National Energy Board
Reasons for Decision

TransCanada PipeLines Limited

Application Dated 5 February 1988 for Tolls

RH-1-88 Phase II

June 1989

Cat. No. NE 22-1/1989-8E ISBN 0-662-17160-8

This report is published separately in both official languages.

Ce rapport est publié séparément dans les deux langues officielles.

Copies are available on request from

Exemplaires disponibles auprès du:

Regulatory Support Office

Bureau du soutien de la réglementation

National Energy Board
473 Albert Street

Office national de l’énergie
473 rue Albert

Ottawa Canada
K1A 0E5
(613) 998-7204

Printed in Canada

Ottawa (Canada)
K1A 0E5
(613) 998-7204

Imprimé au Canada

Recital and Appearances

IN THE MATTER OF the National Energy Board Act and the Regulations made thereunder; and

IN THE MATTER OF an application by TransCanada PipeLines Limited for certain orders respecting tolls under Sections 50, 51 and 53 of the National Energy Board Act; and

IN THE MATTER OF National Energy Board Directions on Procedure RH-1-88.

HEARD at Calgary, Alberta on 9, 10, 11, 12, 13, 16, 17, 18, 19 and 20 January and at Ottawa, Ontario on 30 and 31 January and 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23 and 24 February and 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22 and 23 March and 3, 4, 5, 6, 7, 10 and 11 April 1989.

BEFORE:

R. Priddle	Presiding Member
A.D. Hunt	Member
W.G. Stewart	Member

APPEARANCES:

J.W.S. McOuat, Q.C. R.B. Cohen J.S. Koskie	TransCanada PipeLines Limited
C.K. Yates D.E. Crowther	Canadian Petroleum Association
A.S. Hollingworth	Independent Petroleum Association of Canada
P.C.P. Thompson, Q.C. B.A. Carroll	Industrial Gas Users Association
L.E. Smith J. Lowe	Alberta Northeast Gas Export Project
T.G. Kane W. Brackett	ANR Pipeline Company
L.E. Smith	ATCOR Ltd.
J.M. Pelrine	British Columbia Petroleum Corporation
L.E. Smith M. Hopkins	Boundary Gas, Inc.

M.M. Peterson F. Maxim	C-I-L Inc.
R.J. Hunt	CanStates Energy
A.M. Bigué	Champlain Pipeline Company

.

J.H. Farrell D.W. Sooley	The Consumers' Gas Company Ltd.
J. Ryan	Cyanamid Canada Inc. and Cyanamid Canada Pipeline Inc.
A.R. Fraser	Dome Petroleum Limited
T. Tippacott	Dow Chemical Canada Inc.
W.T. Houston	Eastern Canada Natural Gas Brokers Inc.
L.E. Smith	Enron Canada Ltd.
R.P.J. Gaetz	Esso Resources Canada Limited
J. Hopwood, Q.C.	Foothills Pipe Lines (Yukon) Ltd.
L.-C. Lalonde	Gaz Métropolitain, inc.
M.M. Peterson W. Fruehauf	General Chemical Canada Ltd.
J.D. Brett	Greater Winnipeg Gas Company and ICG Utilities (Manitoba) Ltd.
J.H. Smellie D.K. Wilson	ICG Utilities (Ontario) Ltd.
D.M. Masuhara	Inland Natural Gas Co. Ltd.
F.W. Lowther B.L. Webb	Iroquois Gas Transmission System
S.J. May J.A. Horte	Metro Gaz Marketing, inc.
G.J. Baker	Natural Gas Pipeline Company of America
E.B. McDougall	Northern Border Pipeline Company
L.L. Manning	North Canadian Marketing Inc.
A.S. Hollingworth J. Snider M.L. Himmelspach	Northridge Petroleum Marketing, Inc.
J. Hopwood, Q.C. H. Williamson	NOVA Corporation of Alberta
J. Lowe	Ocean State Power and Ocean

L.E. Smith	State Power II
K.L. Meyer	Pan-Alberta Gas Ltd.
S. Miller	Petro-Canada Inc.

T.M. Hughes	Polysar Limited
W. Fruehauf	PPG Canada Inc.
N.W. Boutillier	ProGas Limited
D.G. Hart, Q.C.	PSR Gas Ventures Inc.
H.R. Huber	Saskatchewan Energy Corporation
N.P. Aurini	Shell Canada Limited
L.E. Smith	Simplot Chemical Company Ltd.
M. Robson	Société d'Electrolyse et de Chimie Alcan Limitée (SECAL)
S. Schulli	Tarpon Gas Marketing Ltd.
N.J. Schultz	Tennessee Gas Pipeline Company and Midwestern Gas Transmission Company
C.C. Buchanan	Texaco Canada Resources
D.A. Brown G. Goldlist	TOPGAS Holdings Limited and TOPGAS Two Inc.
W.G. Burke-Robertson, Q.C.	TransContinental Gas Pipe Line Corporation
L.-A Leclerc	Trans Québec & Maritimes Pipeline Inc.
P. Gilchrist D. Murphy	Union Gas Limited
A.M. Bigué S. Struthers	Vermont Gas Systems, Inc.
A.R. Androsoff	Westcoast Energy Inc.
P. McCunn-Miller G. McNamara S.F. McAllister	Alberta Petroleum Marketing Commission
W.T. Houston	Consumer and Corporate Affairs, Director of Investigation and Research
V. Black B.G. Armstrong, Q.C.	Minister of Energy for Ontario
J. Giroux J. Robitaille	Procureur général du Québec

R. Graw
D. Bursey

National Energy Board

Table of Contents

Tables

List of Appendices

Abbreviations

A&G	Administrative and General
ABP	Alberta Border Price
ACQ	Annual Contract Quantity Service
AFUDC	Allowance for Funds Used During Construction
APMC	Alberta Petroleum Marketing Commission
Base Year	1 January to 31 December 1987
Board, NEB	National Energy Board
Boundary	Boundary Gas, Inc.
CanStates	CanStates Energy
CBRS	Canadian Bond Rating Service
CCA	Capital Cost Allowance
CD	Contract Demand
CGA	Canadian Gas Association
CGRI	Canadian Gas Research Institute
C-I-L	C-I-L Inc.
Champlain	Champlain Pipeline Project
CMP	Competitive Marketing Program
Consumers Gas	The Consumers’ Gas Company Ltd.
CPA	Canadian Petroleum Association
CWNG	Canadian Western Natural Gas Limited
Cyanamid	Cyanamid Canada Inc. and Cyanamid Canada Pipeline Inc.
DCF	Discounted Cash Flow
EAA	Energy Administration Act
Encor	Encor Energy Corporation Inc.

FCA	Fuel Cost Adjustment

FERC	Federal Energy Regulatory Commission
FS	Firm Service
FST	Firm Service Tendered
FTA	Canada-United States Free Trade Agreement
GCCL	General Chemical Canada Limited
GJ	gigajoule
GMi	Gaz Métropolitain, inc.
GPIS	Gas Plant in Service
GPUAR	Gas Pipeline Uniform Accounting Regulations
GPUC	Gas Plant Under Construction
Great Lakes	Great Lakes Gas Transmission Company
GWG	Greater Winnipeg Gas Company
ICG (Manitoba)	ICG Utilities (Manitoba) Ltd.
ICG (Ontario)	ICG Utilities (Ontario) Ltd.
IGUA	Industrial Gas Users Association
IPAC	Independent Petroleum Association of Canada
IPEL	International Pipeline Engineering Limited
IS	Interruptible Transportation Service
IS-1	Tier One Interruptible Transportation Service
IS-2	Tier Two Interruptible Transportation service
km	kilometre
kPa	kilopascal
LDC	Local Distribution Company
Long-Canada	Long-Term Government of Canada Bond
Mcfd	Thousand Cubic Feet Per Day
MMcfd	Million Cubic Feet Per Day

10^6m^3	Million Cubic Feet

NCMI	North Canadian Marketing Inc.
NEB Act	National Energy Board Act
Northridge	Northridge Petroleum Marketing, Inc.
NOVA	NOVA Corporation of Alberta
NZ	New Zealand
OD	Operating Demand
ODV	Operating Demand Volume
OEB	Ontario Energy Board
Ontario	Minister of Energy for Ontario
PAA	Administration Act
Polysar	Polysar Limited
PPG	PPG Canada Inc.
ProGas	ProGas Limited
PS	Peaking Service
RFSF	Request for Service Form
SaskEnergy	Saskatchewan Energy Corporation
SGR	System Gas Resale
SGS	Small General Service
STS	Storage Transportation Service
TAA	Transportation Administration Agreement
T-ACQ	Transportation Annual Contract Quantity
TCPL, the Company	TransCanada PipeLines Limited
10^3m^3	Thousand Cubic Metres
Test Years	1 January to 31 December 1988, and 1 January to 31 December 1989
TOA	Transportation Operating Agreements

TransGas	TransGas Limited
TWS	Temporary Winter Service
Union	Union Gas Limited
United	United Gas Pipe Line Company
WGML	Western Gas Marketing Limited

Overview

(NOTE: This overview is provided solely for the convenience of the reader and does not constitute part of this Decision or the Reasons, to which readers are referred for the detailed text and tables).

The Application

Due to the number of issues to be examined in RH-1-88 the Board divided the proceedings into two phases. Phase I dealt with certain toll design and tariff matters, including selfdisplacement, as well as the disposition of excess revenues received by TCPL in 1987. The Board's Decision on Phase I was issued in January 1989.

In Phase II the Board has addressed the revenue requirement and tolls for the 1988 and 1989 test years and several toll design and tariff matters such as capacity brokering and queuing.

The Hearing

The Phase II hearing lasted 51 days. The proceedings opened in Calgary on 9 January 1989, for two weeks, and reconvened in Ottawa from 30 January to 11 April 1989.

Revenue Requirement

The revenue requirement for 1989, net of miscellaneous revenue, was forecast by TCPL to be $889.9 million. The approved 1989 revenue requirement is $836.2 million. $29.4 million of the $53.7 million reduction results from the higher than expected excess revenue that TCPL collected from the interim tolls that were in place during 1988 and the first half of 1989.

The approved revenue requirement for toll design purposes for 1989 of $836.2 million is $272.9 million less than the approved revenue requirement for the 1987 base year. The main factors contributing to this decrease are reduced Transmission by Others costs, reduced Income Taxes and the adjustment necessary to offset the excess revenues received by TCPL from interim tolls in 1988.

Decision on Tolls

The approved tolls to the Eastern Zone are 31.9 percent lower than the approved tolls for the base year and 11.3 percent lower than the tolls applied for.

The Board has decided to maintain the current toll design for export and domestic gas. However, the Board has directed TCPL to charge a point-to-point toll for export volumes delivered to Dawn, Ontario.

In the calculation of tolls for FST (formerly ACQ Service), the Board approved the inclusion of an upstream differential using the cost of downstream storage as a surrogate for the cost of upstream storage. The Board also approved TCPL's proposal to allocate fixed costs to the Eastern zone for FST based on 100 percent of the average winter day volume.

For toll design purposes the Board found it appropriate that 50 percent of TCPL's administrative and general expenses should be allocated on the basis of fixed volume allocation units and 50 percent on the basis of fixed volume-distance allocation units. The Board directed TCPL to study this issue further, taking into consideration customer and contract-related factors.

The Board accepted TCPL’s proposal to base the STS toll calculation on current test-year costs rather than historical costs.

The Board approved the proposed delivery pressure tolls and agreed that the toll for the movement of the compressor fuel used to increase the pressure should be excluded from the delivery pressure tolls.

Tariff Matters

The Board accepted the transportation contracts between TCPL and WGML because it found that the contracts did not result in any significant advantages to WGML that are not available to other shippers.

The Board removed certain restrictions on the diversion of gas such as the "between-affiliate" condition and the condition that TCPL is not required to agree to an upstream diversion during the period 15 December to 15 March. The Board considered that the removal of the restrictions allows shippers an opportunity to increase their load factors and permits more effective use to be made of excess capacity.

The Board decided not to implement a capacity brokering mechanism at this time because it would result in added costs to the producers and shippers and would not be in the public interest.

However, the Board has decided to permit assignments at a discount negotiated between the assignor and assignee as long as the toll approved by the Board is paid to TCPL.

The Board has directed TCPL to submit revised queuing procedures by 1 October 1989. The procedures proposed by TCPL afforded it too much discretion to deny a shipper entry into the queue.

The Board found that SGRs do not confer a transportation benefit on the parties involved that is not available to other shippers. The Board determined that SGRs do not contravene the NEB Act and therefore decided not to interfere with them.

Rate of Return

The Board denied TCPL’s request for an increase in the deemed equity component of its capital structure from 30% to 32.5%.

The Company requested a rate of return on common equity of 14.50% for 1989. The Board approved a rate of 13.75%, an increase of one-half of one percent over the previouslyapproved rate of 13.25%.

The Company has entered into a complex debt issue involving a swap with New Zealand dollars. This transaction provides for a guaranteed capital gain of approximately $20 million, which TCPL proposed to recognize when realized in 1993. The Board decided to recognize this gain over the term

of the borrowing. This decision results in a reduction in the funded debt rate from the rate of 13.57% applied for to 13.26%, representing a reduction of approximately $4 million per annum in the revenue requirement. The provision for flow-through income taxes was reduced to reflect this transaction and the amount of the gain recognized in advance is to be included in rate base until the gain is actually realized.

Operating Costs

Transmission by Others expense has been reduced by $7.4 million in anticipation of lower tolls on the Great Lakes System effective 1 July 1989 and to reflect the delay in the probable
date for commencement of the 62 500 MMcfd annual contract quantity service from 1 March
1989 to 1 July 1989.

Adjustment to person-year vacancy allowances, advertising and research and development expenses further reduced costs by $1.2 million.

Interim Revenue Adjustments

As a result of the Board's decisions, the revenue surplus for the 1988 test period, including carrying costs, was increased from $19.2 million to $47.4 million.

As well, the Board has estimated that under the approved interim tolls TCPL will have incurred a revenue deficiency for the period 1 January to 30 June 1989 of approximately $1.7 million. The net variance for the two periods, together with carrying charges at the unfunded debt rate, has been credited to the tolls for the period 1 July to 31 December 1989.

Chapter 1

Background and Application

On 14 July 1988 the Board issued Amending Order AO-2-RH-1-88 to Hearing Order RH1-88 which established the timing and filing requirements for Phase II of the hearing. On 12 August 1988 the Board issued Hearing Order GH-4-88 dealing with an application by TCPL for new facilities. Because the Board considered it preferable not to schedule two major hearings involving TCPL at the same time, it further amended Hearing Order RH-1-88 by issuing Amending Order AO-3-RH-1-88 which postponed the commencement of Phase II from 7 November 1988 to 28 November 1988.

By letter dated 25 August 1988, TCPL requested an extension of the filing date for the rate of return evidence from 8 September 1988 to 30 September 1988. The Board granted the request and issued Amending Order AO-4-RH-1-88 establishing the new date for filing of rate of return evidence.

On 26 September 1988, TCPL requested an extension of the filing date for responses to information requests from 30 September 1988 to 11 October 1988. The Board granted TCPL's request and issued Amending Order AO-5-RH-1-88 which set out a new filing timetable for Phase II of the hearing.

On 23 September 1988 the Board advised interested parties of its intention to hold a pre-hearing conference to discuss procedural matters, to clarify responses to information requests and to provide for an exchange of documents among parties. Attached to the letter was Appendix IV, as amended, to Order AO-2-RH-1-88 which replaced the initial list of issues with a revised list of issues to be considered during the hearing.

The pre-hearing conference was held in Ottawa on 18 October 1988. Following the pre-hearing conference, the Board issued a letter dated 26 October 1988, which set out the Board's decisions concerning procedural matters raised at the conference. Most notably the Board elaborated on certain issues it expected parties to address in Phase II. In addition, the Board attached Amending Order AO6-RH-1-88 which made further changes to the timing and filing requirements.

Earlier, on 12 October 1988, IPAC had filed a Notice of Motion seeking an adjournment of the commencement of Phase II from 28 November 1988 to 9 January 1989. In the Board's letter of 26 October 1988, addressing matters which arose out of the pre-hearing conference, the Board also responded to the IPAC motion. The Board stated that it was denying IPAC's motion and adopting a compromise solution put forward by TCPL at the pre-hearing conference whereby the Board would hear rate of return evidence commencing on 28 November 1988 following which it would adjourn and resume hearing the balance of the evidence on 9 January 1989.

On 19 October 1988 TCPL filed a Notice of Motion, together with supporting material, requesting an order of the Board clarifying that the provisions of the Board's Draft Rules of Practice and Procedure do not

require TCPL to file consolidated and/or nonconsolidated financial information and in any event declaring that the filing of a utility financial statement would satisfy whatever requirements there were. The Board's decision on the motion was contained in its letter to TCPL dated 21 October 1988. The Board denied TCPL's motion and directed TCPL to file its consolidated financial information as required under Part V of Schedule II of the Draft Rules of Practice and Procedure.

On 10 November 1988 TCPL requested an order establishing new interim tolls effective 1 January 1989. Accordingly, the Board issued Order AO-3TGI-55-87 establishing new interim tolls effective 1 January 1989. The new interim tolls were based on TCPL's 1989 forecast revenue requirement adjusted to reflect the then approved rate of return. TCPL had applied for new interim tolls using its applied-for rate of return.

On 21 November 1988 TCPL advised the Board that it was unable to proceed with its rate of return evidence as scheduled and requested that the Board adjourn the commencement of the entire Phase II portion of the hearing until 9 January 1989. In addition, TCPL noted that many of the intervenors were also unable to meet filing deadlines. In responding to TCPL's request the Board stated, in its letter of 22 November 1988, that it recognized the difficulty in proceeding under the circumstances and therefore agreed to the adjournment as requested. Accordingly, the Board issued Amending Order AO-7-RH-1-88 outlining these changes.

In addition to the TCPL toll application, the Board considered two other applications during Phase II. The first was an application by Northridge Petroleum Marketing, Inc., dated 12 December 1988, requesting an order of the Board, pursuant to subsections 19(2), 71(2) and section 20 of the NEB Act, requiring TCPL to receive, transport and deliver gas offered by Northridge for transmission through the TCPL system from Empress, Alberta to Emerson, Manitoba.

On 18 April 1989, the Board granted the Northridge application. The Board's Decision on the Northridge application is included in these Reasons for Decision as Appendix XIII.

The second application was by Union Gas Limited, dated 23 January 1989, requesting an order of the Board pursuant to subsections 19(2) and 71(2) of the NEB Act requiring TCPL, as of 1 February 1989, to receive, transport and deliver gas offered by Union on the same terms and conditions as its then-existing "CD and ACQ Service Contracts" with the exception of certain terms and conditions as set out in the application. The purpose of the application was to obtain the associated transportation capacity on the TCPL system to accommodate a newly-negotiated gas purchase contract between Union and WGML. Union had been unable to negotiate a transportation service contract with TCPL prior to applying to the Board.

Since the application raised a question of urgency, the Board heard representations from interested parties on 31 January 1989 with respect to the interim relief sought by Union. After hearing the motion the Board granted the interim relief as requested. On 1 February 1989 the Board issued Order TGI-1-89 requiring TCPL to receive, transport and deliver gas offered by Union, as of 1 February 1989, on terms and conditions as set out in the order. The order was to remain in effect until the Board's final decision in respect of the Union application. A copy of Order TGI-1-89 is attached to these Reasons for Decision as Appendix XIV.

On 3 April 1989 Union informed the Board that it had reached a tentative agreement with TCPL regarding transportation arrangements on the TCPL system. Accordingly, Union, with the concurrence of TCPL, requested that its application for an order pursuant to subsection 71(2) be adjourned for 60 days to enable the parties to finalize their contractual arrangements. The Board granted the adjournment.

On 20 June 1989 Union advised the Board that the parties had executed a transportation service contract and therefore it wished to withdraw its application. The Board acceded to Union's request to discontinue its

application and accordingly rescinded Order TGI-1-89 by issuing Order ROTGI-1-89 which is attached as Appendix XV.

Chapter 2

Revenue Requirement for 1989

TCPL applied for new tolls for the period 1 January 1988 to 31 December 1989 using a base year ending 31 December 1987. TCPL's tolls were made interim, effective 1 January 1988, by Order TGI-55-87 as amended by AO-1-TGI-55-87. The interim tolls were revised, effective 1 July 1988, by AO-2-TGI-55-87, to reflect the Board's decisions, in Phase I of these proceedings, regarding the disposition of 1987 excess revenues.

TCPL applied to have the 1988 interim tolls made final tolls with any variance between the approved 1988 revenue requirement and the revenues recovered under the interim tolls to be included as an adjustment to the 1989 revenue requirement.

Since the Board has approved new tolls to be effective 1 July 1989, the interim revenue adjustment included in the 1989 revenue requirement covers both the 1988 test year and the period from 1 January to 30 June 1989.

