transport up to 145.0 $10^3m^3/d$ (5.1 MMcfd) from Empress, Alberta to Emerson, Manitoba, commencing 1 September 1997; and

(b) to receive, transport, and deliver gas offered by Renaissance to TransCanada.

Renaissance's original request, dated 30 November 1995, for a ten-year term was not included in TransCanada's 1997-98 Facilities Application because TransCanada was not satisfied that Renaissance had demonstrated the existence of both long-term downstream take-away arrangements and markets. TransCanada was concerned that the Board may place it at risk for lost revenues due to any failure by Renaissance to access downstream arrangements.

Renaissance submitted that the gas to be transported would be used by the Winnipeg Division of Rogers Sugar to process sugar beets, for about five or six months out of the year (September to February). Renaissance and Rogers Sugar have entered into an amended five-year gas supply agreement commencing 1 September 1997. During the remaining months, referred to as the non-campaign period, Renaissance indicated that it hopes to utilize the TransCanada firm service capacity to deliver gas to Emerson to supply short-term export markets. Renaissance has entered into a gas supply arrangement with its subsidiary, REI, for the period 31 October 1997 to 1 November 2007, to supply 145 $10^3m^3/d$ (5.1 MMcfd) of gas.

Renaissance holds firm service agreements for the requisite upstream capacity on NOVA. Downstream transportation will be provided by currently available interruptible service on Centra Manitoba for domestic deliveries to Rogers Sugar and by Great Lakes and/or Viking on a short-term basis for export deliveries. REI will be responsible for obtaining U.S. pipeline capacity. With regard to Great Lakes capacity, REI relies on capacity held by its customers and on released or interruptible capacity. REI currently utilizes monthly interruptible transportation on Viking. Accordingly, firm service capacity has not been contracted for on Centra Manitoba, Great Lakes or Viking.

Renaissance's corporate supply pool will be utilized, under a corporate warranty, to meet the required volume. No reserves will be dedicated by Renaissance to Rogers Sugar. A summary of Renaissance's corporate supply pool was submitted together with a corporate supply and demand balance indicating sufficient supply is available to meet projected annual requirements.

Renaissance believed that it had demonstrated the existence of long-term markets and that it would be punitive for it to contract and pay for Great Lakes firm capacity when such capacity would only be used for six to seven months of the year. Renaissance advised TransCanada that it is prepared to provide such financial assurances as may reasonably be required by TransCanada to protect it from the risk of default on Renaissance's demand charge obligations.

Renaissance submitted that it would be appropriate for the Board to consider its application in TransCanada's 1997-98 Facilities Application. By letter dated 23 May 1996, after examining Renaissance's request for approval, the Board decided to refer Renaissance's section 71 application to the GH-3-96 proceeding.

Renaissance indicated that TransCanada's prevailing requirements concerning evidence of downstream transportation arrangements do not explicitly stipulate the term and type of transportation arrangements (firm or interruptible) which must be demonstrated. Renaissance pointed out that, in the past, TransCanada has demonstrated that it has the ability to be flexible as it has accepted evidence of interruptible arrangements on the downstream pipeline and it has also accepted a term of service on the downstream pipeline less than the term of the TransCanada contract.

Renaissance conceded that it does not have firm capacity on the Great Lakes system for the portion of the year that Rogers Sugar does not require gas, as Great Lakes does not offer six-month firm service. However, Renaissance stated that this does not mean it will be unable to move its gas to U.S. markets during the Rogers Sugar non-campaign periods. Renaissance indicated that it is very familiar with the transportation situation on Great Lakes. Reinaissance submitted that if it were not confident of being able to make the necessary downstream transportation arrangements when it needed to, then it would not have entered into the arrangement that it has with Rogers Sugar.

Renaissance further submitted that the circumstances surrounding its application are unique and that TransCanada's policies should be applied in recognition of those unique circumstances. To support this, Renaissance concluded that the Winnipeg facility has unusual gas requirements and suggested that the likelihood of encountering a Canadian industrial consumer who requires a firm gas supply for six months a year, who is situated in an area where there are few markets for the gas during the remainder of the year, and who is close to the international border and, to an interconnecting U.S. pipeline, is very low. Renaissance stressed that it was not applying for transportation to Emerson, in order to serve a year-round export market, but was applying for transportation to Emerson in order to allow it to serve, in a cost-effective manner, the needs of a domestic market. Renaissance argued that it was unreasonable, under these circumstances, for TransCanada to require Renaissance to demonstrate the same long-term firm, downstream capacity as is required from shippers serving long-term export markets.