A summary of the approved revenue requirement for the 1989 test year, together with the Board's adjustments, is shown in Table 2-1. The details of the revenue requirement for the 1988 test year and the calculation of the interim revenue adjustment are provided in Chapter 6. Details of the Board's other adjustments to the 1989 test-year revenue requirement are provided in Chapters 4 and 5.

Chapter 3

Rate Base and Depreciation

The Board's adjustments to rate base for the 1989 test year are summarized in Table 3-1. The details of the adjustments are explained in the sections following the table.

3.1 Gross Plant

3.1.1 Amortization of Pipeline Internal Inspection Tools Inventory

In 1987, TCPL closed its pipeline monitoring department and sold the general assets of the department to IPEL-KOPP International Pipeline Service. The pipeline internal inspection parts were also offered to IPEL-KOPP but the Company did not purchase them. The parts were not offered for sale to anyone else as they are unique to the particular inspection tool used on TCPL. They are still of value to TCPL since IPEL-KOPP will perform TCPL's pipeline inspection service for three years utilizing these parts.

TCPL proposed to amortize the inventory of these parts to the revenue requirement over three years.

The Company maintained that three years is a reasonable estimate of the continued utility of the internal inspection parts because there is considerable interest in the development of new on-line inspection tools and there are new companies in the market offering pipeline inspection services.

At the end of the agreement with IPEL-KOPP, TCPL expects to have contract specifications in place so that outside companies can bid to perform TCPL's inspection services. However, if TCPL is not satisfied with the available inspection services, the parts will still be available for use by TCPL.

Views of the Board

Because of the potential for the development of new internal inspection technology, the Board agrees with TCPL that the amortization of the existing parts inventory over a three-year period is reasonable.

Decision

The Board approves the amortization of the inspection tools inventory as proposed by TCPL.

3.1.2 AFUDC and Overhead

TCPL proposed a change in the method used for estimating the AFUDC and overhead to be included in rate base during the test years. The proposed method is based on a monthly forecast of direct costs for work in progress and the expected date that the projects will be transferred to GPIS. This method will be used to forecast AFUDC and overhead for the

test years and is similar to the method used to calculate the actual AFUDC and overhead included in GPUC.

Under the previous method, approved in RH-1-84, AFUDC and overhead were based on estimates of direct expenditures which would be transferred to GPIS during the test year together with a weighting factor based on five years of historical construction experience. TCPL stated that when this methodology was adopted it did not have the capability to forecast cash flow which is now available.

Views of the Board

The Board agrees that the proposed method, using the projected cash flow of construction expenditures, should enable TCPL to estimate more accurately the AFUDC and overhead to be included in the rate base for the test years.

Decision

The Board approves TCPL's proposed methodology, based on anticipated cash flows, for estimating the test-year AFUDC and overhead amounts.

3.1.3 Forecast of Test-Year AFUDC

Decision

The calculation of AFUDC related to capital additions for the 1988 and 1989 test years has been adjusted to reflect the approved rate of return on rate base (see sections 4.6 and 6.1.2.6).

The Board has reduced the 1988 AFUDC by $61,000, the depreciation expense by $2,000 and the related accumulated depreciation by $1,000. The Board has also reduced the 1989 AFUDC by $221,000, the depreciation expense by $6,000 and the related accumulated depreciation by $2,000.

3.2 Working Capital

TCPL estimated its working capital for the 1989 test year to be $73,386,000. The Board's adjustment to working capital is shown in Table 3-2 and explained in section 3.2.1.

3.2.1 Cash Working Capital

TCPL requested a cash working capital allowance equal to one-twelfth of operation and maintenance expenses net of gas-related costs, toll-hearing expenses and non-cash items. In support of its request TCPL submitted a lead-lag study. The requested allowance of one-twelfth of net operation and maintenance expenses is unchanged from the level approved in the RH-3-86 Decision.

The lead-lag study reflected both mail lag and the lag resulting from the requirement to make remittance of payroll withholdings twice monthly.

In the final update to its application, TCPL corrected the calculation of

the cash working capital allowance by deducting the amortization of unfunded pension expense of $313,000 in determining the net operation and maintenance expense.

Decision

The Board has reduced the cash working capital allowance by $100,000 as shown in Table 3-2.

3.2.2 Valuation of Line Pack

TCPL valued the line pack included in rate base at $1.90/GJ. The total value of line pack is $26,819,000 for 1988 and $26,942,000 for 1989. IGUA submitted that, as a matter of principle, the cost to be included in the revenue requirement and in rate base for company-use gas requirements should reflect a market-sensitive price.

IGUA also submitted that, as is known from the Board's Natural Gas Market Assessment Report dated October 1988 and other public information, the ABP for all gas under the new agreements between WGML and the LDCs, as approved by the producers, is $1.85/GJ. IGUA argued that there is no justification for the price of $1.90/GJ and submitted that the Board should reduce the value of line pack by an appropriate amount. IGUA suggested a 25 percent reduction from the $1.90 price as a more realistic market-sensitive price for company-use gas.

TCPL argued that the profile of the company-use gas requirement was such that if it were put to tender, the resultant price might be higher than $1.90/GJ.

Views of the Board

The Board notes that the volume of line pack may fluctuate from month to month. If TCPL were to adopt a tendering process to acquire or dispose of the line pack, it would be only for the incremental volumes. Historically the total line pack has been valued at the ABP and any gains or losses resulting from price changes have been included in the revenue requirement.

In its RH-3-76 Decision, the Board considered an application by TCPL to amend the GPUAR to permit a company to treat line pack as a plant item. At that time most intervenors argued that line pack should continue to be treated as a current asset for accounting and toll-making purposes and that revaluation credits arising from time to time should be included in the revenue requirement. The Board found that TCPL had not justified the proposed amendments to the GPUAR and denied the request.

The Board is concerned that the current method for accounting for line pack may no longer be appropriate in the light of the changing circumstances surrounding the gas industry. However, the Board has not heard sufficient evidence to decide whether a change is necessary.

Decision

The Board approves the valuation of line pack at $1.90/GJ. The Board wishes to hear evidence at the next toll hearing after 1989, about the appropriateness of including line pack in current assets for accounting

and toll making purposes, and the appropriateness of valuing line pack at the average price of system gas at the Alberta border as it changes from time to time.

3.3 Deferred Costs

3.3.1 Preliminary Surveys and Investigations Costs

TCPL included $1,426,000 in rate base for 1988 preliminary surveys and investigation costs and $509,000 for 1989 costs. TCPL argued that it should be compensated for financing preliminary engineering expenditures. It was noted that TCPL could be compensated by accruing carrying charges similar to AFUDC, as these expenditures are not substantially different from construction work in progress.

The CPA submitted that the inclusion of preliminary surveys and investigation costs in rate base should be reviewed on a case-by-case basis.

Views of the Board

Expenditures incurred for projects under construction are not included in rate base because such projects are not yet used and useful. Preliminary engineering costs, such as those TCPL has proposed to include in rate base for 1988 and 1989, are incurred to determine the feasibility of construction projects. If these are included in rate base while expenditures for construction work in progress are not, it would result in inconsistent treatment of similar types of expenditures.

The Board agrees that TCPL should accrue carrying charges on preliminary surveys and investigation expenditures at the same rate at which AFUDC is accrued for construction work in progress. If, as a result of these expenditures, plant is constructed, the preliminary costs together with the carrying charges may be transferred to work in progress. However, if plant is not constructed, TCPL can apply to the Board, in accordance with the GPUAR, for recovery of the costs.

Decision

The Board has reduced rate base by $1,426,000 for 1988 and $509,000 in 1989 under "Other Deferred Items" in respect of preliminary surveys and investigation costs.

3.3.2 Amortization of Capital Gain on New Zealand Dollar Debt

Decision

As a result of the Board's decision in section 4.1 to recognize, over a five-year period, the gain on the New Zealand debt which will be realized in 1993, the Board has included the average balance of the recognized gain in 1988 of $1,958,000 and the average balance to the end of 1989 of $5,873,000 in the respective test-year rate bases.

3.4 Depreciation

Decision

The Board has reduced the depreciation expense by $6,000 to reflect the adjustment to the AFUDC rate (see section 4.6). Accordingly, the approved depreciation expense is $101,637,160.

3.4.1 Depreciation Rate for Data Processing Equipment

For depreciation purposes data processing equipment is included in the office furniture and equipment group and is depreciated at the rate of 7% per year.

TCPL applied to change the depreciation rate for data processing equipment from 7 to 20% because it anticipated that its program of acquiring data processing equipment would continue and that the normal useful life would be less than the 14.3 years used for office furniture and equipment. In support of its request, TCPL submitted the results of a survey which showed the period over which data processing equipment is depreciated by various companies in the Canadian gas industry. On the basis of this survey, TCPL submitted that a five-year period is more reasonable than the period presently used by TCPL.

No intervenor opposed the proposed depreciation rate for data processing equipment.

Views of the Board

The Board agrees that the normal useful life of data processing equipment is less than the useful life of other office furniture and equipment. Based on the results of TCPL's survey, the Board finds that the proposed depreciation rate for data processing equipment is appropriate.

Decision

The Board approves a depreciation rate of 20% per year for data processing equipment.

Chapter 4

Cost of Capital

TCPL applied for a rate of return on common equity of 14.5% for the 1989 test year, on a deemed common equity component of 32.5%. Details of the applied-for capital structure and requested rates of return are shown in Table 4-1 and discussed in succeeding sections of this chapter. See sections 6.1.2 to 6.1.2.6 for a detailed discussion of rate of return matters relating to the 1988 test year.

4.1 Funded Debt

Funded debt represents TCPL's average principal amount of utility debt capital that is projected to be outstanding during the test year.

In its final update, TCPL applied for a cost rate of 13.57%. This rate was determined in a manner consistent with that employed in the last TCPL toll proceeding. This methodology was not at issue.

The only issue raised in connection with this matter related to TCPL's proposed treatment of the capital gain related to its New Zealand debt issue.

By way of private placement TCPL had issued notes totalling $NZ200 million, bearing a coupon rate of 17.7% and maturing in 1993. Five-eighths of this issue (i.e. $NZ125 million) was allocated to the utility. At the same time, TCPL entered into a series of forward foreign exchange contracts thus eliminating any foreign exchange risk. This foreign exchange hedging results in a gradual reduction of the interest charges each year of the debt issue, as well as a capital gain upon maturity of $19,575,000. TCPL proposed to reflect the capital gain as a one-time gain in 1993. The all-in cost of the transaction, including the capital gain, reflected an effective rate of 10.72%, only 56 points higher than the long-Canada rate at the time.

The CPA put forward a proposal that would, in effect, recognize a portion of the capital gain each year until the maturity of the debt issue. In the CPA's proposal, one-fifth of the known capital gain would serve to reduce TCPL's financial charges in each of the five years of the debt issue. At the same time, TCPL's funded debt balance would be reduced by a similar amount, given the CPA's view that the capital gain was tantamount to a reduction in the amount of funded debt outstanding. The CPA proposed that the cumulative amount of the gain be added to TCPL's unfunded debt balance and be allowed to earn the unfunded debt cost rate.

TCPL countered by arguing that since it does not actually receive the capital gain until maturity of the debt issue, there is no repayment of any portion of the loan prior to 1993. TCPL argued that if the CPA's proposal were put in place, the tollpayers would reap the benefits of the capital gain prior to it being realized by TCPL, and the shareholders would earn only approximately 6 percent after-tax on any funds credited

to the revenue requirement. If the capital gain were to be recognized for toll-making purposes prior to its receipt, TCPL felt that the amounts recognized should attract the Company's overall cost of capital.

Views of the Board

The Board notes that the amount of the capital gain upon maturity is known and considers that it would be appropriate to recognize a portion of the gain for toll purposes during the test years. However, the Board realizes that TCPL's shareholders will be out-of-pocket for the amounts recognized, since the capital gain is not, in fact, realized until 1993. The Board finds merit in TCPL's assertion that the appropriate rate at which these amounts should attract a return is the overall rate of return on rate base.

Decision

The Board has reduced TCPL's 1989 financial charges by $3,815,000 (i.e. one-fifth of the capital gain of $19,575,000). This results in an approved cost rate for TCPL's funded debt component of 1326% for the 1989 test year. Further, the Board has included the average amortized balance of the recognized capital gain ($5,873,000; see section 3.3.2) in TCPL's 1989 rate base.

4.2 Unfunded Debt

Unfunded debt included in TCPL's total utility capitalization is determined by subtracting funded debt, preferred share capital and common equity from total capitalization.

TCPL applied for a cost rate of 11 3/8% on its forecast unfunded debt balance for the 1989 test year based on its forecast of long-term interest rates. In applying for a long-term rate for 1989, TCPL noted that there was a potential penalty to the Company, citing the fact that short-term interest rates were, at the time, higher than long-term rates. However, consistent with its approach in past proceedings, TCPL continued to espouse the use of a long-term interest rate for its forecast unfunded debt balance.

TCPL indicated that short-term interest rates were currently 12.1% and that most banks and investment dealers expected such rates to increase over the remainder of the 1989 test year. TCPL also provided forecast Treasury Bill rates for the last three quarters of 1989 ranging from 8.5% to 13%, and noted that TCPL's actual short-term borrowing costs would be some 25 to 35 basis points higher.

TCPL intends to fund its entire unfunded debt requirements by going to the Canadian long-term debt market in the second half of 1989. The expected timing of its proposed financing takes into account the Company's concerns about trending higher interest rates.

The expert witness representing the CPA was not concerned about the use of an unfunded debt rate of 11 3/8% for the 1989 test year. Ontario's witness accepted the applied-for cost rate for 1989, noting that, no

matter how the balance was actually financed, he expected there to be little difference between using either a short-term or long-term rate.

Views of the Board

In the context of a true forward test year, unfunded debt balances should be costed using a long-term interest rate. In the circumstances of this case, however, there are a number of practical considerations to be taken into account, given TCPL's intention to fund its entire unfunded debt balance in the second half of 1989. The Board is of the view that until such time as TCPL issues longterm debt in 1989, its unfunded debt balances will be funded by the use of short-term borrowings. The Board also recognizes that the use of a long-term interest rate alone would penalize TCPL to a certain degree given that short-term rates are currently higher than long-term rates.

Decision

The Board has decided to use a combination short-term/long-term rate. The Board accepts the projected long-term corporate rate for 1989 of 11 3/8%. The Board has also taken into account the various projections for shortterm borrowing rates during the test year. The Board finds 11.75% to be a reasonable rate at which to cost TCPL's projected unfunded debt balance for the 1989 test year.

4.3 Preferred Share Capital

Preferred share capital represents the average capital of preferred share issues associated with utility investments projected to be outstanding during the test year.

TCPL applied for a cost rate on its preferred share capital of 8.46% for the 1989 test year. This rate, calculated in a manner consistent with past NEB decisions, reflects the expected issuance of Series K preferred shares in November 1989 carrying a dividend rate of 8%. No intervenor objected to the applied-for rate.

Decision

The Board accepts the applied-for cost rate for preferred shares of 8.46% for 1989.

4.4 Common Equity Ratio

TCPL applied to maintain its deemed common equity ratio at a level of 30% for the 1988 test year, and to increase the ratio to 32.5% in 1989.

TCPL argued that the increase to 32.5% was supported by four factors: (i) the level of TCPL's utility business risks in an increasingly competitive environment; (ii) TCPL's capital requirements in the near future, which would necessitate an increase in the Company's financing flexibility; (iii) TCPL's common equity ratio relative to other major Canadian utilities with which TCPL competes for capital; and (iv) sufficient equity now being available to adequately underpin TCPL's non-utility investments, thus removing the concern about cross-subsidization.

As part of its evidence, TCPL indicated that a corporate restructuring was planned for 1989 whereby the oil and gas components of TCPL's non-utility operations, including Encor, would be split off and set up as a separate company. The reorganization was to take effect 1 May 1989. As a result of the corporate restructuring, TCPL's expert witnesses were of the view that there would be sufficient common equity underpinning TCPL's remaining non-utility activities, and recommended an increase in the deemed common equity ratio to 32.5% for 1989.

The CPA's expert witness recommended a deemed common equity ratio of 30% for both test years, suggesting this was at the upper end of the reasonable range. The witness further suggested that, prior to the TCPL's corporate restructuring, a shortfall existed between the appropriate common equity and the amount of equity actually underpinning the utility.

This led him to conclude that, for the period 1 January 1988 to the effective date of the reorganization, 5 percentage points of TCPL's common equity component be allowed to earn a before-tax rate of return of 11%, based on the AArated utility bond rate experienced in the first three quarters of 1988.

Ontario's expert witness also expressed the view that the amount of equity that could be said to underpin TCPL's utility operations was considerably less than 30%. Consequently, he recommended a deemed common equity ratio of 28% for both test years.

On the topic of business risk, there was general agreement that there had been no significant change in the level of TCPL's business risks since its last toll hearing. However, the witnesses for TCPL took the position that TCPL's business risk profile warranted a common equity ratio in excess of 30%. The witnesses suggested that in arriving at a common equity ratio of 30% in previous decisions, the Board had given inadequate consideration to TCPL's longer-term business risks.

The witnesses for both the CPA and Ontario believed that there had been little change in TCPL's longer-term risks in recent years as a result of deregulation. The CPA's witness argued that TCPL has been adequately compensated for its longer-term business risks in the risk premium component of the allowed rate of return. Ontario's witness stated that he has consistently been of the view that the move to deregulation has served to reduce TCPL's business risks.

One of TCPL's expert witnesses stated that an increase in the equity ratio to 32.5% would send a signal to the investment community that would facilitate TCPL's substantial debt financing in 1989/90. During cross-examination, TCPL witnesses stated that, while the Company could no doubt raise the required debt capital at an equity ratio of 30%, TCPL was attempting to place itself in a position where it could refinance its long-term debt coming due in the mid-199Os at the most favourable terms, as well as improve its coverage ratios to the point where TCPL's bonds could attract an A rating. It was noted during the proceeding that an increase in the equity ratio, absent an increased bond rating, would raise TCPL's revenue requirement by some $6.9 million. TCPL indicated that the benefit to be received by the tollpayers from such an increase would be the flexibility TCPL would then have to proceed with its proposed expansion on the most favourable terms.

The CPA's witness was of the view that TCPL does not require a 32.5% equity ratio in order to raise the significant amount of debt financing being proposed during this proceeding. In this regard, he noted that TCPL had been able to substantially increase its rate base investment in the early 1980's under capital market conditions which were more adverse than are currently being experienced with an equity ratio of 30%. He pointed out that, post-reorganization, TCPL will essentially be a utility and an investor in other utilities; he perceived this as providing a solid base on which to raise additional capital for the Company's proposed expansion. The CPA argued that TCPL's tollpayers should not be required to pay for something that was not necessary, concluding that 30% was all that was necessary post-reorganization.

Ontario argued that TCPL's currently-approved capital structure has proven to be financially viable, citing that TCPL has been able to operate effectively over the past number of years with a common equity component in the range of 28 to 30%. Ontario's witness was of the view that TCPL's proposed reorganization sent sufficient signals to the financial markets, predicting that TCPL's bond ratings would probably improve, irrespective of an increase in TCPL's deemed equity component.

There was considerable discussion concerning the issue of possible cross-subsidization of TCPL's nonutility operations and the effect of the planned corporate restructuring. Both the CPA and Ontario voiced concerns about the residual equity underlying the non-utility assets in the test years, as well as the related historical and projected coverage ratios. In their view, the current and expected status of these indicators was clear evidence of cross-subsidization. In this regard, these two intervenors focussed on TCPL's acquisition in late November 1987 of Encor and the subsequent effect this purchase had on the mix of TCPL's non-utility capital structure.

TCPL acknowledged that, shortly after acquiring Encor, its debenture rating was reduced by onethird of a grade by the CBRS. However, TCPL countered intervenor arguments that this downgrade had negatively impacted its cost of capital by indicating that only one utility-related debt issue had been placed after the Encor acquisition and noting that one of its expert witnesses confirmed that the downgrade had not impacted on the pricing of the debenture transaction. In the TCPL witness'

opinion, the CBRS downgrading was viewed, in the credit market, as a non-event.

With respect to the residual equity underpinning TCPL's non-utility activities, TCPL accepted that its acquisition of Encor had created a temporary imbalance in the non-utility capital structure as of year-end 1987, citing a debt ratio of 58%. As evidence that this imbalance was being corrected, TCPL pointed to the fact that its non-utility debt ratio, on a fully-consolidated basis, had been reduced to 43% by the end of 1988. The proposed corporate reorganization, expected to be in place effective 1 May 1989, was offered as further evidence that there should be no remaining concerns regarding possible cross-subsidization of non utility assets.

Views of the Board

As in previous TCPL toll cases, the Board continues to rely on the following three main considerations in assessing the Company's deemed common equity ratio:

- the business risks faced by TCPL's utility operations;

- the maintenance of an appropriate balance between the debt and equity elements of the deemed capitalization; and

- the maintenance of an appropriate balance between the equity financing attributed to the utility through the deeming process and that portion of the actual consolidated financing which is left implicitly to underpin TCPL's non-utility operations.

The Board notes that there was general agreement that there had been no significant change in TCPL's business risks since the last toll proceeding. However, there was dispute over whether an equity ratio of 30% adequately compensated TCPL for its long-term business risks. The Board finds that a 30% equity ratio adequately compensates for TCPL's business risks, both short-term and long-term.

With respect to the criterion relating to a balanced utility capital structure, the Board notes TCPL's concern about its future financing requirements and the need for increased financing flexibility. However, the Board does not consider the issue of future financing to be relevant to this proceeding; evidence showed that TCPL has been able to raise substantial debt in the past and will be able to do so in this instance, whether the equity ratio is at 30% or the requested ratio of 32.5% for 1989. It remains to be seen whether TCPL's concern regarding financing flexibility warrants an increased common equity ratio. Further, TCPL did not demonstrate that any tangible benefits would necessarily accrue to the tollpayers as a result of a higher common equity component. The Board was not persuaded by the evidence presented that an equity ratio in excess of 30% would be cost effective.

Based on the evidence presented relative to the first two criteria, to which primary weight is normally given, the Board would not move from the currently-approved common equity ratio of 30%.

On the issue of possible cross-subsidization, the Board notes the improvement in TCPL's nonutility capital structure by year-end 1988. The Board has also taken into account the comments made by TCPL's witnesses that the mild downgrade of its debentures by the CBRS had no impact on the utility's cost of capital in 1988. Although a great deal of evidence was presented on the residual non-utility capital structure, there was no clear indication that the common equity underpinning TCPL's utility capital structure resulted in crosssubsidization during the 1988 test year. On balance, the Board finds no conclusive reason to reduce TCPL's deemed common equity ratio in 1988.

For 1989, the Board acknowledges the further steps taken by TCPL to rectify the temporary imbalance in its non-utility capital structure, as evidenced by its proposed corporate reorganization. As a result of this reorganization, there is also a significant change in the nature of TCPL's remaining non-utility assets. The Board concludes that it is best, in the circumstances of this case, to adopt a wait-and-see approach to assessing the adequacy of the non-utility capital structure which will result from the corporate reorganization.

Decision

The Board finds that no change in the currently approved deemed common

equity component is warranted at this time. Accordingly, the Board approves a common equity ratio of 30% for the 1988 and 1989 test years.

4.5 Rate of Return on Common Equity

TCPL applied for rates of return on common equity of 14.65% for 1988, and 14.5% for the 1989 test year. In supporting these rates, TCPL's expert witnesses relied on the results of the comparable earnings, equity risk premium and DCF approaches in estimating the cost of equity capital. A downward adjustment from the applied-for rate for 1988 of 14.65% was made to reflect the reduction in financial risk which would result if TCPL's request for a deemed common equity ratio of 32.5% in 1989 were granted.

As in past proceedings, TCPL's witnesses placed primary emphasis on the comparable earnings technique, given its compatibility with utility regulation on an original cost basis. An examination of historical and projected returns for a complete business cycle (1983-1990) for a sample of industrials thought to be of similar risk to TCPL yielded a result of 14.75%. During cross-examination, one of the witnesses indicated that the result of this technique should serve as an upper limit in determining a fair and equitable rate of return, and that adjustments to this result could then be made taking into account one's risk assessment of the sample companies relative to the company in question. In this case, TCPL's witnesses were of the view that no such downward adjustment was required.

Of the two market-based techniques employed by TCPL's witnesses, the equity risk premium approach was given slightly more weight than the DCF approach. The witnesses' risk premium technique also suggested a result of 14.75%. This rate was based on a long-Canada rate of 10%, a required risk premium of 3.5 percentage points, and a further market-to-book adjustment of 1.25 percentage points. A subsequent adjustment to their long-Canada rate forecast to a level of 10.25% supported a rate of return in excess of 14.75%. The witnesses found further support for the risk premium results by reference to an empirical study they had performed which indicated that, for the period 1974 to 1987, for every one percentage point increase in long-Canada rates, the risk premium declines by 50 to 70 basis points. In this regard, TCPL noted in argument that the long-term interest rates used by the CPA and Ontario witnesses in this proceeding were 100 and 195 basis points higher, respectively, than they were at the time of TCPL's last toll hearing.

TCPL's witnesses focussed their DCF analysis primarily on a sample of 38 stable industrials, recognizing the inherent circularity of applying this technique to a group of utilities. The basic cost of equity using the DCF technique was found to be 13%, and an adjustment for market-to-book considerations raised the cost to 14.2%. The witnesses decided to give this result relatively little weight, citing a number of severe limitations of the approach. One problem area with this technique is attempting to infer investor growth expectations. Based on an examination of historical dividend growth rates for a number of time periods ending in 1987, and an expected longer-term sustainable growth rate of 10%, the witnesses concluded that the investors' expected growth rate is in the range of 10 to 10.5%. In reaching this conclusion, the witnesses removed the ten-year, five-year and oneyear data from their analysis, characterizing these results as "outliers".

The CPA recommended a rate of return on common equity of 12 5/8% for all of 1988 and the early part of 1989, and 12 5/8 to 12 7/8% thereafter. The CPA relied on the advice of its expert witness, who utilized the DCF and equity risk premium methods of determining a fair rate of return on equity.

Using the DCF technique, the CPA's witness estimated TCPL's basic cost of equity to be no more than 12%. The growth component implicit in this rate is some 8 to 9%, and gives considerable weight to the five-year growth rates experienced by his sample companies. In this regard, it was suggested that the weighting technique used by the witness in arriving at his five-year growth rates was flawed, given the wide range of results so determined. The CPA's witness argued that one should be more concerned with the central tendency of data, noting the wide dispersion of achieved equity returns in 1988 for the industrial sample utilized by TCPL's witnesses.

In his risk premium analysis, the CPA's witness utilized a long-Canada forecast of 10% and a riskadjusted premium of 2.5 percentage points, resulting in a basic cost of equity of 12.5%. The witness' risk premium of 2.5 percentage points was unchanged from the last proceeding, while his forecast of long-Canadas had increased by 100 basis points.

It was noted that the current recommendation of the CPA's witness was the same as his recommendation during the last proceeding, despite the increase in long-Canada rates. The witness argued that this relationship was appropriate under the circumstances, noting that rates of return on equity do not necessarily move in lock-step with interest rates. Further, this witness' previous final recommendation was augmented by 25 basis points for take-or-pay risk considerations. No such adjustment was required in this case because of his view that investors did not currently perceive take-or-pay risks to be any greater than they were prior to deregulation.

Ontario recommended that a rate of return on equity of 13 to 13.25% be approved for 1988 and a rate of 13.25% be awarded for 1989, in the light of the trend in bond yields in recent months. Ontario relied on the evidence of its expert witness who utilized the risk premium, comparable earnings and DCF cost estimation techniques in arriving at his estimate of a fair rate of return on equity.

In his risk premium analysis, Ontario's witness concluded that the cost of equity for the average risk stock on the Toronto Stock Exchange was in the range of 12.82 to 13.32%. He then proceeded to make two risk-related downward adjustments, each 30 basis points in magnitude, concluding that the cost of equity for TCPL, as measured by the risk premium approach, was 12.22 to 12.72%. During cross-examination, the witness indicated that the spot yield on long-Canadas, which was 9.82% when he first performed his risk premium analysis, had increased to 10.61%. The witness did not attempt to perform another risk premium analysis to take into account this increase in interest rates of some 80 basis points. However, the increase did influence him to focus on the upper end of his rate of return range for 1989, noting that an 80 basis point increase in bond rates may translate into a 40 basis point effect on his risk premium test results.

Ontario's witness performed his comparable earnings analysis using both a low-risk industrial sample and a utility sample, for five-year and ten-year periods ending in 1987. Because of recent changes in the equity market, the witness adjusted the historical returns of these sample companies downwards using current market-to-book ratios. His adjusted results ranged from 12.01 to 12.94%. Having performed this analysis, he proceeded to give the results of this technique little weight in reaching his final recommendation because of his view that the test has become distorted in the past, due to the effects of high levels of inflation. However, he opined that if comparable earnings results are adjusted for market-to-book ratios, the resultant data should be accorded some weight; without the adjustment for market-to-book ratios, no weight should be given to the comparable earnings approach.

In his DCF analysis, the witness also employed both a low-risk industrial sample and a utility sample. The results ranged from 11.59 to 12.93%. In reaching his conclusions regarding the growth component of the DCF formula, the witness made a downward adjustment to historical growth in book value data, reflecting current expectations for lower inflation rates. TCPL argued several points in this regard, concluding that the witness' downward adjustment for inflationary considerations was overstated by about 50 to 100 basis points.

Ontario's witness augmented his basic rate of return results by 60 basis points for considerations relating to market pressure. During crossexamination, it was noted that the witness had concluded 60 basis points was sufficient in the last proceeding, in part because TCPL was not, at that time, planning any major expansion to its facilities. In the circumstances of this case, the witness recognized that TCPL would be requiring equity capital; however, he stated that such equity would be issued under more favourable conditions this time.

Views of the Board

The Board has placed some reliance on all of the cost estimation techniques used by the various witnesses in this proceeding. In the circumstances of this case, the Board has placed slightly more reliance on the results of the risk premium tests because this approach is less subjective than the others.

With regard to the risk premium approach, the Board notes that there is still a lack of agreement amongst the witnesses as to the relative risk of TCPL compared to the market as a whole. While the witnesses recognized the increase in long-term interest rates since the last toll proceeding, there was no clear consensus as to the exact relationship between such increases and the cost of equity. In this case, the risk premium results would suggest an increase in the cost of capital of approximately 50 basis points.

The Board also finds some merit in the comparable earnings approach. The Board recognizes the difficulties inherent in developing a sample of industrial companies of similar risk to TCPL's utility operations. As

well, the Board remains concerned about the potential distortions in historical return levels as a result of past levels of inflation. The Board concludes that the results of the comparable earnings approach used by TCPL's witnesses should serve as an upper limit in this case. However, the Board finds that these results need to be discounted to reflect its views of TCPL's risk level relative to the witnesses' industrial sample.

The DCF test provides a useful check when estimating a fair rate of return on equity as it provides a proxy for investor expectations. The Board is aware of the limitations inherent in the use of this test because of the fact that growth rate expectations can only be inferred. The wide range of growth rates employed by the various witnesses in this proceeding is clear evidence of the problems involved in estimating the growth expectations of investors; however, the Board recognizes each of the cost estimation techniques is subject to the exercise of judgment.

With respect to interest rates, the Board notes the significant increases in short-term and long-term interest rates that have taken place since TCPL's last toll proceeding. The Board further notes that, while such increases have occurred, the overall recommendations from all of the witnesses generally are not materially different from those presented last time.

Decision

The Board finds that an increase in the approved rate of return on common equity to 13.75% is fair and reasonable for the 1989 test year.

4.6 Rate of Return on Rate Base

The Board approves a rate of return on rate base of 12.65% for the 1989 test year. The approved capital structure and overall rate of return are shown in Table 4-2.

4.7 Income Taxes

TCPL calculated its utility flow-through income tax provisions for both the 1988 and 1989 tax years to reflect the revised federal tax rates contained in the tax reform legislation enacted in September 1988. The methodology for determining the utility income tax requirement was not an issue in the hearing.

4.7.1 Tax Rate Change on Deferrals

The only income tax issue raised in the hearing was TCPL's proposal to recover, in its revenue requirement, the additional income taxes associated with the maintenance of the deferral accounts.

TCPL was required to include in its 1987 taxable income for tax return purposes, utility deferred credits amounting to $75,408,000 that arose in 1987. TCPL was allowed to deduct this amount for tax purposes in 1988 when the credits were amortized. However, owing to tax reform and the resultant lower tax rate of 48.063%, effective in 1988, the taxes recovered did not compensate TCPL for the taxes paid at the higher rate of 52.2% in 1987 $3,120,000 being the tax cost to TCPL.

Similarly, in 1989 the revenue surplus of $42,795,000, included in the 1988 revenue requirement at the tax rate of 48.063% and amortized in 1989 when the tax rate is 44.091%, will result in a shortfall of $1,700,000.

TCPL provided a number of reasons to justify the recovery of such income tax costs in its revenue requirement. The Company argued that the tax costs were attributable to the deferral of amounts in accordance with Board orders. Such tax cost recovery was not sought in the past because the amounts involved were not significant.

The CPA opposed the recovery of these amounts and related the tax costs to inaccurate forecasting by TCPL. It felt that the income tax risk should be borne by TCPL and there was no deferral account in place for this. The CPA also argued that TCPL's request was retroactive, in effect, and in addition its actual 1987 tax expense was considerably less than that which was included in the revenue requirement.

TCPL replied that the credit deferral balances arose as a result of variances between estimated and actual costs which have been recognized by the Board as being beyond the Company's control and not possible to

reasonably forecast. It was also noted that TCPL's actual income tax expense is different from the utility income tax expense owing to the effect of non-utility costs. TCPL argued that it would be disadvantaged if it had to bear the cost of the tax rate change on deferrals.

Views of the Board

The income tax cost of the tax rate change on deferrals arose from factors beyond TCPL's control and therefore it would be consistent with the Board's practice to allow TCPL to include these costs in its revenue requirement.

Decision

The Board has included the additional income taxes associated with the maintenance of the deferral accounts in the revenue requirement.

4.7.2 Amortization of Capital Gain on NZ Dollar Notes

The Board's decision (see section 4.1) to amortize the capital gain on the NZ dollar issue over the five-year life of the debt results in a reduction in TCPL's revenue requirement amounting to onefifth of $19,575,000, or $3,915,000, in each of the 1988 and 1989 test years.

TCPL's flow-through income tax calculations have been adjusted to reflect this decision.

4.7.3 Flow-Through Tax Calculation

Decision

The Board has adjusted the 1989 flowthrough income tax provision from $90,800,000 to $77,579,000, a reduction of $13,221,000 to reflect the decisions included in this report (see Table 4-3).

4.7.4 Federal Budget of 27 April 1989

The 1989 federal budget proposes to levy a new tax, the Large Corporations Tax, at the rate of 0.175% on capital in excess of $ 10 million employed in Canada by corporations. This new tax, which will apply after June 1989, may be offset against the existing 3% surtax, so that, effectively, the greater of the two taxes would be payable.

Views of the Board

The Board notes that this measure would have implications for TCPL's utility income tax allowance for part of the 1989 test year. Legislation to implement the budget proposals, however, has yet to be enacted. Any variance in the approved revenue requirement for 1989 arising from this measure should be recorded in the appropriate deferral account and should be brought forward for disposition at a future toll hearing.

Chapter 5

Operating Costs

Adjustments to operating costs included in the 1989 test-year revenue requirement are provided in this chapter. Details of the interim revenue adjustments for the 1988 test year and the 1989 test year are provided in Chapter 6. Capitalrelated adjustments to rate base, depreciation and cost of capital are provided in Chapters 3 and 4. A summary of the approved operating costs for the 1989 test year, together with Board adjustments, is shown in Table 5-1. A summary of the approved transportation revenue requirement for the 1989 test year is shown in Chapter 2.

5.1 Transmission by Others

The Board's adjustments to Transmission by Others are summarized in Table 5-2.

5.1.1 Great Lakes Charges

In Transmission by Others, TCPL included Great Lakes' charges in the amounts of $130,989,000 for the 1988 test year and $130,991,000 for the 1989 test year for services rendered by Great Lakes under its T-4 Rate Schedule.

Included in these amounts are charges in respect of an additional 37.5 MMcfd of contract quantity and 62.5 MMcfd of annual service. The 37.5 MMcfd was approved by the FERC on 26 October 1988 and service began on 1 November 1988. The application to increase TCPL's annual service by 62.5 MMcfd is still pending before the FERC. Accordingly, the 37.5 MMcfd is reflected in TCPL's toll design as of 1 November 1988 while the 62.5 MMcfd is reflected in the toll design as of 1 March 1989. However, these incremental volumes are not reflected in Great Lakes' rate design and are charged at the existing T-4 rate.

Also included in the amounts that TCPL wished to recover were overrun charges of $6,324,000 for the 1988 test year. Any overrun charges for 1989 will not be known until after 31 October 1989, the end of the contract year. The overrun rate is equivalent to the rate for T-4 service calculated at 100 percent load factor.

The CPA proposed that the Board should deny the inclusion in TCPL's revenue requirement of:

(i) any fixed costs recovered by Great Lakes from TCPL through the provision of services which are not represented in the existing Great Lakes toll design. This would include the 37.5 MMcfd increase in the T-4 contract quantity as well as 62.5 MMcfd of Annual Service, and

(ii) all fixed costs included in both the demand and commodity charges recovered by Great Lakes from TCPL through the provision of overrun services subsequent to 1 July 1989, unless Great Lakes had filed for new rates to be effective 1 July 1989.

The CPA argued that because the incremental volumes were not included in the forecasts used to determine Great Lakes' current rates, the charges for these services recover fixed costs that have already been recovered in other Great Lakes' charges. The CPA submitted that the level of the overrun charge resulted in Great Lakes earning a rate of return on equity in 1987 greater than 30%.
Therefore, in the CPA's view the Great Lakes rates were not just and reasonable as would be determined by this Board.

The CPA also argued that because TCPL is the operator of the Great Lakes pipeline system, which it considers to be part of the "TCPL integrated pipeline system" and is a 50 percent owner of Great Lakes, TCPL is in a conflict of interest position and should not be permitted to benefit financially from the "unconscionable" over-recovery of fixed costs in Great Lakes' tolls.

Furthermore, in the CPA's view, TCPL, as a shipper on Great Lakes, has not taken all appropriate actions on behalf of its Canadian tollpayers to protect their interests before the FERC. The CPA also maintained that TCPL's nominees on the Great Lakes' Board of Directors have a duty to act in the interest of TCPL's tollpayers and therefore should have taken action that would have resulted in both a lower rate for T-4 service in conjunction with the increases in volumes, and a lower rate for overrun service.

The CPA urged the Board to take control of Great Lakes and not to allow TCPL's tollpayers to be subject to the vicissitudes of the FERC and of American law. The CPA asserted that to do otherwise, to continue a placid acceptance of FERC's regulation of Great Lakes, would be an abdication of the responsibility which the Board has to the tollpayers of TCPL.

TCPL replied that at no time did the CPA arguethat TCPL was imprudent in transporting gas on Great Lakes nor did it argue that any of the costs of that transportation were imprudently incurred. Therefore, TCPL submitted, the thrust of the CPA's argument, that TCPL should not be permitted to recover prudently incurred costs, would be contrary to the most fundamental principle of ratemaking.

TCPL further submitted that it had done everything possible before the FERC to obtain the most favourable Great Lakes tolls possible. In this regard TCPL advised the Board that, under American law, the directors of Great Lakes owed a fiduciary duty to their corporation whether they were TCPL nominees or not and any action favouring utility customers at the expense of the corporation would contravene this responsibility.

TCPL also noted that Great Lakes must file restated base tariff rates at least thirty days before 1 July 1989 as required by the draft order approved by the FERC on 29 March 1989. If, as a result, Great Lakes' rates are adequately reduced, the CPA's requests for disallowance of costs relating to additional volumes as well as overrun charges may be moot.

As an alternative course of action to disallowing FERC-approved charges, the CPA suggested that the Board classify TCPL's investment in Great Lakes as a utility asset and include it in TCPL's rate base. TCPL would be entitled to a return on its investment in Great Lakes at a level determined to be just and reasonable by the Board. TCPL's share of Great Lakes' net income, after tax, would be credited to the revenue requirement. If the Board were to adopt this alternative, the effect would be to nullify TCPL's excess earnings from its shareholding in Great Lakes.

Views of the Board

The Board considers that TCPL, as a shipper, has taken appropriate action before the FERC to protect the interests of its Canadian tollpayers. It is not for this Board to second-guess the business judgment of the Board of Directors of Great Lakes. Even though some of the directors were TCPL nominees, they had a lawful duty to act in what they considered to be the best interests of Great Lakes. Furthermore, there is no evidence that the Board of Directors of Great Lakes acted improperly by not seeking lower rates. Nor is there any evidence to suggest that the rates would have been any different if TCPL were not a shareholder in Great Lakes.