In an effort to try and accommodate Renaissance's service request, TransCanada had offered firm service from Empress, Alberta to the Manitoba Delivery Area, with access to Emerson, Manitoba via a diversion. However, Renaissance found this offer to be unacceptable as TransCanada could not guarantee the reliability of the diversion to Emerson.

Renaissance acknowledged that, if TransCanada's capacity exceeds downstream take-away capacity, some of TransCanada's capacity will be underutilized. However, Renaissance noted that TransCanada has confirmed that it will have excess capacity to Emerson if the applied-for facilities are approved by the Board. As a result, Renaissance contended that it will not be creating any mismatch as a mismatch will already exist. Renaissance stated that it will actually be helping to allay TransCanada's concern by making deliveries to Rogers Sugar at Winnipeg for six months a year, during which period the remainder of the Emerson Shippers will have access to 145.0 $10^3m^3/d$ (5.1 MMcfd) more capacity on the Great Lakes system.

Renaissance also pointed out that its required volume is only 145.0 $10^3m^3/d$ (5.1 MMcfd). TransCanada has acknowledged that it would not be able to match upstream and downstream capacity to that degree.

Renaissance contended that Rogers Sugar, and the sugar industry in Manitoba, would benefit if the Board were to grant this application as Rogers Sugar would gain the economic benefits of more economically-priced gas.

Finally, Renaissance stated that this project is a unique situation and would have no precedential value. Renaissance submitted that the issue of precedential value is really the essence of TransCanada's concern. Renaissance urged the Board to consider its request on its own merits and leave the bigger issues such as the upstream and downstream matching principle and TransCanada's related Tariff and Queuing Procedures for another day.

TransCanada submitted that if the Board were to approve the section 71 application, it should do so having found that the case is unique and that the principle of TransCanada requiring assurance of downstream take-away capacity should be upheld. TransCanada further submitted that the approval should be treated as an exception and not be construed as a precedent for interpretation of the current tariff regarding the requirement that there be assurance of matching take-away capacity on downstream pipeline systems. TransCanada stated its concern regarding the impact of including Renaissance's request in the facilities application, as the Queuing Procedures would be ignored. TransCanada argued that history has shown that once rules and guidelines are relaxed it is only a matter of time before another "unique" project appears which may also request similar relaxation to accommodate its particular case. TransCanada submitted that, if the Renaissance request is approved, it would amount to preferential treatment relative to other shippers in the facilities application that did meet the requirements for inclusion.

TransCanada stated that it did not dispute the historical information that had been filed regarding Renaissance's ability to access release capacity on the Great Lakes system. TransCanada contended that there is not adequate assurance that the availability of such capacity will be sufficiently assured over the ten-year life of the FT contract that Renaissance is asking for, or that Renaissance will consistently be the winning Great Lakes service bidder. TransCanada also stressed its concern about the possibility of building redundant capacity to the Great Lakes interconnect without a matching increase in the downstream capacity. According to TransCanada, this would increase the likelihood of having more capacity going to, than leaving, Emerson. In such circumstances, TransCanada submitted, there is the potential that Renaissance would displace existing Canadian gas sales to that point, leading to underutilization of TransCanada's facilities. TransCanada also indicated that the risk of displacement of existing Canadian volumes also exists in situations where Renaissance is successful in obtaining released capacity on Great Lakes, if a displaced shipper is not able to access another point on the system via a diversion. TransCanada conceded that it is the relatively small volume in this case that tends to minimize this concern and that it is not unreasonable to mismatch upstream and downstream capacity by 142 $10^3m^3/d$ (5.0 MMcfd).

TransCanada submitted that the Great Lakes system is extremely tight and TransCanada does not expect interruptible transportation to be available on the Great Lakes system, particularly in the initial year of the term.

TransCanada indicated that, assuming the applied-for facilities are to be approved, sufficient system excess to accommodate Renaissance's request would apply to 1997-98 only and that, at this point, it could not determine whether additional facilities in the future would be required.

None of the other shippers objected to Renaissance's section 71 application. Manitoba's Economic Development Board Secretariat supported Renaissance's request and indicated that approving the application would assist Rogers Sugar and allow the sugar industry to remain viable.