The Board recognizes that there are general similarities between the FERC and the NEB in their regulation of natural monopolies. However, notwithstanding these general similarities, the Board also recognizes that the FERC and the NEB have, in some instances, developed different methods of regulation and, as a result, the tolls approved by the FERC may differ from those that the Board would have approved in similar circumstances. The FERC is the duly constituted regulatory authority responsible for approving Great Lakes' tolls. The tolls charged by Great Lakes have been found by the FERC to be just and reasonable, and

therefore are the only lawful tolls which Great Lakes may charge.

With respect to the CPA's alternative suggestion that TCPL's capital investment in Great Lakes should be placed in TCPL's rate base and its share of Great Lakes net income, after tax, which is derived therefrom should be credited to TCPL's cost of service, the Board sees this suggestion as being predicated on finding that Great Lakes per se is part of the TCPL integrated pipelines system.

As stated in the Board's letter of 18 April 1989 comprising its Reasons for Decision on the Northridge application (Appendix V), the Board considers that the physical pipeline system of Great Lakes does not, of itself, form a part of the TCPL integrated pipeline system. Rather, it is TCPL's contracted transportation capacity on Great Lakes that is part of that integrated system. Therefore, the Board finds that it would be inappropriate to require that TCPL's capital investment in Great Lakes be incorporated into TCPL's rate base as the CPA suggested.

Decision

The Board has allowed the recovery by TCPL of FERC-approved charges paid to Great Lakes. However, the Board expects that Great Lakes' tolls may be reduced effective 1 July 1989, as a result of the filing that Great Lakes is required to make pursuant to the FERC draft order of 29 March 1989. Accordingly, the Board has reduced the cost of Transmission by Others for 1989 by $4,163,000, which represents 85 percent of TCPL's fixed costs incurred on the additional 100 MMcfd under the existing tolls for the period 1 July to 31 December 1989. This is the Board's approximation of the cost reduction to TCPL if the tolls are redesigned and become effective on 1 July 1989.

Furthermore, the Board has reduced the estimated cost of Transmission by Others by an additional $3,129,000 to reflect the exclusion of Great Lakes charges related to the 62.5 MMcfd of Annual Service for the period 1 March 1989 to 1 July 1989 as this service had not yet been approved by the FERC at the conclusion of this hearing.

5.1.2 Great Lakes Fuel Cost Adjustment

The Great Lakes FCA was established when gas prices were regulated under Part III of the EAA. Fuel used in the transmission of Canadian gas through the Great Lakes system was purchased by TCPL at the ABP as defined in the Natural Gas Price Regulations, 1981, made pursuant to the EAA Because such fuel was sold to Great Lakes at the export price, TCPL received excess revenues amounting to the difference between the export price and the ABP plus transmission costs from the Alberta border to the export point at Emerson, Manitoba. To offset these excess revenues, an equal amount, the FCA, was deducted from the revenue requirement.

TCPL proposed to eliminate the FCA in the test years for the following reasons:

(i) The net-back pricing mechanism precludes TCPL from making any profit on the sale of company-use gas to Great Lakes. Therefore, the FCA

provision is not required;

(ii) The data required to implement the adjustment, namely the average ABP for all system and non-system supply volumes, is not available; and

(iii) Using the average ABP for system gas in the FCA calculation will lead to either an unwarranted subsidization of system suppliers by non-system suppliers where the FCA is added to the revenue requirement, or to an unwarranted subsidization of non-system suppliers by system suppliers where the FCA is deducted from the revenue requirement.

Views of the Board

The Board agrees with TCPL that the net-back pricing mechanism precludes TCPL from experiencing a profit or a loss on the sale of fuel to Great Lakes, and therefore the FCA is no longer required.

Decision

The Board approves the elimination of the Great Lakes FCA from the revenue requirement.

5.1.3 Steelman Gas Adjustment

TCPL included in Transmission by Others the Steelman gas adjustment of $443,900 for the 1989 test year.

The Steelman gas adjustment was first approved by the Board in its RH-2-75 Decision. At that time the Board approved rates which included the cost of gas.

Prior to 1 November 1975, domestic gas prices were based on negotiated contract prices between TCPL and the purchasers. However, in 1975 the PAA was enacted and Alberta entered into an agreement with the federal government respecting the pricing of natural gas produced in Alberta. Under the terms of the agreement an "imputed Alberta border price" was to apply to all gas produced in Alberta for delivery in Canada outside the province, at the point where it crossed the Alberta border. The effect of this provision was to distinguish between costs incurred inside Alberta and those incurred outside the province.

Although the majority of TCPL’s system gas was purchased in Alberta, some of its gas was purchased from Steelman gas producers in Saskatchewan. This gas was shipped on the Saskatchewan Power Corporation system (now TransGas) and entered TCPL’s system in Saskatchewan, 383.95 km downstream from the Alberta border.

As a result of the enactment of the PAA all Alberta gas was priced at the imputed ABP plus transportation costs to the point of delivery. Since Steelman gas was not from Alberta it was not subject to the PAA. Because Steelman gas was considered to have a location advantage over Alberta gas, the Board decided to grant TCPL an allowance, which was paid to the Steelman producers, for the transportation differential in respect of Steelman gas. This allowance (the Steelman gas adjustment) was calculated

as the cost of transportation from the Alberta border to the point of receipt of Steelman gas. The amount of the adjustment was then included in TCPL's revenue requirement and recovered only from system gas users.

In these proceedings TCPL maintained that the adjustment should still be included in its revenue requirement because:

(i) the amount is cost-based since it relies on system average unit costs,

(ii) the amount is lawfully paid since it is paid pursuant to a contract,

(iii) the provision of gas by TransGas at Regina West and Success reduces the facilities that would be required by TCPL if the gas were delivered into the TCPL system at Empress, and

(iv) TCPL is applying the historically-approved methodology in determining the Steelman tolls and revenues

Views of the Board

Circumstances have changed since the Board first approved the Steelman gas adjustment. The purchase price of gas is now determined by the market rather than by government regulation, and the purchase and sale of gas have been separated from the transportation function.

The payment of the adjustment by TCPL to Steelman producers and the inclusion of the amount in TCPL's revenue requirement represents, in effect, a gas price subsidy to Steelman producers. The cost to TCPL of Steelman gas should not be subsidized by the tollpayers.

Decision

The Steelman gas adjustment is disallowed effective 1 November 1989 to give time for renegotiation of the applicable gas purchase contract if required. Accordingly, the Steelman gas adjustment has been reduced by $97,000 for the 1989 test year to reflect the approved transportation costs and to reflect the disallowance.

5.2 Operation and Maintenance

The Board's adjustments to operation and maintenance expenses are summarized in Table 5-3.

5.2.1 Salaries and Employee Benefits

5.2.1.1 Permanent Employees

For the 1987 base year and the 1988 test year, TCPL had an average complement of 1,541 and 1,491 pipeline and corporate permanent positions, respectively. For the 1987 base year TCPL had on average 56 vacant positions. For 1988 the average number of vacancies was 75. For the 1989 test year TCPL forecasts a staff complement of 1,472 permanent positions, a reduction of 69 positions from the 1987 base year and 19 positions from

the 1988 test year. TCPL expects, for the 1989 test year, that there will be 43 permanent positions vacant at all times as a result of the lag in recruiting replacement staff. Therefore, the Company expects to have an average of 1,429 permanent employees on staff during the 1989 test year.

TCPL's estimate of the permanent employee complement took into account new positions in gas control, revenue accounting, transportation and legal activities as a result of deregulation and increased activity in information systems. Any tendencies for the number of permanent positions to increase were more than offset by decreases due to the early retirement program, transfers arising from reorganizations and positions being deleted as a result of efficiencies achieved. TCPL indicated that the actual vacancies experienced in 1988 were exceptionally large due to significant reductions in head count over the last few years.

Ontario argued that the Board should reduce the pipeline and corporate staff level for 1989 by 33 positions. Ontario indicated that it may be reasonable to expect increased workloads in some areas, however, these would be offset by efficiency gains resulting from computer automation. It was also Ontario's view that the vacancy level should be held to the level demonstrated in 1988.

Views of the Board

The Board recognizes TCPL's effort in restraint as demonstrated through reductions in its permanent staff complement in recent years. However, the Board is not convinced that the proposed vacancy adjustment for the 1989 test year is reasonable based on recently experienced vacancy levels.

Decision

The Board accepts the 1988 and 1989 staff complement as the basis for TCPL's estimate of salary and employee benefits expense. However, the Board finds that a vacancy adjustment based on the last four years experience is appropriate for 1989. Such a four year average yields a vacancy adjustment of 59 positions Therefore, the Board has disallowed, for inclusion in the calculation of gross salary costs for 1989, the salaries associated with 16 positions. The Board approves an average net pipeline and corporate permanent complement of 1,416 for 1988 and of 1,413 for 1989.

5.2.1.2 Temporary Employees

TCPL had an average of 146 and 150 temporary pipeline and corporate employees during the 1987 base year and the 1988 test year, respectively. For the 1989 test year TCPL forecasts an average requirement of 234 temporary positions. TCPL explained the increase of 84 positions over 1988 by the significant increase in the 1989 construction program.

Views of the Board

The Board notes that much of the cost associated with the increase in temporary employees in 1989 is to be capitalized and that should the

actual number change due to unforeseen circumstances, there would be an equal and offsetting change in the amounts capitalized with no net change to the salaries charged to the cost of service.

Decision

The Board approves the requested temporary staff complement of 150 for 1988 and 234 for 1989, as the basis for estimating TCPL's salary and employee benefit expenses.

5.2.1.3 Competitiveness of Salary Levels and Annual Rate of Increase

TCPL, in adopting its estimates of test-year salaries, relied partially on the recommendations of its expert witness, which were based on survey information comparing the competitive position of TCPL's 1987 employees' salaries with those of a broad range of industries and utilities. On the basis of the analysis, the expert witness concluded that TCPL's salaries were within the competitive range.

TCPL provided for a general company-wide salary increase of 5.2 percent and 5.14 percent for the 1988 and 1989 test years, respectively. The Company indicated that, based on a salary survey provided by its expert witness, the 5.2 percent granted in 1988 was lower than the overall national increase in salaries of 5.8 percent. In addition, TCPL indicated that the same survey showed that, on a national basis, organizations are planning a 5.6 percent increase in salary budgets for 1989 versus the 5.14 percent requested by TCPL. The Company pointed out that if it had focussed on the Toronto market, instead of national averages, levels of salary increases higher than the requested levels for 1988 and 1989 could have been justified.

Ontario opposed the salary increase of 5.2 percent for 1988. Ontario argued that TCPL's salary increase was outpacing inflation and the Board's 1988 salary increases approved for other utilities. Ontario agreed that the Toronto area has been subject to a heated labour market and that this factor justifies, at most, an overall salary increase of 4.75 percent for 1988.

Views of the Board

The Board is satisfied with the overall competitiveness of TCPL's salaries and recognizes that the Toronto market has experienced greater salary increases than those experienced in other regions of the country.

Decision

The Board finds the requested salary increases for the 1988 and 1989 test years to be reasonable.

5.2.1.4 Employee Benefits

In support of its employee benefits estimate for the test years, TCPL provided evidence, through its expert witness, that, on average, its benefits were competitive. TCPL, in deriving its estimate of employee

benefits expense for the test years, provided for adjustments due to increases in salaries, plan participation and changes in statutory and pension plan costs.

The most significant change in employee benefits is in the pension plan which TCPL proposed to change to a final-average pension plan from a career-average pension plan. The change in the pension plan has the effect of increasing the annual cost of current service and creating a past service liability which TCPL proposed to amortize over 15 years. TCPL indicated that the change will bring stability to the annual pension plan expenses and will address the Company's concerns regarding employee attraction and retention. TCPL's competitors in the marketplace most commonly provide a final-average plan. TCPL indicated that the long-term costs to the tollpayers would be the same under a final-average plan as under a careeraverage plan with regular periodic updates. The principal difference between the career-average plan and the final-average plan is the timing of the expense. TCPL indicated that pension expense is typically 7 to 9 percent of payroll. TCPL pointed out that its pension expenses for 1988 and 1989 cannot be considered to be typical since they include the amortization costs.

IPAC indicated it was not opposed to TCPL updating its pension plan. However, IPAC questioned why the plan had to be so rich at 15 percent of total salary burden versus the norm of 7 to 9 percent as submitted by TCPL. Ontario argued that the Board should limit TCPL's cost recovery for pensions to 10 percent of salary for the 1988 and 1989 test years versus the requested 13.7 percent in 1988 and 14.8 percent in 1989.

Views of the Board

The Board considers TCPL's employee benefits to be competitive. With regard to test-year pension expense, since the long-term cost to the tollpayer of the new pension plan is estimated to be approximately the same as that of the former pension plan, the Board accepts the estimated pension expense for the test years.

Decision

The Board approves the employee benefits as requested by TCPL for 1988 and 1989.

As a result, of the Board's decision in section 5.2.1.1, the applied-for 1989 test-year allowance for salaries and employee benefits included in the revenue requirement has been reduced by $704,000.

5.2.2 Other Transmission, Departmental and General Expenses

5.2.2.1 Advertising Expense

In its RH-3-86 Decision the Board expressed the view that the costs associated with the promotion of natural gas sales or the development of natural gas markets would more appropriately be borne by WGML. Accordingly, the Board directed TCPL to demonstrate, in this tolls hearing, why such costs should not be excluded from the transportation

revenue requirement.

In its application for the 1989 test year TCPL included an amount of $350,000 to reflect its participation in the CGA's advertising program. In support of this request TCPL argued that the advertising program is not to promote the use of gas from TCPL/WGML producers and therefore it is not a cost which should be borne by WGML. TCPL argued that the expenditure is on behalf of the industry. By including these costs in its revenue requirement, TCPL is serving as an intermediary to collect the funds on behalf of tollpayers and remit it to the CGA for the advertising programs that have been adopted by the industry.

Ontario argued that the inclusion of advertising costs in the revenue requirement amounts to a levy on tollpayers for advertising and that participation in such programs should be voluntary. Ontario also questioned the need for advertising at a time when pipeline capacity is being fully utilized. IPAC expressed similar views stating that there had been more justification for this payment when TCPL sold gas.

Views of the Board

Advertising is a discretionary expense. The inclusion of advertising costs in TCPL's revenue requirement amounts to a levy on tollpayers for advertising programs in which they may, or may not, wish to participate. TCPL is now essentially a transporter of gas with most of its former merchant functions being performed by WGML. The cost of advertising to promote the use of natural gas should be borne by producers and marketers. Participation in such programs by tollpayers should be on a voluntary basis directly with the CGA rather than indirectly through tolls.

Decision

The Board has reduced the 1989 revenue requirement by the amount of $350,000 provided for advertising.

5.2.2.2 Aircraft Expense

In its RH-3-86 Decision the Board restricted the utility portion of TCPL's corporate aircraft expense to 25 percent. In response to this decision, TCPL sold a one-third interest in its two long-range aircraft to an unrelated third party.

TCPL argued that this sale resulted in a better utilization of the aircraft since the owning and operating costs would be spread over more flying hours. Based on estimates of use, TCPL proposed to allocate to the utility 38 percent of its two-thirds share of the costs. TCPL pointed out that 38 percent of the two-thirds share of the costs is equivalent to 25 percent of the total costs.

Ontario argued that the sale of a one-third interest in the aircraft had provided no benefits to the utility and that the problem of using long-range aircraft for mid-range flights, which was of major concern to the Board in the RH-3-86 Decision, still exists. Ontario and IPAC

proposed that the Board should allow only 25 percent of TCPL's share of the aircraft.

Views of the Board

The Board accepts that the sale of a one-third interest in the aircraft has resulted in a cost saving to TCPL. The cost allocation proposed by TCPL is equal to the cost allocation allowed by the Board in the RH-3-86 Decision.

While it is still the Board's view that the utility's requirements would be better served with mid-range aircraft, rather than long-range aircraft, the Board accepts that sharing the aircraft with the non-utility divisions of TCPL could be more cost efficient.

Decision

The Board approves the allocation, to the utility, of 38 percent of the corporate aircraft costs for the 1988 and 1989 test years.

5.2.2.3 Budgeting Error

The CPA and Ontario argued that TCPL's forecasts for operation and maintenance expenses are consistently too high. In support of this view the CPA pointed to the fact that TCPL's achieved return on equity has exceeded its approved return on equity in nine of the last ten years. The CPA urged the Board to make a general cut to the applied-for cost forecast.

TCPL indicated that if, in any one year, it is able to achieve efficiencies from the forecast, the savings would fall to the shareholders, but such savings would be to the benefit of the tollpayers in the long run. In arguing against a general disallowance, TCPL suggested that such a practice could result in a tendency for applicants before the Board to provide inflated estimates to ensure full recovery of costs.

Views of the Board

As is the case with all budgets, TCPL's forecast of operation and maintenance costs for the 1989 test year is based on estimates. The Board expects TCPL to prepare its cost estimates carefully, taking into account factors such as historical experience and a detailed analysis of work to be performed during the test year.

The level of information and detail provided by TCPL in this proceeding is a significant improvement over that provided in the past. The increased detail provided indicates to the Board that TCPL has paid greater attention to its cost forecasting in determining its financial requirements.

All pipelines regulated by the Board on a forward test-year basis are expected to take every opportunity to effect cost savings and productivity gains.

To the extent that such gains are made, a company is entitled to enjoy them in the year these are achieved. However, in subsequent years the cost savings should flow to the tollpayers.

Decision

The Board accepts TCPL's assertion that the forecast costs represent its best estimate of the actual costs to be incurred. To the extent that the costs incurred are less than the costs applied for, the Board will expect TCPL to provide full details of the cost savings or productivity gains achieved.

5.2.2.4 Contracted Services

TCPL has forecast, for 1989, contracted services expenses of $500,000 in respect of three special studies relating to gas supply, gas markets and rate design. TCPL argued that these studies, which will be updated periodically, are a prudent management requirement which will help to ensure that new facilities to be constructed will, in fact, be used and useful.

The CPA did not object to the recovery in tolls of the costs of the rate design study, provided that, when completed, it will be available to interested parties. However, the CPA argued that the costs of studies of reserves and markets should not be allowed because these matters should be considered by suppliers and marketers and not by the transporter.

Views of the Board

As a transporter of gas, TCPL has a legitimate interest in studying gas supplies and markets to ensure that existing and planned facilities will, indeed, continue to be used and useful. However, to the extent that the costs of such studies are included in TCPL's revenue requirement, it is reasonable for interested parties to expect that studies performed will be made available to them upon request.

Decision

The Board approves the inclusion, in the revenue requirement, of the costs of studies related to gas supply, markets and rate design matters. TCPL is to make all such studies available to interested parties upon request.

5.2.2.5 Donations

Views of the Board

The Board has noted that TCPL's charitable donations on behalf of the utility in 1987 were approximately $78,000 less than the amount originally forecast. While the Board realizes that there may have been valid reasons for this, TCPL is reminded that the applied-for amount is viewed by the Board as the minimum amount of donations to be made by the Company.

Decision

The Board approves the applied-for amounts in respect of charitable donations for the 1988 and 1989 test years.

5.2.2.6 Rent Expense

IPAC questioned the need for TCPL to have its offices in the heart of Toronto's financial district. IPAC suggested that TCPL should be directed to file a cost/benefit analysis to justify its Commerce Court location

Views of the Board

The Board shares the concerns expressed by IPAC and agrees that the matter should receive further study. The requirements of TCPL do not appear to necessitate a downtown-Toronto location for operational purposes.

Decision

TCPL is directed to file, for examination at the next toll hearing after 1989, a cost/benefit study for five, ten and fifteen years comparing the cost of maintaining its existing Toronto offices with the cost of relocating the operational departments elsewhere, including an analysis of the potential impact of any move on staffing and payroll costs.

5.2.2.7 Research & Development

During the hearing the Board heard evidence about TCPL's contributions to the research programs of the CGRI and its Natural Gas Vehicle Research Program.

TCPL argued that inclusion of these costs in its tolls is an appropriate method of sharing the costs among the producers.

The evidence showed that the research currently being undertaken by the CGRI relates primarily to consumer-oriented gas appliances. However, in the past, some research performed was directly related to pipeline technology. No parties objected to the inclusion in the revenue requirement of contributions to the CGRI.

Ontario expressed concern with the payments to the Natural Gas Vehicle Research Program arguing that this program has no direct connection to the operation of the pipeline.

Views of the Board

It is fitting that TCPL should participate in research programs related to the construction, maintenance and operation of pipelines. However, the Board questions the appropriateness of participation in programs related to gas consumption rather than gas transportation. Such costs should be borne by producers and marketers of gas including local distributors.

Decision

Contributions to the Natural Gas Vehicle Research Program amounting to $142,000 for the 1988 test year and $143,000 for the 1989 test year have been excluded from the revenue requirements. While the fees paid to the CGRI have been allowed, the Board does not know whether the research performed is of sufficient value to TCPL to justify the contributions made. The Board wishes to hear more evidence on this matter in the next toll hearing after 1989.

5.3 Miscellaneous Revenue

TCPL credited its transportation revenue requirement with miscellaneous revenue in the amount of $52,935,000. This amount included revenue from the sale of IS, STS, PS, TWS and the two gas exchanges with Consumers Gas.

Views of the Board and Decision

The Board approves an amount of $46,025,000 for miscellaneous revenue which reflects an adjustment of $6,910,000 based on the approved tolls for PS, TWS and STS.

5.4 Purchase Price of Company-Use Gas

Views of the Board

The current provision in the Uniform Toll Schedule of TCPL's tariff provides for a price of $1.90/GJ for fuel provided to shippers by TCPL.

In its Phase I Decision, the Board decided that it did not require TCPL to adopt a tendering process for its company-use gas requirements.

The price of $1.90/GJ is not unreasonable given the nature of the supply and today's circumstances.

Decision

The Board approves the price of $1.90/GJ for fuel gas supplied to shippers and TCPL's own company-use gas requirements for the 1988 and 1989 test years.

Chapter 6

Interim Revenue Adjustment

This chapter provides details of the interim revenue adjustment which is comprised of a revenue surplus for the 1988 test year and a revenue deficiency for the period 1 January to 30 June 1989.

The 1988 test-period revenue surplus results from interim tolls being charged throughout 1988. The 1989 test-year revenue deficiency results from interim tolls being in place from 1 January to 30 June 1989.

6.1 1988 Test-Year Revenue Surplus

Details of the Board's adjustments to the 1988 revenue surplus are provided in this section. Adjustments to rate base, depreciation, cost of capital and operating costs are explained in sections 6.1.1, 6.1.2 and 6.1.3, respectively. The revenue requirement and the revenue surplus for the 1988 test year, including carrying charges to 31 December 1988, are shown in Table 6-1.

6.1.1 Rate Base and Depreciation

The Board's adjustments to the 1988 rate base are shown in Table 6-2.

Decision

A net reduction to the 1988 rate base is required as a result of the Board's decisions with respect to the AFUDC rate (see section 3.1.3), research ant development expenses (see section 5.2.2.7), preliminary surveys and investigation charges (see section 8.3.1), the amortization of the capital gain on the New Zealand debt (see section 4.1) and the inclusion in rate base of the balances of operating deferral accounts (see section 6.3.2).

The disallowance of the average preliminary surveys and investigation costs from rate base results in a reduction of other deferred items of $1,426,000. The amortization of the capital gain on the New Zealand debt results in an increase in rate base of $1,958,000. This is the average of the amount amortized during the year. The inclusion in rate base of the average unamortized balance of the 1987 operating deferral accounts results in a reduction of $55,833,000 in rate base.

The reduction of the AFUDC rate to the approved rate of return on rate base results in a reduction to gross plant of $61,000. Depreciation expense for 1988 has been reduced by $2,000, and accumulated depreciation has been reduced by $1,000.

The working capital allowance has been reduced by $12,000 to reflect the disallowance of research and development costs of $142,000 (see Table 6-3).

6.1.2 Cost of Capital

TCPL applied for a rate of return on common equity of 14.65% for the 1988 test year, on a deemed common equity component of 30%. Total deemed capitalization has been set equal to the average utility rate base plus GPUC. The applied for capital structure and requested rates of return are shown in Table 6-4 and discussed in the sections following.

6.1.2.1 Funded Debt

Decision

Consistent with its decision in section 4.1, the Board approves a funded debt cost rate of 13.42% for 1988. This rate reflects the amortization of one-fifth of the amount of the capital gain resulting from TCPL's NZ debt issue, and reduces TCPL's financial charges by $3,915,000. Also, the Board has decided to include in TCPL's 1988 rate base the average amortized balance of the capital gain recognized for toll-making purposes ($1,957,500; see section 6.1.1).

6.1.2.2 Unfunded (Prefunded) Debt

TCPL applied a cost rate of 11 3/8% to its unfunded debt balance of $8,339,000 for the 1988 test year. This rate corresponds to TCPL's estimate of the rate at which it could have raised long term funds, on average, in 1988.

TCPL indicated that it had not issued any utility related long-term debt in 1988 after the filing of its application in September 1988. TCPL's witnesses did not agree with the concept of costing its unfunded debt component using a short-term rate, taking the position that a long-term rate should be used. During cross-examination, a Company witness did indicate that the average cost of its bank loans and commercial paper in 1988 was 8.80% and 8.92%, respectively.

The CPA's witness was in agreement with TCPL that a long-term rate was appropriate to use in this situation. However, Ontario's witness stated that a short-term rate should be used given his view that the unfunded debt component of TCPL's utility capitalization was, in fact, financed by short-term funds during the 1988 test year.

Views of the Board

As stated in section 4.2, as a matter of principle in a true forward test year, unfunded debt rates should correspond to forecast long-term interest rates. However, the Board notes that TCPL issued no long-term debt after the filing of its toll application in September 1988 and concludes that TCPL's unfunded debt component, to the extent it existed, was financed with short-term funds in the interim.

Decision

The Board finds that, on an after the-fact basis, it would be reasonable to cost unfunded debt at a short-term rate of 8.9%, this rate to be used in determining the carrying charges on TCPL's special, non recurring,

deferral accounts (see section 6.3.1). However, as a result of other decisions in this case (see section 6.1.1), the unfunded debt component of TCPL's originally applied for capital structure reverts to a prefunded debt situation. In the special circumstances of this case, the Board also has decided to cost TCPL's prefunded debt in 1988 using the short-term rate of 8.9%.

6.1.2.3 Preferred Share Capital

For 1988, the applied-for cost rate relative to TCPL's projected preferred equity balance is 8.82%. This rate was determined in a manner consistent with that used in TCPL's last toll proceeding and was not at issue during the hearing.

Decision

The Board accepts the applied-for cost rate for preferred shares of 8.82% for 1988.

6.1.2.4 Common Equity Ratio

Decision

As stated in section 4.4, the Board has decided to maintain TCPL's utility-related deemed common equity ratio at a level of 30% for toll-making purposes for the 1988 test year (see section 4.4 for a more detailed discussion).

6.1.2.5 Rate of Return on Common Equity

There was some discussion during the proceeding concerning the granting of a lower rate of return on common equity in 1988 given the circumstances of this case. One TCPL witness argued that he saw no merit in awarding a lower rate in 1988, noting that even though that test year was now completed, the Company still, in fact, had taken risks during the year.

In recommending the lower end of his recommended range for 1988, the CPA's witness saw TCPL's risk as being reduced slightly if the Board were to accept and approve the Company's actual expenses incurred in 1988. Ontario's witness agreed that TCPL, on an after-the-fact-basis, was exposed to less risk in 1988, given its cost of service status. However, he stated that in recommending a lower rate of return for 1988, he was attempting to reflect the lower interest rates of that test year.

Views of the Board

Given that the Board has approved a revenue requirement for 1988 after the actual expenses were known, TCPL's risk of non-recovery of operating expenses has been reduced significantly. A change in the currently-approved rate of return on common equity is not warranted under these circumstances.

Decision

The Board approves a rate of return on common equity of 13.25% for the 1988 test year.

6.1.2.6 Rate of Return on Rate Base

Decision

The Board approves an overall rate of return of 12.77% for the 1988 test year. The approved deemed capitalization and the derivation of the allowed rate of return are shown in Table 6-5.

6.1.2.7 Flow-Through Tax Calculation

Decision

The Board has adjusted the 1988 flowthrough income tax provision from $135,110,000 to $120,031,000, a reduction of $15,079,000 (see Table 6-6).

6.1.3 Operating Costs

6.1.3.1 Operation and Maintenance

Research and Development

Decision

As a result of the Board's decision in section 5.2.2.7 not to allow research and development costs related to the Natural Gas Vehicle Research Program, 1988 Operation and Maintenance expenses have been reduced by $141,900.

6.1.4 Regulatory Amortizations

Pursuant to the Board's decision, set out in section 6.3.2, to continue to include average unamortized operating deferral account balances in rate base regulatory amortizations have been reduced by the amount of carrying charges now provided through the return on rate base. The adjustments to regulatory amortizations for the 1988 test year are summarized in Table 6-7.

6.1.4.1 Adjustment to Carrying Charges for Deferral Accounts

In its decision in Phase I the Board directed that carrying charges on the unamortized net credit operating deferral account balances of $76,403,000, as at 31 December 1987, should accrue carrying charges at the rate of return on rate base approved in the RH-3-86 Reasons for Decision of 13.5% per year, for the period 1 January 1988 to 30 June 1988.

The Board's decision in section 6.3.2 of this chapter provides that the average unamortized balance of operating deferrals is to be included in rate base. Since the approved rate of return on rate base for 1988 is less than the 13.5% discussed above, a credit of $294,000 to the revenue

requirement for 1988 has been made.

6.1.4.2 Preliminary Surveys and Investigations Costs

TCPL included $ 130,000 in the 1988 revenue requirement for the preliminary engineering costs related to a heat recovery system at Station 30, and the cost of determining the feasibility of using electric driver units at Station 41.

TCPL submitted that although certain projects might not proceed because of economic conditions, the results of the preliminary work might be utilized in the analysis of future alternatives. TCPL argued that the cost of projects which do not proceed, and the cost of preliminary work which cannot be utilized for alternate facilities are prudent, legitimate, and actual, and should be recovered in the revenue requirement.

The CPA submitted that there should be no presumption by TCPL of recovery of preliminary design and engineering costs. The inclusion of such costs in rate base and their inclusion in the revenue requirement should be reviewed on a case-bycase basis. The CPA submitted that TCPL had not presented sufficient evidence to warrant the recovery of the preliminary engineering costs incurred for the waste heat recovery system at Station 30, or the costs incurred for determining the feasibility of utilizing electric driver units at Station 41.

Views of the Board

The Board agrees with the CPA’s position that there should be no presumption of recovery of preliminary engineering costs and the inclusion of such costs in the revenue requirement should be determined on a case-by-case basis. In this case, the Board is satisfied that the preliminary engineering costs relating to the waste heat recovery system at Station 30 and the feasibility of utilizing electric drivers at Station 41 are reasonable pipeline costs that should be included in the revenue requirement.

Decision

The Board has included, in the 1988 revenue requirement, the preliminary engineering costs relating to the waste heat recovery system at Station 30 and the feasibility of utilizing electric drivers at Station 41.

6.2 1989 Revenue Deficiency

The estimated 1989 test-year revenue deficiency is $1,746,668 for the period 1 January 1989 to 30 June 1989. This amount represents the difference between the projected transportation revenue from the interim tolls, and the adjusted test-year revenue requirement, as shown in Table 6-8. The Board's decision with respect to a deferral account for the 1989 test-year revenue variance, is provided in section 7.3.3.

6.3 Carrying Charges

6.3.1 Special Deferral Accounts

Pursuant to the Board's decision in Phase I, interim revenue variances are considered to be special situations as provided for in the RH-3-86 Reasons for Decision. The Board decided, in Phase I, that in calculating any variance between the approved revenue requirement for the interim period and the total revenue generated from interim tolls, carrying charges would be based on the actual monthly variance, using the average of the opening and closing monthly balances. The rate would be the unfunded debt rate to be determined during this Phase of the hearing. The approved rate for the 1988 test year, as discussed in section 6.1.2.2, is 8.9%.

In its application TCPL calculated carrying charges on the 1988 revenue surplus at its applied for rate of return.

Decision

In accordance with the Board's decision in Phase I carrying charges have been recalculated using a rate of 8.9%.

6.3.2 Operating Deferral Accounts

In its application TCPL excluded the average unamortized balances of the 1987 operating deferral accounts from the rate base. TCPL explained that the unamortized balances had been excluded from rate base because the Board had directed the Company to use the rate of return on rate base of 13.5% authorized in RH-3-86 for calculating carrying charges in the first half of 1988 rather than the rate of return applicable to 1988 which was to be determined in Phase II of the hearing. However, TCPL testified that it was its intention to continue the practice of including average unamortized balances in the rate base in the future.

Views of the Board

The inclusion of the average unamortized balances of deferral accounts in rate base during the period of amortization and the allowance of carrying charges on operating deferrals, calculated using the rate of return on rate base, is consistent with past practice and remains appropriate.

Decision

The average unamortized balance of the 1987 operating deferral accounts, as summarized in Table 3-1 of the Phase I Reasons for Decision, shall be included in the 1988 test year rate base. An adjustment has been made to the 1988 revenue requirement to reflect the difference between the approved rate of return on rate base and the rate of 13.6% approved to 30 June 1888 in the Phase I Decision (see section 6.1.5.1).

6.4 Amortization of Interim Revenue Adjustment

The interim revenue adjustment included in the authorized 1989 test-year revenue requirement is set out in Table 6-9.

The tolls, effective 1 July 1989, have been set based on the amortization of the interim revenue adjustment over the last six months of the 1989 test year. For the purpose of calculating tolls the interim revenue credit of $49,908,000 has been doubled to reflect the amortization over one-half of the test period.

Chapter 7

Deferral Accounts

7.1 Rate of Carrying Charges

In its Phase I Decision the Board indicated that it wished to hear expert financial evidence on the matter of the continued appropriateness of using the rate of return on rate base to calculate carrying charges on operating deferral accounts.

TCPL took the position that the rate of return on rate base is the appropriate rate. It stated that the funding of deferred amounts is a part of the ongoing funding of its operations and that it does not put names on dollars. TCPL also stated that it cannot borrow funds without equity and, to the extent that it borrows to finance deferred balances, it is relying upon its equity to do so.

The CPA expressed the view that deferral account balances are not like other assets and, therefore, should not be treated as such. It argued that in instances where funds are owed to the tollpayers, TCPL should pay the rate of return on rate base if the funds can be used to finance the rate base. For balances due to the Company the CPA suggested a short-term rate would be appropriate because it is the rate at which TCPL could raise the money. Ontario argued for a short-term rate for carrying charges on all deferral account balances, pointing to TCPL's persistent use of short-term debt in its capital structure.

Views of the Board

The operation of deferral accounts requires that TCPL stand ready to finance debit balances, or find a home for credit balances, as they occur. TCPL indicated that it does not, in fact, issue or redeem equity as deferral account balances occur. However, the Board accepts TCPL's arguments that it could not raise short-term debt without underlying equity.

Decision

The Board finds that rate of return on rate base continues to be the appropriate rate for calculating carrying charges on operating deferral account balances. In the case of deferral accounts established for special situations such as revenue deficiencies or surpluses, carrying charges should be calculated using a rate that approximates TCPL's probable cost of financing the deferred balances. The appropriate rate for such deferral accounts will continue to be determined by the Board on a case-by-case basis.

7.2 Accounts Suspended 1 January 1989

TCPL requested the reinstatement of all deferral accounts (with the exception of the Great Lakes Fuel Cost Adjustment and the Fixed-Cost Revenues from Interruptible Services deferral accounts) suspended by Order TGI-55-87, effective 1 January 1989, subject to certain proposed

amendments.

7.2.1 Accounts to be Reinstated Without Change

TCPL requested that the following deferral accounts be reinstated without change:

Great Lakes Rates,
Great Lakes Exchange,
Great Lakes Refund,
Union Rates,
TQM Toll,
Debt Service, Future Legislative Changes to Various Taxes,
and Income Tax Reassessment.

No intervenors opposed the reinstatement of these deferral accounts.

Decision

The Board approves the reinstatement of these deferral accounts without change.

7.2.2 Accounts to be Discontinued

Great Lakes Fuel Cost Adjustment

TCPL applied to eliminate the Great Lakes Fuel Cost Adjustment deferral account because it will no longer be required if the Board accepts TCPL's proposal to eliminate the fuel cost adjustment.

Fixed-Cost Revenues from Interruptible Services

TCPL requested that the Fixed-Cost Revenues from Interruptible Service deferral account be eliminated as it will no longer be needed if the Board approves--TCPL's proposal to include projected interruptible volumes in its variable cost allocation units for the test years and to establish a new deferral account for fixed-cost variances from interruptible services.

No intervenors opposed the elimination of these deferral accounts.

Views of the Board

Since the Board has accepted TCPL's proposal to eliminate the Great Lakes Fuel Cost Adjustment (see section 5.1.2), the related deferral account is no longer required.

The Fixed-Cost Revenues from Interruptible Service deferral account is no longer required as the Board has approved the new deferral account requested by TCPL (see section 7.3.2).

Decision

The Board approves the elimination of these deferral accounts.

7.2.3 Accounts to be Amended and Reinstated

7.2.3.1 Great Lakes Demand Charge

TCPL requested that the Great Lakes Demand Charge deferral account be reinstated without change.

No intervenors opposed the reinstatement of this deferral account.

Views of the Board

The demand volume of 750 000 Mcfd currently reflected in the Demand Charge deferral account was approved by Order No. TG-3-87 for the 1987 test year.

TCPL applied for a demand volume of 827 083 Mcfd for the purpose of calculating Great Lakes costs for the 1989 test year, however this estimate was determined on the basis that 62 500 Mcfd of new Annual Service would commence on 1 March 1989.

As stated in section 5.1.1, because TCPL'S application for approval of the 62 500 Mcfd was still pending before the FERC at the conclusion of the hearing, the Board decided to include this volume on the basis that it will commence flowing on 1 July 1989 (see section 5.1.1). Therefore, the Board considers that a demand volume of 806 250 Mcfd is appropriate for the 1989 test year.

Decision

The Board approves the reinstatement of this account, amended to include a demand volume of 806 250 Mcfd.

7.2.3.2 Gas Related Costs and Purchase Price

TCPL requested that the Gas-Related Costs and Purchase Price deferral account be amended to exclude heating fuel and operating uses since both of these items are now being included in the fuel ratios. During the hearing TCPL agreed that the account should be further amended to exclude the inventory allowance for tax purposes which also is no longer required.

No intervenors opposed the amendment and reinstatement of this deferral account.

Views of the Board

The Board agrees that the amendments proposed by TCPL are appropriate. In addition, the account should be amended to exclude sale of delivery pressure as the Board has accepted TCPL's proposal regarding incremental tolls. The account should also be amended to exclude transportation chargespaid to Steelman producers effective 1 November 1989 since the Board has decided to disallow the Steelman gas adjustment (see section

5.1.3).

Decision

The Board approves the reinstatement of the Gas-Related costs and Purchase Price deferral account, amended to exclude the following items:

(i) heating fuel and operating uses,

(ii) inventory allowance for tax purposes,

(iii) sale of delivery pressure, and

(iv) transportation charges paid to Steelman gas producers, effective 1 November 1989.

7.2.3.3 Compressor Fuel

TCPL proposed that the Compressor Fuel deferral account be amended to exclude the ACQ make-up sub-account as it is no longer required. TCPL further requested that volume variances no longer be reflected in the account as these are included in the fuel ratios. The account, as amended, would include variances between costs recovered through tolls and actual costs for the following items:

(i) the cost of compressor fuel the applicant supplies,

(ii) the cost of fuel within the Great Lakes T-4 rate related to volumes,

(iii) the cost of electric fuel, and

(iv) the cost of sales tax on fuel.

No intervenors opposed the amendment and reinstatement of this account as requested by TCPL.

Decision

The Board approves the amendment and reinstatement of the Compressor Fuel deferral account as requested by TCPL.

7.2.3.4 Demand Revenue

TCPL requested that the Demand Revenue deferral account be amended to include amounts from export direct shippers representing fixed revenues anticipated in the setting of tolls, but not received. TCPL argued that there is no reason to differentiate between domestic and export shippers. In the absence of the requested deferral account, the rapidly increasing number of export direct shippers will significantly increase TCPL’s business risks.

No intervenors opposed the amendment and reinstatement of this account as proposed by TCPL.

Views of the Board

The Board agrees that in the light of today's circumstances, there is no need to differentiate between export and domestic shippers for the purposes of this deferral account.

Decision

The Board approves the reinstatement of the Demand Revenue deferral account. The account is amended to include amounts representing fixed revenues anticipated, but not received, from export direct shippers.

7.3 New Accounts

7.3.1 Fixed Costs in the Great Lakes Commodity Charge

TCPL requested a new deferral account in which to record any variances between the fixed costs in the Great Lakes' commodity rate for the level of firm service on Great Lakes approved by the Board and the fixed costs in Great Lakes' commodity rate for the actual firm service volumes on Great Lakes.

The volumes which flow on the Great Lakes system are determined on a day-to-day basis using the flow-split equation. The use of the equation ensures the transmission of gas at the lowest possible cost. The flow-split which results from the equation is dependent on TCPL's contract demand level on Great Lakes. Therefore, if the actual contract demand level is different from that forecast for the test year, the actual firm volumes which flow on the Great Lakes system will also be different from the firm volumes projected to flow during the test year. Consequently, the fixed costs charged to TCPL in the Great Lakes' commodity rate for the actual level of firm service will be different from those approved by the Board for toll purposes.