CAPP submitted that the Renaissance application should be granted based on the facts of the case. CAPP further submitted that the broader issues which concern TransCanada can and will be addressed at another time.

Views of the Board

The Board is of the view that TransCanada acted in accordance with its Tariff in assessing Renaissance's request for service to Emerson, Manitoba. The Board notes that Renaissance was unable to demonstrate the existence of long-term firm downstream transportation. As expressed in past decisions including GH-5-89 and GH-4-91, the Board continues to believe that TransCanada is in the best position to assess the risks associated with the individual projects underpinning an expansion of its facilities and, in particular, to determine the risk associated with the recovery of demand charges. The Board continues to believe that TransCanada should have the discretion to determine whether there is reasonable expectation of a long-term requirement for capacity expansion.

The Board, however, notes that potential shippers, believing that a strict application of the Tariff results in undue hardship, may always approach the Board to review the actions of TransCanada. Where the Board considers that the public interest is best served by a different interpretation of the Tariff, it may intervene. Such a decision by the Board will generally be made on a case-by-case basis upon examination of all relevant factors including, without limitation, the nature of the specific service request, the impact of the request on the existing system and shippers, the risk of under-utilized facilities, the cost of providing the service, and the likelihood of the Board receiving a large number of similar requests. In appropriate circumstances and at its discretion, the Board will grant the request that would not have precedential value.

The Board acknowledges TransCanada's concern regarding the possibility of building redundant capacity to the Great Lakes interconnect without a matching increase in the downstream capacity. According to TransCanada, this would increase the likelihood of displacing existing gas sales, leading to underutilization of TransCanada's facilities. The risk of displacement of existing volumes also exists if a shipper is successful in obtaining released capacity on the Great Lakes system, as a displaced shipper may be unable to access another point on the system via a diversion.

The Board notes that the relatively small volume in this case tends to minimize the concern related to the principle of matching upstream to downstream capacity, as TransCanada is unable to match volumes to such a degree.

The Board also notes that TransCanada was not opposed to Renaissance's request for FT transportation service, to the extent that it is a unique case and that the principle of TransCanada requiring assurance of downstream take-away capacity is upheld. The Board acknowledges Renaissance's argument that this project is a unique situation. In addition, the Board agrees that the likelihood of encountering a project which is similar in nature to the Renaissance project is low.

The Board has also taken into consideration the following facts: Renaissance has advised TransCanada that it is prepared to provide such financial assurances as may reasonably be required by TransCanada to protect it from the risk of default on Renaissance's demand charge obligations; the volume in question is small and the risk of related displacement is minimal; Renaissance is one of Canada's top producers and is an experienced shipper and marketer; no party opposed the application; and, Renaissance applied for transportation to Emerson, Manitoba in order to allow it to serve, in a cost-effective manner, the needs of a domestic market. The Board is also of the view that approval of Renaissance's application would benefit Rogers Sugar and the sugar industry and, thus, is in the public interest.

Decision

The Board approves Renaissance's application, pursuant to subsection 71(2) of the NEB Act, contingent upon Governor in Council approval of the issuance of a certificate. The Board directs TransCanada to receive, transport and deliver gas offered by Renaissance to TransCanada of up to 145.0 $10^3m^3/d$ (5.1 MMcfd) from Empress, Alberta to Emerson, Manitoba, commencing 1 November 1997 in accordance with the existing FT Toll Schedule. An order will be issued by the Board subsequent to Governor in Council approval of the issuance of a certificate in respect of TransCanada's 1997-98 Facilities Application.

However, the Board wishes to stress that it will review every application on a case-by-case basis. The granting of this section 71 application is an exception and should not be construed as a precedent for interpretation of TransCanada's *Transportation Tariff,* including the Queuing Procedures, or the Board's *Guidelines For Filing Requirements* regarding the requirement that upstream and downstream capacity should mirror TransCanada's transportation service contracts. In addition, the granting of this section 71 order does not suggest that capacity release provisions on U.S. pipelines will necessarily constitute satisfactory evidence of downstream take-away capacity.

The Board encourages parties to address the broader issues of the upstream and downstream matching principle and TransCanada's related *Transportation Tariff* and Queuing Procedures.

As TransCanada has confirmed that no facilities, beyond those already proposed by TransCanada, are required for 1997-98 to accommodate Renaissance's transportation request, it is not necessary for the Board to order TransCanada, pursuant to subsection 71(3) of the NEB Act, to provide adequate and suitable facilities for Renaissance.