TCPL contended that it is at risk for the variances in these fixed costs because its level of contract demand on Great Lakes is subject to change for reasons beyond its control.

No intervenors opposed the approval of this deferral account.

Views of the Board

The Board recognizes that TCPL is at risk for the variances in these fixed costs and also that the variances are beyond TCPL's control. The Board considers it appropriate that the requested deferral account be established.

Decision

The Board authorizes TCPL to record, in a deferral account, any variances between the fixed costs in the Great Lakes' commodity rate for the level of firm volume service on Great Lakes approved by the Board for toll purposes and the fixed costs in Great Lakes' commodity rate for the actual level of firm service volumes on Great Lakes.

7.3.2 Fixed-Cost Variance from Interruptible Service

In conjunction with its request to include a forecast of interruptible volumes in the allocation units to be used for toll design purposes (see section 8.4), TCPL applied for a new deferral account in which to record any variances between fixed costs actually recovered by IS tolls and the fixed costs projected to be recovered by IS tolls.

TCPL argued that because the interruptible market is very volatile and the interruptible volume levels are beyond TCPL's control, the new deferral account would be appropriate.

TCPL further requested that this deferral account replace the existing Fixed-Cost Revenues from Interruptible Service deferral account.

No intervenors opposed the establishment of this deferral account.

Views of the Board

The Board agrees that levels of IS volumes are beyond the control of TCPL and, therefore, it is reasonable that any variances in fixed costs associated with IS volumes should be deferred.

Decision

In the light of the Board's decision on IS cost allocation (see section 8.4), the Board authorizes TCPL to record in a deferral account any variances between fixed costs actually recovered by IS tolls and the fixed costs projected to be recovered by IS tolls. This account will replace the existing Fixed-Cost Revenues from Interruptible Service deferral account discussed in section 7.2.2.

7.3.3 Test-Year Revenue Deficiency

TCPL proposed that the Board establish a deferral account to record any variances between the estimated revenue deficiency/surplus used in setting the new final tolls and the actual revenue deficiency/surplus for the period.

No intervenors opposed the approval of such an account.

Views of the Board

The Board has determined that the interim tolls will result in a revenue deficiency for the period 1 January to 30 June 1989. The Board has reflected this estimate in the 1989 test-year revenue requirement to be amortized in the period 1 June to 31 December 1989 (see sections 6.2 and 6.4).

Since the actual revenue deficiency cannot be determined until the actual volumes for the period 1 January to 30 June 1989 are known, it is reasonable to defer any variances from the Board's estimate. This is consistent with the Board's past practice.

Decision

TCPL shall record in a deferral account the difference between the actual revenue deficiency for the period 1 January to 30 June 1989, and the deficiency estimated by the Board for toll purposes, together with carrying charges to be calculated at the authorized unfunded debt rate.

Chapter 8

Toll Design

8.1 Throughput Forecast

TCPL's 1989 test-year throughput forecast is 37 844 10^6m^3, of which 27 901 10^6m^3 is forecast for the domestic market, and 9 943 10^6m^3 is forecast for the export market.

Views of the Board

Deregulation of the natural gas industry in Canada and the United States is an evolving process. This process, in addition to other factors such as weather, the level of economic activity, and inter-fuel competition, contributes to the uncertainties which make natural gas demand forecasting a difficult task.

The Board notes that the 1989 test-year throughput forecast was not seriously challenged throughout the hearing.

The Board considers TCPL's forecast to be reasonable.

Decision

The Board accepts TCPL's 1989 throughput forecast for cost allocation and toll design purposes.

8.2 FST

TCPL proposed to replace the existing ACQ, which is a bundled sales service, with FST, which is a transportation service.

In relation to this change in type of service, TCPL also proposed changes to the toll design and cost allocation for FST. These proposals are addressed in the following sections.

8.2.1 Toll Design

Under the existing toll design methodology for ACQ, the toll is determined by subtracting a differential from the average FS toll in the Easternzone calculated at 100 percent load factor. The ACQ differential represents the additional downstream costs that TCPL would incur for transportation, storage and inventory if it provided FS instead of ACQ.

TCPL did not propose to change the method of determining the downstream differential because the provisions of the proposed FST Toll Schedule are virtually the same as the ACQ Toll Schedule.

However, because FST would now be available to all shippers, TCPL was of the view that, to provide FST, it would be necessary to have storage facilities at both the upstream end and the downstream end of the system. TCPL argued that the equivalent of storage facilities at the upstream end of the system is currently provided by system gas producers who have the

ability to vary their delivery volumes to meet the requirements of FST.

TCPL stated that, in the past, it was appropriate that system gas producers should have fulfilled this storage function because they provided the majority of the FS deliveries as well as ACQ deliveries and, in that circumstance, ACQ operated to improve the load factor of their total deliveries. Now that the system producers have lost much of their FS deliveries through displacements, a higher proportion of their deliveries are represented by ACQ, resulting in an uneven and more costly profile of takes for the system producers to effectively fulfill the upstream storage function.

Accordingly, TCPL submitted that the FST toll differential should be increased to include the cost of storage which TCPL would incur at the upstream end of the system to provide deliveries under FST, so that its system producers can be relieved of what TCPL characterized as an unfair and discriminatory cost burden.

TCPL also proposed that an upstream differential be added to enhance system access by other shippers and to accommodate the displacement of system ACQ sales by non-system FST transportation volumes. In order for these objectives to be attained, compensation for the variable input requirements of FST is required.

TCPL proposed that the upstream differential be calculated in the same way as the downstream differential by including the three components of transportation, storage and inventory.

TCPL stated that the transportation component is based upon published NOVA rates and also represents the extra level of transportation that the FST shipper would require on NOVA to translate the variable, daily tender swings of FST into a flat FS delivery pattern. TCPL therefore concluded that the rate and volume level of the transportation component had been justified.

TCPL also stated that the volume level of the upstream storage and inventory is required to translate the FST tendering pattern into an FS delivery pattern, but it conceded that the proposed rates for storage and inventory costs were open to question because they are not regulated and are not a matter of public record. Nevertheless, TCPL argued that the bid rate which had been provided to it by CWNG represents the most reasonable estimate of the cost of storage space in Alberta. In the alternative, TCPL recommended that the downstream storage costs be used as a proxy for the upstream storage costs.

TCPL received support, in principle, for its upstream differential proposal from the CPA, IPAC and the APMC.

The CPA stated that, with the advent of deregulation and the change from bundled ACQ to FST, flexibility is now required at both the upstream and downstream ends of the system and this flexibility can only be provided at a cost.

In the CPA’s submission, the toll for FST should be established in such

a manner that shippers would be indifferent to the use of FS or FST in terms of the costs associated with each type of service. Therefore, the costs which are avoided, at both ends of the system, must be considered in determining the FST toll.

The CPA also submitted that the lack of precision with respect to the cost of storage in Alberta should not preclude the Board from including an upstream differential because there is ample evidence on the record from which an appropriate amount for the upstream differential can be determined.

IPAC argued that the upstream differential appeared to be too large and recommended that the downstream storage costs be used as a surrogate for the upstream storage costs.

In the APMC's view, TCPL had made a reasonable effort to determine CWNG's storage rate and recommended that the Board approve TCPL's estimate. The APMC submitted that disallowance of the upstream toll differential could, by making FST a less attractive service, adversely affect the overall utilization of the TCPL system and cause TCPL to construct additional facilities, both of which could have a negative impact on existing tollpayers. The APMC also urged the Board to direct TCPL to investigate all upstream storage alternatives and to review the issue at the next tolls proceeding.

Those intervenors who opposed the proposed upstream differential included Consumers Gas, Union, C-I-L, and GMi. While Polysar was not opposed to the general concept of an upstream differential, it maintained that the proposed differential was too large and the Board should not approve TCPL's proposed storage cost component.

Consumers Gas and Union objected to the upstream differential for basically the same two reasons. Firstly, they both contended that an upstream differential is not required at this time. Secondly, in their view, no justification had been established for the level of the differential.

Union stated that, at present, the only supplier of gas for FST is WGML. The two users of FST, Union and Consumers Gas, have contracted to pay WGML any increase in the FST differential attributable to deemed upstream costs. Therefore, Union argued that any increase in the FST differential respecting upstream costs would simply result in a handout to WGML. Moreover, Union stated that there is no evidence that system gas producers incur incremental costs in delivering gas on the F ST delivery pattern because the existing gas delivery system simply absorbs those swings.

Consumers Gas submitted that the storage rate used in the calculation of the upstream differential is not reliable, nor suitable, for use as a proxy for TCPL's avoided cost. Consumers Gas wondered whether the cost to TCPL of its own storage entitlement at Carbon would provide a better proxy for the avoided costs.

Likewise, C-I-L and GMi expressed doubts about the validity of the

proposed storage costs and C-I-L stated that it appeared that the system producers would receive an immediate benefit if the differential were approved, because the vintaged storage costs in Alberta are, in all likelihood, substantially less than the proposed amount.

Views of the Board

The calculation of the downstream FST toll differential received very little examination during the hearing. Therefore, the Board does not see any reason to alter the present methodology.

The inclusion and calculation of the upstream FST toll differential, on the other hand, received considerable examination with particular attention focussed on the rate which TCPL used for the upstream storage cost.

With respect to the general question of whether an upstream differential should be added, the Board finds that it would be appropriate to add an upstream FST differential at this time in order to compensate those producers who supply gas for FST, for the costs associated with the variable gas production required for FST. This compensation should be provided equally to both system and non-system gas producers, notwithstanding that the system gas producers have traditionally provided gas for ACQ service without being compensated in this way. The greater toll differential between FS and FST should give an economic incentive for non-system producers to provide gas for FST resulting in more efficient utilization of the existing system facilities which in turn will result in lower costs for all shippers.

With respect to the specific costs to be included in the upstream differential, the Board accepts the costs associated with the transportation and inventory components in that the methodology used in their determination is consistent with that used for the downstream differential, and the transportation rates utilized are subject to regulation and are on the public record. However, the Board shares the concerns of those intervenors who argued that the bid rate used in the storage component is not a reliable figure and should not be used as a proxy for TCPL’s avoided storage costs.

After considering the possible alternatives to the bid rate, the Board has decided that it would be appropriate to utilize the cost of downstream storage as a surrogate for the cost of upstream storage in the calculation of the upstream differential. The Board recognizes the arbitrariness of this figure but until a more reliable basis for the cost of storage in Alberta can be determined, it will provide a suitable approximation. Not to include an estimate for Alberta storage costs would have been unreasonable.

Decision

The Board approves a downstream FST toll differential of $5.805 per 10^3m^3 and approves an upstream FST toll differential of $2.281 per 10^3m^3 for tolls effective 1 July 1989.

For the 1989 test year, the Board has decided to use the downstream storage cost of $7.397 per 10^3m^3 in the calculation of the upstream differential. The Board directs TCPL to investigate further all possible upstream storage alternatives in order that a more accurate assessment of the cost of storage in Alberta can be determined in TCPL's nest toll hearing after 1989.

8.2.2 FST Cost Allocation

For the 1989 test year, TCPL proposed that the allocation of fixed costs to the Eastern Zone for FST be based upon 100 percent of the average winter day volume rather than the presently approved 90 percent of average winter day volume.

TCPL stated that, in designing the central section of its system, it ensures that 100 percent of the annual FST volumes can be delivered over the year. With the contractual right to deliver plus or minus 10 percent of the 100 percent average winter day volume, the central section system design for a given contract year may actually exceed the requirements for delivering 100 percent of average winter day volumes during the winter season.

TCPL also stated that the effects of translating the FST deliveries into FS deliveries are compensated for in the downstream differential, via the downstream storage and transportation components.

Failure to alter the cost allocation mechanism for FST service from 90 percent of average winter day to 100 percent of average winter day would result in the users of FST twice reaping the benefit of the difference in delivery patterns between FS and FST.

TCPL also proposed to allocate the total FST differential dollars to all system FS users as well as FST users. TCPL contended that its proposed allocation methodology has the advantage of eliminating the additional step of having to allocate the historical trial-revenue deficiency while at the same time recognizing that the value of the FST toll differential is a surrogate for avoided facilities costs and/or foregone revenue requirement, thus benefiting all system users.

If the FST toll differential were allocated only to FS customers, the differential between the two services would be expanded and this would give a benefit to the FST shipper which is beyond the benefit that would result from a proper allocation of the FST toll differential.

Consumers Gas supported TCPL's proposal to allocate fixed costs for FST to the Eastern Zone on the basis of 100 percent of the average winter day volume. Both Consumers Gas and IPAC supported the allocation of the total FST differential dollars to FS and FST shippers on a system-wide basis.

Union and C-I-L opposed the change in allocation of fixed costs to 100 percent of the average winter day volume. Union argued that this change in methodology would result in a purchaser of FST having to pay twice for the fixed charges associated with obtaining firm service for the difference between 90 percent and 100 percent of the average winter day

volume.

Views of the Board

The Board concurs with TCPL's opinion that FST users are properly compensated through the downstream FST differential for the differences in the delivery patterns of FS and FST. Therefore, an allocation based on the design of the central section would yield the most appropriate result.

Since the downstream differential includes an inventory component, FST users would be compensated for the costs associated with any additional gas held in storage that the FST users purchased because they anticipated receiving only 90 percent of the annual FST volume. Therefore, the Board was not convinced by Union's argument.

In order to maintain the approved differential between FS and FST, the total FST differential dollars should be allocated to all FS and FST users across the system.

Decision

The Board approves the proposal to allocate fixed costs to the Eastern Zone for FST based on 100 percent of the average winter day volume. The Board also approves the proposal to allocate the total FST differential dollars to all system FS and FST users.

8.2.3 Operating Characteristics of FST

Consumers Gas stated that it was concerned that the operating characteristics of the new unbundled FST service may not be appropriate because they may not suit an optimal facilities design or the "new era" of unbundled transportation services.

In Consumers Gas' view, TCPL's proposal to convert ACQ into FST has been done in an exceedingly simplistic fashion. Consumers Gas explained that significant changes have occurred in the operation of TCPL's system since 1972 when the current version of the operational characteristics was first proposed. Notwithstanding these changes, TCPL has simply taken those 1972 operating characteristics and incorporated them into the proposed FST Toll Schedule, with a few minor modifications. The process of unbundling ACQ proposed by TCPL involves imposing the delivery point operational characteristics on the receipt points without studying whether this is appropriate.

Consumers Gas submitted that this is too big a jump to make without re-assessing the operating conditions and the level of flexibility required at the upstream end of the system. From the evidence, it concluded that the need for operating flexibility and the continuing appropriateness of the FST operating characteristics is determined on a daily basis with reference to the deliveries rather than the receipts.

Consumers Gas also submitted that a daily matching of receipts and deliveries under FST is not required because Consumers Gas and TCPL are

presently having difficulty matching the ACQ volumes on a monthly basis, let alone a weekly or daily basis.

Based on these concerns, Consumers Gas recommended that TCPL be directed to conduct an optimization study for FST that would assess its need, the operating parameters required, and the avoided costs with and without the service. Consumers Gas was of the view that such a study would help determine, more objectively, what the value of FST really is.

The CPA stated that its desire was to see a service which maximizes deliveries on an annual basis for the minimum cost on a per-unit basis. The CPA did not disagree with the desirability of a study of the terms and conditions of FST and the volume of FST offered. However, the CPA argued that such a study need not be completed prior to the implementation of FST in the manner suggested by TCPL.

Polysar and C-I-L also agreed that studies concerning the minimization of facilities and the maximization of throughput should be carried out, as well as studies to determine whether the operating parameters remain appropriate today. Polysar suggested that these studies be brought forward for consideration at TCPL's next toll hearing.

Views of the Board

The Board notes the concerns of Consumers Gas and others with respect to the optimal volume of FST and the appropriateness of the existing FST operating characteristics in today's circumstances. The Board encourages TCPL to consult with its existing and potential FST customers on these issues and to undertake studies that will examine both the optimal configuration of the TCPL system and the operating parameters for FST that are required for that configuration.

As part of such studies, it is expected that TCPL will have evaluated the possibility of further storage development in Ontario and/or off Great Lakes' system and ways to encourage the use of FST and storage services so that the fundamental needs of the market will be able to be met with the minimum level of facilities and associated owning and operating costs.

The Board expects that the results of such studies together with any proposed changes to the FST operating characteristics and toll design will be brought forward for consideration at a future Board proceeding.

8.3 Export Transportation Tolls

In its Hearing Order, the Board included the following two related issues for examination in this hearing:

(i) The appropriateness of designing tolls for volumes delivered to the export market on a point-to-point basis when tolls for domestic volumes are designed on a zone basis; and

(ii) The appropriateness of the Eastern Zone FS toll for

deliveries of export volumes to Dawn, Ontario.

In its evidentiary submission, TCPL took the position that the current point-to-point methodology remained appropriate. TCPL stated that it viewed each export point as being a separate and distinct zone because each export point serves a particular market or market area of the United States and each of these market areas is dissimilar to the adjacent Canadian market.

However, in final argument, TCPL stated that while its evidentiary support for the different point-to-point methodology for exports was justified based on historical policy considerations, it was now of the view that continuation of the different methodology would offend the policy intention of the FTA. Accordingly, TCPL submitted that tolls should be established on the same basis for both domestic and export services.

TCPL stated that its change in position on this issue was not based on legal considerations. In its view, section 62 of the NEB Act is broad enough to permit a decision either way and the different point-to-point methodology has been in place for many years without anyone, until now, questioning its legality.

On the second issue raised by the Board, TCPL argued that it is appropriate to continue to use the Eastern zone FS toll for deliveries of export volumes to Dawn, Ontario. That view, TCPL stated, was reinforced by its change in position on the generic export toll issue.

TCPL also stated that if the Board should decide to maintain the status quo for export tolls generally, the Dawn exports should still be subject to the Eastern zone FS toll. This would remove the temptation that might exist for some of the volumes that were originally destined for export to instead be used to serve the Eastern zone because the point-to-point toll to Dawn is less than the Eastern zone FS toll.

Of the intervenors who addressed these issues, the majority were in favour of maintaining the current point-to-point methodology.

The CPA suggested that if a position that gas destined for export is a different circumstance from gas destined for the domestic market were adopted, a different toll treatment for export and domestic gas would be justified.

With respect to the provisions of the FTA, the CPA submitted that the Board is not (thed-600(is)TJ±¼0 -1 TD±¼[(favourror(issues,)-600(the)ow00(of

point-to-point export tolls.

Union and PPG also supported the existing pointto-point methodology for exports. Union stated that the considerations which led to domestic zoning did not, and do not, apply to exports.

Union also stated that if there is perceived to be any inequity in not imposing the same point to point toll for exports at Dawn, as for other exports, then there should be a review of whether the Eastern Zone toll continues to be appropriate for domestic deliveries at Dawn.

IPAC submitted that there should be more equality between the tolls for domestic gas and export gas. The volume and nature of exports being made at various export points has altered with more sales being made to specific end-users in the United States.

However, IPAC was of the view that this issue would involve a major restructuring of the methodology TCPL uses to determine its tolls and therefore it should be deferred for consideration at the next TCPL hearing in conjunction with an examination of zoning.

IGUA submitted that the Board could change the method used for determining just and reasonable tolls if changed circumstances necessitate such action. IGUA stated that the FTA may be perceived as a changed circumstance triggering a need for change.

IGUA also suggested that in considering whether a change is needed, the impact of change and the history, in terms of the export pricing arrangements, should be assessed before a changed approach is adopted.

Boundary was the only export customer to address this issue. Boundary did not question the Board’s jurisdiction to establish either a zone toll or a point-to-point toll for exports but suggested that it is inequitable to allocate costs to exports on a point-to-point basis when the gas is physically transported to the same point as other gas charged a domestic zone rate.

Views of the Board

In considering the two issues concerning the appropriate toll methodology for natural gas exports, the Board was led to a further consideration of its jurisdiction under section 62 of the NEB Act (formerly section 52) and whether its prior interpretation of that section as expressed in its GH-2-87 Decision remains appropriate. Section 62 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."

In the GH-2-87 Decision the Board took the view that in section 62 of the NEB Act, the word "traffic" refers to the commodity which is being transported; the phrase "over the same route" refers to a specific

domestic toll zone or a specific export point in the context of TCPL's system; and that the phrase "under substantially similar circumstances and conditions" may be regarded as referring to circumstances and conditions of transportation of gas such as the nature and character of the service provided.

Most parties who commented on that prior interpretation took the position that the Board had been too restrictive. They added that the Board should not unnecessarily fetter the broad discretion which it has been given under the NEB Act by being overly restrictive in interpreting its own jurisdiction.

In addition, it was pointed out that the Board's interpretation of the word "traffic" in section 62 of the Act as referring only to the commodity which is being transported was not in accord with the French version of section 62 which uses the word "transport".

In its GH-2-87 Decision, at page 72, the Board stated:

"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 (now section 62) of the National Energy Board Act."

The section referred to appears to be section 317(1) of the Railway Act R.S.C. 1952 chapter 234. The definition of"traffic" is found in subsection 2(33) of that Act which provides:

"2(33) 'traffic' means the **traffic** of passengers, goods and rolling stock;" (emphasis added)

The French version of subsection 2(33) provides:

<<2.(33) <transport> ou <trafic> signifie le transport des voyageurs, des merchandises et du matériel roulant. >>

It is clear from a reading of the English and French definitions of "traffic" in the Railway Act that traffic is not simply passengers, goods and rolling stock per se but rather it is the traffic of those items that embodies the definition. Furthermore, in subsection 339(2) and section 340 of the current Railway Act R.S.C. 1985 chapter R-3, concerning the regulation of telegraphs and telephones, the word "traffic" is defined in subsection 339(2) for the purpose of section 340 as follows:

"339(2) 'traffic' means the transmission of and other dealings with telegraphic and telephonic messages."

The significance of these provisions is that section 340 is identical to section 62 of the NEB Act.

It is also clear that under the Railway Act Parliament has intended in

the case of telecommunications that "traffic" includes, as a minimum, the messages and the transmission and other dealings with those messages. Consequently, the word "traffic" as used in the Railway Act cannot be equated solely to the word "commodity".

It can be argued then, that the word "traffic" in the NEB Act, in provisions which are either the same or virtually the same in all material respects as those used in the Railway Act, likewise connotes something more than the mere physical commodity being transported in a pipeline.

Moreover, the word "traffic", as defined in the Oxford English Dictionary, in its substantive sense means the transportation of merchandise for the purpose of trade, commerce and more widely, trade itself, communication, dealings, or business; the passing to and fro of persons or vehicles; and, the amount of business done by a railway in the transport of passengers and goods. These are the primary meanings associated with the word. The use of "traffic" to denote saleable commodities is identified as being obsolete.

Under the Government of Canada's rules for interpreting bilingual legislation, both versions of an act or regulation are considered to be equally authoritative. Therefore, in order to equate the word "traffic" to the word "transport" found in the French version of section 62, the Board finds that it is no longer correct to interpret the word "traffic" as referring solely to the commodity being transported. Rather, it should be given a wider meaning so that it will accord with the meaning of "transport" in the French version of the NEB Act and reflect correctly its modern English usage. Thus, the Board now views "traffic" as referring not only to the commodity that is being transported but also to the activity of transportation and other associated dealings in that commodity.

In view of the foregoing, the Board considers that the phrase "all traffic of the same description" in section 62 of the NEB Act can have a broad meaning, depending upon the particular traffic characteristics manifested in the transportation of the commodity.

Similarly, the phrase, "under substantially similar circumstances and conditions with respect to all traffic of the same description", should no longer be considered as applying solely to the circumstances and conditions of transportation such as the nature and character of the service provided as was held in the GH-2-87 Decision. Rather, the circumstances and conditions which the Board must consider under section 62 are "with respect to... traffic..." which, given the Board's expanded definition of "traffic", would require that it consider all relevant matters affecting the traffic of the commodity by a pipeline.

Furthermore, under section 63 of the NEB Act, the Board is given the exclusive authority to determine, as a question of fact, what matters or traffic characteristics are relevant and what weight should be assigned to each in determining whether or not traffic is or has been carried under substantially similar circumstances and conditions and whether such carriage has resulted in unjust discrimination in tolls,

service or facilities against any person or locality. In so doing, while the Board may take into account the business motives of the parties or the circumstances and conditions created by contract or any other matter that the Board considers relevant, it is for the Board alone to determine what weight should be given to such matters.

Decision

In consequence of the Board's interpretation of sections 62 and 63 of the NEB Act, the Board finds that the distinction of traffic as being either export traffic or domestic traffic should continue to be taken into account in determining whether or not such traffic is carried under substantially similar circumstances and conditions. Accordingly, the Board considers that the existing point-topoint methodology for export traffic remains appropriate. The Board further notes that the current toll methodology allocates the cost of service between export and domestic traffic, as well as between domestic toll zones, on the basis of point-to-point cost allocation units.

In examining the appropriateness of the Eastern zone FS toll for deliveries of export volumes to Dawn, Ontario, the Board finds the toll treatment of these export volumes to be inconsistent with the Board's toll-making principles. The Board recognizes that the reason for setting the export toll at Dawn at the same level as the Eastern zone FS toll, instead of at the lesser point-to-point rate, was to discourage "leakage" of export volumes into the domestic market. Nevertheless, the Board no longer considers this possibility as sufficient grounds for disregarding its tollmaking principles and, in effect, for penalizing all shippers exporting volumes through Dawn. Accordingly, the Board directs TCPL to charge a point-to-point toll for all deliveries of export volumes to Dawn, Ontario effective 1 July 1989. The approved point-to-point tolls for exports are found in Appendix III.

Some parties suggested during this hearing that it may be appropriate to undertake a comprehensive review of the overall toll methodology to determine whether the Board's use of both point-to-point tolls and zone tolls requires any modification in the light of the significant changes that have taken place in the industry in recent years, including the advent of the FTA. The Board did not hear any evidence that the recent changes in the industry warrant such a review and is, therefore, not disposed to conducting one.

8.4 IS Cost Allocation

TCPL proposed the following changes respecting the revenues generated by IS-1 and IS-2 volumes:

(i) A forecast of IS-1 and IS 2 volumes will be included in the test-year variable cost allocation units;

(ii) The imputed fixed-cost component of the IS-1 and IS-2 tolls will be credited to the revenue requirement via the Miscellaneous Revenue Credit in the test year in which the volumes are forecast to move; and

(iii) Due to the volatile nature of the interruptible market and the fact that it is beyond control, TCPL requested a deferral account for the variance between the IS revenues currently credited and those actually realized.

TCPL stated that 25 percent of the forecast level of IS volumes were forecast to be transported under IS-1 and 75 percent under IS-2. The test-period crediting, therefore, reflects that forecast.

TCPL submitted that it is appropriate to credit the test-year revenue requirement with the imputed fixed cost which would result from the movement of interruptible volumes because such a practice will maximize the benefit to current firm service tollpayers, while also reducing any intergenerational inequity.

TCPL was supported in this proposal by IPAC and ICG (Ontario). No intervenor opposed the proposal.

Views of the Board

The Board finds TCPL's proposal to credit the testyear revenue requirement with the imputed fixed costs resulting from the movement of the forecast interruptible volumes to be appropriate because it will result in the current firm service customers receiving the maximum benefit possible from the movement of those interruptible volumes.

Decision

The Board approves TCPL's proposal. As discussed in section 7.3, the Board had also approved the requested deferral account.

8.5 Allocation of Administrative and General Expenses

Under the current toll design methodology, all A&G expenses are classified as fixed costs with insurance expense apportioned between metering and transmission, on the basis of the functional distribution of total plant. The remaining A&G expenses are apportioned between metering and transmission generally on the basis of the functionalization of direct transmission salaries. The result of this process is that approximately 4 percent of A&G expenses are included in the metering function and allocated to services on the basis of fixed volume units. The remaining 96 percent are included in the transmission function and allocated to services on the basis of fixed volume-distance units.

In its RH-3-86 Reasons for Decision, the Board stated the following:

"The Board wishes to examine the appropriate allocation of these administrative costs for the purposes of calculating tolls and therefore directs TCPL to address the matter in its next toll case."

In response to this directive, TCPL proposed, in its application, that 50 percent of the A&G expenses be allocated on a volume basis and 50 percent on a volume-distance basis. At that time, TCPL took the

position that this allocation was appropriate in light of what it viewed as being ample regulatory precedent in the United States.

Based on changing circumstances in the U.S. pipeline companies, TCPL concluded, prior to the hearing, that it was inappropriate to rely on its 50/50 allocation. TCPL therefore prepared an analysis which explained the nature of the work performed by TCPL's various departments and which highlighted the factors driving the work performed. TCPL concluded that the work of a number of departments has changed since deregulation and is now driven by factors that are not distance related. TCPL revised its proposal such that 70 percent of the A&G expenses would be allocated on a volume basis and 30 percent would be allocated on a volume-distance basis.

TCPL submitted that it is unreasonable to assume that all such expenses are driven only by volume or only by volume-distance factors. However, TCPL recognized that there is some degree of subjectivity as to the appropriate allocation between the two extremes.

In conclusion, TCPL's position on this issue was as follows

(i) If the Board decides on a general split of the A&G expenses, that will not require review for a relatively long period of time, then it would be appropriate to allocate 50 percent of such costs on a volume basis and 50 percent on a volume-distance basis; and

(ii) If the Board decides for an allocation based upon a study, then it would be appropriate to follow TCPL's study and allocate 70 percent of the expenses on a volume basis and 30 percent on a volume-distance basis.

Consumers Gas and SaskEnergy submitted evidence and cross-examined extensively on this issue during the hearing.

Consumers Gas proposed that 100 percent of the A&G expenses be allocated on a volume basis. It stated that these expenses are the general overhead costs of managing and administering a business and, accordingly, they should be shared by all system-users in proportion to their service entitlements and not in proportion to their location relative to the system inlet.

Consumers Gas agreed with TCPL's view that deregulation is the primary reason for the changes in cost causality relative to administrative and general expenses. Consumers Gas was also of the view that the more general volume-type units are better suited to general overhead costs, particularly when distance is not a significant driver of those specific costs.

Consumers Gas stated that it also relied on U.S. regulatory precedent in arriving at its conclusion. It pointed out that of six-long-line zoned interstate pipelines that are comparable to TCPL, five allocate their A&G expenses on a volume-only basis.

SaskEnergy submitted that TCPL's proposed change in methodology is a

significant one and therefore it is incumbent upon TCPL to satisfy the Board that there are very good reasons for making such a change and that the proposal will result in tolls which are more just and reasonable than was previously the case.

In SaskEnergy's submission, neither TCPL nor Consumers Gas demonstrated sufficient reason to justify the proposed changes in methodology and although deregulation may have resulted in a change in the manner in which TCPL's A&G expenses are now being incurred, the effect of adopting either of the proposed changes in methodology is unjust and unreasonable because it shifts costs away from the zones where most of the increased costs of deregulation are being incurred.

SaskEnergy argued that TCPL's analysis should be rejected because it is flawed in many respects and Consumers Gas volume-only proposal should be rejected because TCPL testified that distance does have a bearing on certain administrative costs.

SaskEnergy also argued that, as a result of deregulation, it is more likely that a significant portion of TCPL's A&G expenses are now customer or contract-related rather than purely volume-related. SaskEnergy therefore suggested that the Board could direct TCPL to conduct a more detailed study of these expenses and include an examination of customer-related costs in that study.

Among the other intervenors, IPAC, Union and ICG (Ontario) supported TCPL's 70/30 allocation proposal. However, ICG (Ontario) stated that it would leave it to the Board to determine an allocation that is just and reasonable in light of current circumstances and current cost allocation methodologies.

ICG (Manitoba) was of the view that sufficient and satisfactory evidence had not been presented to the Board to justify any change at this time. ICG (Manitoba) submitted that the status quo should prevail until a more detailed study of all departments is conducted to determine the true cost causality.

Views of the Board

The existing methodology for allocating A&G expenses no longer reflects the nature of cost causality in today's circumstances. The nature of the work performed by a number of departments at TCPL has changed since the advent of deregulation, resulting in significant increases in the number of contracts and the number of customers using the system. The additional A&G expenses resulting from these changes, as well as some A&G expenses, are driven by factors that are not distance-related. There is now sufficient justification to change from the existing methodology, which allocates only 4 percent of A&G expenses on a volumetric basis, to a methodology which allocates a greater percentage on a volumetric basis.

The Board is also cognizant of the precedent established by various FERC decisions requiring some interstate pipeline companies under its jurisdiction to allocate their administrative expenses on a volume-only

basis. These decisions can provide useful guidance to the Board when considering similar issues in Canada.

The Board was persuaded by the arguments of SaskEnergy that the analysis conducted by TCPL in support of its proposed allocation of A&G expenses (70 percent based on volume and 30 percent based on volume-distance) was not conclusive. SaskEnergy submitted that the same analysis could also support an allocation of 23 percent based on volume and 77 percent based on volume-distance if certain assumptions were changed. TCPL acknowledged that the selection of the appropriate allocation as between volume and volume-distance required a certain amount of judgment and the conclusions resulting from any particular analysis would depend on the assumptions underlying the analysis.

The nature of cost causality of A&G expenses has not changed to an extent that would justify an allocation of 100 percent on a volumetric basis. Because many of TCPL's administrative activities would drop in cost and scope if the pipeline system were shorter, the Board concludes that distance does have a bearing on the incurrence of certain of the administrative and general expenses.

A&G expenses will continue to be allocated in the traditional manner using fixed volume and fixed volume-distance allocation units, with an appropriate percentage assignment between the two methods of allocation. However, the evidence presented in this hearing on the determination of an appropriate percentage assignment was incomplete. The nature of the A&G expenses were considered mainly in relation to volume and distance factors, while customer and contract-related factors were not adequately taken into account. Therefore, in order to determine an appropriate percentage assignment of A&G expenses between the two methods of allocation, a further, more complete examination of the nature of cost causality will be required; that is, a comprehensive study which takes customer and contract-related factors into full consideration.

For the 1989 test year, the Board considers that 50 percent of A&G expenses should be allocated on the basis of fixed volume units and 50 percent on the basis of fixed volume-distance units for toll design purposes. The Board recognizes that a 50/ 50 percentage assignment may not be an accurate reflection of the true nature of cost causality, but considers that, at this time, it provides a better estimate than the existing methodology or the 23/ 77 assignment.

Decision

For the 1989 test year, the Board directs TCPL to allocate 50 percent of A&G expenses on the basis of fixed volume units and 50 percent on the basis of fixed volume-distance units.

The Board directs TCPL to analyze the nature of cost causality of its A&G expenses, taking into consideration volume, distance, customer and contract-related factors. The analysis should include the calculation of an appropriate percentage for assigning A&G expenses between fixed

volume and fixed volume-distance allocation units for toll design purposes. The study is to be brought forward at TCPL's next toll hearing after 1989.

8.6 STS Tolls

In Phase I of this hearing, the Board examined and approved the STS Toll Schedule. In Phase II, the toll design for STS was the subject of examination.

STS tolls are designed to recognize the additional distance of haul involved in moving gas stored in the summer from storage to market during the peak demand of the winter period.

The STS tolls were initially developed by utilizing the 1975 system average fixed and variable unit costs of transmission times the extra distance of haul, plus the average system cost of metering. The STS tolls have not been updated since 1975.

TCPL proposed to utilize the current test-year system average unit costs in determining the testyear STS tolls in order to make the current STS tolls cost-based. TCPL also stated that this proposal would prevent FS and FST users from subsidizing STS users.

Based on a similar methodology, TCPL also proposed tolls in respect of two Gas Exchange Agreements with Consumers Gas.

TCPL's proposed STS tolls were either supported or were not opposed by the CPA, GMi, ICG (Ontario) and Consumers Gas. Consumers Gas also supported TCPL's proposed Gas Exchange Agreement tolls.

Views of the Board and Decision

The proposal to calculate the tolls for both STS and the Gas Exchange Agreements using the current test-year costs will result in these tolls being cost-based. Accordingly, the Board approves the proposed change in methodology.

The tolls approved for these services are based on the 1989 approved revenue requirement.

8.7 Delivery Pressure Tolls

In its partial Reasons for Decision, dated 18 May 1988, issued in respect of the hearing held pursuant to Order GH-2-87, the Board determined that:

"...any incremental costs incurred by TransCanada to guarantee the provision of delivery pressure in excess of 4000 kilopascals (580 pounds per square inch gauge) at any delivery point on the TransCanada system shall be recovered through an incremental two-part delivery pressure toll to be collected from all shippers using that delivery point."

With respect to the toll design methodology, the Board decided that

"The commodity component shall recover the costs of the compressor fuel used to elevate the pressure of the delivered gas above 4000 kilopascals and the FS transportation toll at 100 percent load factor to move this fuel from the Alberta border to the zone in which it is consumed."

In this proceeding, TCPL provided the detailed calculations for the incremental delivery pressure tolls at each of the four locations where such tolls would apply. However, TCPL sought to amend that portion of the Board's decision relating to the inclusion of the FS transportation toll to move the compressor fuel to the zone in which it is consumed.

TCPL stated that the toll which the Board directed it to apply to the fuel used also has a fuel ratio component. Therefore, the Board-directed toll design would involve the calculation of fuel on fuel.

TCPL submitted that the administration of these incremental tolls would be greatly simplified if it were not necessary to provide for a toll on the fuel consumed in the rendering of incremental delivery pressure service.

During the hearing, TCPL sought guidance from the Board with respect to future delivery pressure toll methodology. TCPL stated that if higher delivery pressure continues to be required by its customers, then the following questions arise:

(i) Should the facilities which have been identified currently for raising the delivery pressure remain vintaged for the future calculation of delivery pressure tolls and, as other facilities are needed to raise the pressure, those new incremental facilities would be added to the facilities already reserved for providing the higher pressure with the tolls based on the total revenue requirement of those facilities?

(ii) Or for each test year, should the facilities required for raising the delivery pressure be recalculated with the most recent set of facilities being deemed to be for servicing the higher pressure requirement with the tolls based on the revenue requirement of those facilities?

Through a response to a Board information request, TCPL discussed the pros and cons of each of these alternatives and concluded that the first alternative would be the more appropriate of the two.

Union was of the view that the proposed pressure toll at Dawn was incorrect since TCPL has incurred no incremental costs in providing the higher delivery pressure at that point. Union referred to TCPL's testimony in the GH-2-87 proceeding wherein TCPL stated that no additional facilities were added to meet the contractual obligations at Dawn.

Union further argued that if incremental costs are later incurred to maintain the higher delivery pressure because of increased loads, changes in Great Lakes' operating pressures and/or changes in optimum design pressures, then it would be appropriate to include those costs in the toll. However, at this time, the application of the delivery pressure toll design methodology would yield incremental costs equal to zero at Dawn.

Views of the Board

The Board is satisfied that, except for the modification requested, TCPL has correctly implemented the delivery pressure toll design methodology approved by the Board in the GH-2-87 Reasons for Decision.

With respect to TCPL's request to amend the toll design methodology to exclude a toll for the movement of the fuel to the zone in which it is to be consumed, the Board remains convinced that, in principle, the decision to include such a toll is correct. However, the Board recognizes the impracticalities that may be caused by its inclusion and, therefore, grants the request to exclude this toll.

Concerning the toll design methodology for future delivery pressure tolls, the Board concurs with TCPL's view that facilities currently identified for raising the delivery pressure should remain vintaged for that purpose and, as other facilities are required to raise the pressure, those incremental facilities should be added to the vintaged facilities with the tolls based on the owning and operating costs of those facilities.

The Board was not convinced by Union's argument that TCPL has incurred no incremental costs at Dawn in order to provide the higher delivery pressure at that point. As stated in the GH-2-87 Decision and as testified by TCPL in this proceeding, the higher delivery pressure provided at Dawn is achieved through the configuration and size of the pipe. Therefore, the incremental costs, in theory, can be equated to the difference between the costs of the larger diameter pipe that was initially installed and the costs of the smaller size line that would have been required had TCPL's contractual obligation been to guarantee deliveries at a pressure less than 4 000 kPa.

Decision

The Board approves TCPL's proposed delivery pressure tolls and approves the request not to include a toll for the movement of the compressor fuel used to elevate the pressure.

8.8 Toll-Adjustment Procedures

In Phase I of this hearing, the Board directed TCPL to file a proposal for a toll-adjustment procedure which would operate during a test year to minimize the accumulation of large balances in deferral accounts.

In response TCPL proposed a monthly adjustment procedure whereby billings would be adjusted monthly to reflect one-twelfth of the net

operating deferral account balances in each of the preceding twelve months. This proposal was criticized by many parties as being administratively complex and restricting the Board’s ability to review and approve deferred balances prior to disposition.TCPL withdrew this proposal and suggested, as an alternative, that the status quo be maintained. TCPL noted that it can apply at any time for new tolls if the net deferred balances reach a level that indicates that an adjustment to tolls, prior to the end of a test year, would be required to avoid disruptive toll changes in the next test year.

Views of the Board

It may be appropriate, in certain circumstances, to adjust tolls during a test year to take into account balances in deferral accounts. In deciding whether to adjust tolls the Board would pay particular attention to the nature of the deferred amounts and the probable impact on the tolls in the next test period if the tolls were not adjusted.

In order to make an informed decision on the need to adjust tolls, the Board would require current information on the deferral account balances and a forecast of the probable balances to the end of the test year. Adjustments beyond the midpoint in the test year would not, in all likelihood, be practical as an amortization period of less than six months would result in too large a fluctuation in tolls.

Decision

In order that the Board and interested parties may properly assess the need to adjust tolls to minimize large balances in deferral accounts, TCPL is directed to include, in its quarterly surveillance reports, the current balance of each deferral account together with a forecast of the balances at the end of each quarter remaining in the test year.

Chapter 9

Tariff Matters

9.1 Transportation Contracts Between TCPL and WGML

In August 1987 TCPL filed with the Board a series of transportation service agreements, dated 1 July 1987, between itself and its marketing subsidiary, WGML. Subsequent amendments to these contracts were also filed with the Board. In the covering letter dated 6 August 1987, TCPL stated that both it and WGML recognized the desirability of separating the transportation and marketing activities of TCPL. By entering into the new Transportation Service Agreements with respect to TCPL's export sales contracts, both TCPL and WGML considered their action to represent a positive step in the separation process.

Under these arrangements TCPL would continue to purchase gas from the system producers in Alberta but would sell that gas to WGML at a point located immediately east of the Alberta/ Saskatchewan border. TCPL would then transport the gas on behalf of WGML pursuant to the new transportation service agreements. At the appropriate export delivery points, WGML would sell the volume of gas required by the export customer back to TCPL, under the terms of a new gas purchase contract with TCPL. The gas would then be exported under TCPL's existing export licences and sold to the export customer pursuant to its existing export sales contracts.

TCPL noted in its letter of 6 August 1987, that the Transportation Service Agreements, combined with certain other contracts entered into with WGML, would allow the pipeline capacity associated with TCPL's export sales contracts to reside with WGML. These arrangements would allow the associated capacity, for which monthly demand charges were being paid, to be used by WGML without it contributing further to the recovery of pipeline fixed costs. Thus, WGML would be able to make spot sales in the export market on days when TCPL was not required to deliver the maximum volume of gas deliverable under the export sales contracts. Only the firm commodity toll would be paid for the transportation of the gas required for these spot sales.

On 30 October 1987 the Board acknowledged receipt of the agreements and stated that in the next TCPL toll hearing the Board wished to examine whether the contractual arrangements between TCPL and WGML resulted in any advantages not available to other shippers. The Board directed TCPL to serve a copy of its letter, the Transportation Service Agreements and the Board's letter on all interested parties to RH-3-86 to facilitate a full examination of those arrangements. This examination took place during Phase II of these proceedings.

The major concern expressed at the hearing was whether TCPL had the authority to transfer the capacity associated with certain export sales contracts to WGML. Those opposed argued that TCPL's unilateral action without prior consultation with the export customer was unfair and that accordingly the Board should suspend the arrangements and provide the export sales customers with an opportunity to negotiate with TCPL.

Those who supported TCPL's position argued that the arrangements served to correct a comparative disadvantage, rather than provide a comparative advantage to WGML. They noted that other firm shippers, like ProGas, could make spot sales and pay only the firm commodity toll when their firm sales were moving at less than 100 percent load factor. TCPL, on the other hand, pursuant to the Board's RH-3-86 Decision, was required to pay an interruptible toll for all of its interruptible sales.

These parties also argued that the export sales customers, pursuant to the terms of their respective gas purchase contracts with TCPL, have always enjoyed the right to purchase gas at the export point and that this right did not include any transportation right. Finally, they maintained that the rights of the export sales customers were unchanged under the new arrangements.

Views of the Board

TCPL is the seller under the export sales contracts associated with the WGML transportation agreements in question. WGML said that during the course of 1989 it would seek to amend these sales contracts to insert itself as the seller and to obtain an assignment of the related export licence from TCPL where appropriate. This should serve to enhance WGML's role as a marketer and to separate further the merchant and transportation functions of TCPL. In addition, WGML noted that these changes would have to be discussed with each of TCPL's sales customers before implementation.

The Board encourages TCPL (and WGML) to take further steps to establish its wholly-owned subsidiary, WGML, as a credible, independent marketer of natural gas.

The Board expects TCPL to act promptly to separate, clearly and credibly, TCPL and WGML, both in form and substance. If this cannot be achieved, the Board will continue to scrutinize all transactions between these companies and, if necessary, will take action to ensure that no undue advantages accrue to WGML as a result of their intercorporate relationship.

In the current situation involving the WGML transportation contracts in question, the sales customers continue to get the service for which they had contracted, that is, gas supply up to a maximum amount, delivered to the export point, on demand. The sales contracts themselves are silent on the matter of transporting the gas to the export point, this having always been up to the merchant, TCPL, to arrange. The nature of these transportation arrangements was not a concern of the sales customer, and thus if TCPL wished to vary these arrangements by assigning the capacity to WGML it was entitled to do so. Moreover, these new transportation arrangements serve to put TCPL and WGML on the same basis as other firm shippers, such as ProGas and the eastern LDCs, regarding use of pipeline capacity not required to meet firm sales commitments.

Decision

The contractual arrangements for transportation between WGML and TCPL do not result in any advantages to WGML that are not available to other shippers. Therefore, the Board accepts these contracts.

The Board considers, however, that the accounting and settlement procedures employed by TCPL covering its transactions with WGML are inadequate. The Board therefore directs TCPL to ensure that its accounting procedures produce a complete record of all transactions with WGML and to ensure that settlements are conducted in the same manner as those of arm's-length transactions.

9.2 Diversion Rights

TCPL proposed changes to the diversion provisions of the FS Toll Schedule which would remove certain existing restrictions.One change proposed was the removal of the "between-affiliate" condition from long-term service in order to be consistent with the RH-3-86 Reasons for Decision wherein the Board ordered TCPL to exclude the "between-affiliate" condition from short-term services. TCPL contended that removing this condition from both the short-term and long-term services also removes the unjust discrimination between these services that currently exists. It stated that such a restriction on longterm firm services is an anachronism and should be removed.

Another proposed change was that all upstream diversions should be treated as firm service, having the same priority as STS, since an upstream diversion, by definition, is not capacity-constrained. TCPL contended that, if a diversion cannot be accommodated because of limited meter station capacity or limited capacity on an upstream lateral or extension, it is not an upstream diversion.

Under the existing tariff provisions, TCPL is not required to agree to an upstream diversion during the period 15 December to 15 March. TCPL proposed that this restriction also be eliminated.

These proposals, to eliminate current diversion restrictions, were made on the understanding that any distributor receiving diverted gas from TCPL will not be entitled to a reduction in its OD as a result of accepting such diverted volumes. These changes were proposed to promote FS by providing additional opportunities to improve the level of utilization of the FS contracts and eliminate certain elements of discrimination.

For upstream diversions, TCPL proposed to revise section 6.3(c) of the FS Toll Schedule so that the customer would provide fuel applicable in the delivery area to which the gas is diverted, rather than providing a quantity of fuel applicable in the delivery area from which the gas is diverted. TCPL believed that it would be more appropriate to provide fuel for such diversions on the basis of the same fuel ratio which would apply to deliveries at the same location under other classes of service.

A number of intervenors disputed the tolls that were proposed for upstream diversions, submitting that the downstream commodity toll for

upstream diversions is unfair. These intervenors suggested the upstream toll be charged instead.

TCPL also proposed that in section 6.3(a)(ii) downstream diversions shall have a priority equivalent to IS-1 service, since such diversions are limited to the availability of capacity upstream of the diversion points.

Generally, intervenors supported TCPL's proposals. However, most opposed the "sole discretion" wording of the provision which enables TCPL to determine when to authorize a diversion. These intervenors recommended deletion of the "sole discretion" wording in the tariff.

Consumers Gas also opposed the nomination deadline of noon for diversions and submitted that the nomination deadline for diversions should not be different from the deadline for FS, which is 3:00 p.m. Eastern Standard Time.

C-I-L also disputed the charge of 88.25¢/10^3m^3 for diversions, asserting that it is not cost-based.

Views of the Board

The Board supports TCPL's proposal to permit short-term and long-term FS customers greater freedom to divert gas between delivery areas by the removal of the tariff restrictions as proposed. Such treatment not only increases the flexibility of FS to existing shippers and allows them an opportunity to increase their load factors, but also permits more effective use to be made of excess capacity.

The removal of the "sole discretion" wording of the tariff provision, which enables TCPL to determine when it will authorize a diversion, is consistent with the intent to remove any unnecessary restrictions on diversions. Most parties opposed the existing wording as being too restrictive, especially in its application to upstream diversions, which, by definition, are not capacity-constrained. If capacity is available to permit a diversion, TCPL should not prevent it.

In addition, the Board heard no evidence about why a nomination for a diversion needs to be made earlier than an FS nomination, which must be made by 3:00 p.m. Eastern Standard Time.

For upstream diversions, the shipper should provide fuel in accordance with the fuel ratio applicable to the delivery area to which the gas is diverted. The Board concurs with TCPL that it would be more appropriate for shippers to provide fuel for diversions on the basis of the same fuel ratio that would apply to deliveries at the same location for other classes of service.

The Board questions the fairness of applying the downstream commodity toll to upstream diversions. The tariff treatment of the cost for shipper provided fuel used to make the diversion should be consistent with the toll charged for the volume of gas diverted. Some intervenors submitted that if the commodity toll applicable in the delivery area to

which the gas is diverted is used, TCPL would recover only those costs it incurred in providing the diversion. The Board agrees with this argument.

For upstream diversions, the upstream commodity toll payable for volumes diverted is consistent with the costs for fuel volumes used to provide the service.

The Board further agrees with TCPL's reasons for the priority to be attributed to upstream and downstream diversions.

The Board also notes that TCPL makes an administrative charge of 88.25¢/10^3m^3 for gas diverted, yet no such administrative charge is made for assignments. Both the diversion provisions and the assignment provisions of the tariff are similar mechanisms for making more effective and efficient use of pipeline facilities. The Board is concerned that the administrative charge is not applied consistently to assignments and diversions.

Decision

The Board approves TCPL's proposals to revise section 6 of the FS Toll Schedule regarding "Diversions" with the following changes:

(a) TCPL shall remove the existing wording from section 6.2 and substitute the following:

"TransCanada may agree to divert Customer's gas as provided in subsection 6.1. Authorization by TCPL of all diversions shall be subject to TCPL receiving a request, prior to 15:00 hours Eastern Standard Time on the day preceding the day for which the diversion is requested"; and

(b) TCPL shall remove the existing wording from section 6.3(c)(i) and substitute the following:

... if the gas is diverted upstream, Customer shall pay for the volume of gas so diverted at the Commodity Toll applicable in the delivery area to which the gas was diverted. In addition, Shipper shall provide fuel volumes to TCPL based on the fuel ratio applicable in the delivery area to which the gas was diverted."

TCPL is required, at the next toll hearing after 1989, to present evidence justifying both the level of the administrative charge and its applicability to diversions and assignments.

9.3 Disposition of Contracted Capacity

One of the issues of the hearing centred on the brokering of unused contracted capacity, which was subsequently expanded to the brokering or other disposition of contracted capacity and TCPL's role in such transactions. As a result of the limited interest shown in this issue, the Board initiated an information request inviting parties to respond to a set of questions. The Board would rely on the responses in

deciding on the issue.

It was evident from the varied responses that parties had different definitions of the generic term "capacity brokering".

The concept of capacity brokering can be visualized, in its broadest sense, as any mechanism by which entitlements to transportation capacity can be allocated to others without the consent of the transporter. It is not, however, restricted to the notion of assignments or diversions or combinations thereof, as is currently permitted in the existing provisions of the tariff.

The concept of capacity brokering used in the proceedings can be divided into the "brokering" component and the "assignment" component, where the brokering component involves the allocation of capacity for a fee or credit (i.e. a premium or a discount) in addition to the applicable NEB-approved toll. The assignment component involves the disposition of transportation service entitlements by means of an assignment under section 8 of the FS Toll Schedule, a diversion in conjunction with such an assignment and buy/sell arrangements whereby a third party may receive transportation of gas without itself becoming a shipper on TCPL.

9.3.1 Brokering

TCPL believed that no shipper should be allowed to recover more than the toll when assigning contracted capacity entitlements. However, it would not dispute a discount policy when applied to the assignment of contracted but unused capacity entitlements.

Most parties, with the exception of Polysar and NCMI, advocated the status quo as an acceptable form of capacity brokering and believed it to be premature to establish a capacity brokering program at this time. These parties believed that this issue should be addressed in the context of a future TCPL tolls proceeding when shippers, TCPL and regulators have gained more experience with the operation of TCPL’s unbundled transportation services.

Polysar proposed that the design of any capacity brokering procedure should incorporate the following three objectives:

(a) no shipper should be able to profit directly from any disposition of TCPL capacity,

(b) any capacity brokering procedure should be sufficiently flexible to accommodate short-term commercial arrangements, and

(c) any capacity brokering procedure should be consistent with TCPL’s queuing procedure.

In particular, Polysar discussed how the last two objectives would relate to both the existing assignment and queuing provisions of the tariff.

IPAC contended that allowing parties to broker capacity for profit on the TCPL system could result in an oligopsony of shippers who could control the availability of gas supply to a particular market through control of transportation capacity. IPAC submitted that profiting in this manner would result in added costs to the overall gas marketing system. The CPA also believed that there should be no brokering for profit as it would violate section 69 of the NEB Act. IGUA also cautioned that assignments for charges less than the full toll could result in criminal prosecution with leave of the Board. The APMC and others submitted it would be difficult to police the charging of brokerage fees. It added that the creation and operation of a secondary market for the brokering of capacity is an issue which must be addressed before implementation of a capacity brokering program.

Consumers Gas held similar views to TCPL with respect to the discounting of capacity assignments (i.e. discount from NEB-approved FS tolls and diversion surcharges), and stated that it would not dispute a discount policy if it were applied.

Polysar submitted that assignments for consideration in excess of the approved tolls should not be allowed, but assignments for a lesser amount were viewed as appropriate. If the Board allows discounts to the secondary market, Polysar stated that the Board should indicate its intention not to initiate any prosecutions for these types of transactions.

Union believed that brokering for profit should be discouraged, although it did not oppose the implementation of an administration fee as long as it would not constitute part of TCPL’s costs or revenues. C-I-L and GCCL believed that for a party to collect a premium for brokering capacity in a secondary market was not repugnant. CanStates held similar views to C-I-L and GCCL. It believed that earning a brokerage fee (a fee over and above the appropriate TCPL toll payable by the shipper) is warranted. It argued that a fee is appropriate and justified its stance by stating that a firm service shipper is obligated to pay demand charges and may also have to expend funds to satisfy the financial assurance requirements of TCPL. Demand charges might also increase in the future as a result of facilities expansions. This is a risk which is borne by the shipper and for which some compensation may be warranted.

CanStates believed that if brokerage fees charged were excessive, then a party seeking capacity can wait for available capacity to be released or wait for expansion of facilities. It submitted that the market forces of supply and demand would force down the fees for excessive brokerage or the broker would risk being unable to broker any capacity of its own for the secondary market. Brokerage fees for this market would be set by the market forces of supply and demand at the time.

As a buyer of gas, Consumers Gas submitted that it would have no problem in paying capacity entitlements for a fee over and above the approved toll.

Views of the Board

The Board believes that a market, operating in a competitive environment, is the best allocator of resources. Assignments of unused contracted capacity, as provided for in the existing tariff, are operating in a secondary market for capacity. The extent to which the current assignment provision in the tariff provides adequate flexibility for shippers to dispose of unused contracted capacity, and at the same time maximizes capacity utilization on the system, is a measure of the effectiveness of the provision. No party in the hearing opposed the assignment provision.

The Board views the brokering of pipeline capacity for profit by the regulated pipeline company as contrary to sound market principles, as such a mechanism would tend to extract monopoly profits in the marketing of a scarce resource. These added costs to the system of gas marketing would be borne by system producers, shippers and consumers. The Board believes such a system is therefore not in the public interest and should be discouraged.

However, the Board believes that by not interfering with assignments that are made at a discount, an even greater incentive to maximize system capacity utilization is created, thereby benefiting all system-users whether they be producers able to sell more gas, existing shippers able to obtain relief from demand charges on unused but contracted capacity, or potential shippers able to obtain firm capacity without necessarily having to "queue" for it, or having to rely on interruptible service.

The Board would not, in these circumstances, give leave for a prosecution to be instituted pursuant to section 69(2) of the NEB Act. However, the Board believes assignments should not be used by the pipeline to receive other than the approved toll for a particular service.

Decision

The Board has decided not to implement a capacity brokering scheme at this time. However, the Board will permit assignments at a discount negotiated between assignors and assignees, provided that the approved toll continues to be paid to TCPL. In those circumstances, the Board will not give leave for a prosecution to be instituted pursuant to section 69(2) of the NEB Act.

9.3.2 Assignments

TCPL favoured the application of the current assignment rights, as provided for in the tariff, as the means of allocating unused contracted capacity. TCPL believed that the existing tariff provisions, in particular those related to assignments and diversions, are all that is currently required to enable parties to transfer unutilized capacity. Its position was one of maintenance of the status quo. TCPL observed that no party opposed the existing assignment provisions.

Most intervenors submitted that assignments, as currently provided in the tariff, provide a mechanism for shippers having unused contracted

capacity to be able to assign it to other shippers, and provide shippers with relief from payment of unabsorbed demand charges while, at the same time, permitting greater utilization of system capacity by allowing other shippers the opportunity to use this unused contracted capacity.

Polysar believed that assignments of one year or less should continue to be unrestricted by any tariff provisions. It submitted that its capacity brokering procedure should be flexible enough to allow commercial arrangements of a short-term nature to continue. However, the Polysar procedure would also require all dispositions of capacity for a cumulative term of over one year to be first offered to parties in the queue, with the exception of those dispositions of capacity which are replacement type of arrangements such as:

(a) an LDC assigning space to an end-user in a displacement situation;or

(b) a direct shipper assigning space back to the LDC in order to return to system gas.

This was to ensure that there would be no discrimination among shippers seeking access to longterm capacity.
The "cumulative" aspect of terms of over one year was to avoid the situation where there was a series of 11-month assignments which were being carried out simply in order to avoid the requirement to offer the space to the queue.

Cyanamid agreed with this aspect of Polysar’s proposal, as it believed this treatment would achieve fairness of allocation of capacity for everyone. Even if Cyanamid had excess capacity which was available to be assigned to another end-user, it advocated that such excess capacity be first made available to the queue.

ICG (Ontario) disagreed with the positions of Polysar and Cyanamid that excess contracted but unutilized capacity should be first offered to the queue before the assignment provisions would apply. It maintained the current assignment provisions should continue to apply without qualification or restriction.

The APMC submitted that paragraphs 3.7, 3.8 and 3.9 of TCPL’s proposal adequately address the offering of such capacity to parties in the queue, and that disputes can be resolved through recourse to the Board.

Consumers Gas commented that the Board can condition the manner in which capacity entitlements may be assigned, not only in the assignment provisions, but in whatever queuing tariff the Board may have approved.

Views of the Board

The Board regards assignments as a particular example of an operating capacity brokering mechanism which currently provides adequate flexibility to enable shippers to dispose of unused contracted capacity, and, by such action, maximize utilization of system capacity

to the benefit of all shippers.

All shippers should be treated equally in terms of their access to capacity and their disposition of contracted capacity on the TCPL system. The Board is not aware of any abuse of the existing mechanism for obtaining access to capacity and is satisfied that the current assignment provisions of the FS Toll Schedule are operating without restrictions. Thus, the Board believes that there is neither a need to restrict the term of an assignment, nor a need to impose any other restriction at this time.

The Board is satisfied that under the existing assignment provisions, there is every likelihood that shippers wishing to dispose of unused contracted capacity would attempt to assign it to existing members of the queue and that if no party in the queue wanted the capacity offered, then the disposing shipper would offer the available capacity as an assignment to any other party for a term and volume not greater than the term and volume it indicated to TCPL it was prepared to offer to the queue.

However, if unfair restrictions with regard to equal access to long-term system capacity should occur or are likely to occur as a result of certain provisions of the unbundled transportation arrangements recently negotiated between WGML and the system distributors, the Board will deal with these at that time.

Decision

The Board has decided not to amend the existing assignment provision of the FS and FST Toll Schedules. The Board's decision to allow assignments at a discount (see section 9.3.1) does not require any amendment to the existing tariff provisions.

9.3.2.1 LDC/WGML Transportation Operating Agreements

Under the TOAs any excess contracted capacity held by the LDCs is first offered to WGML.

Cyanamid and Polysar expressed concern that the TOAs give the LDCs control over a very large volume of TCPL capacity which could create the potential for abuse of the system, to the possible disadvantage of direct purchasers.

As a possible remedy, Polysar suggested that some restrictions should apply to the term of assignments and diversions. Long-term assignments (assignments for a cumulative term of 1 year or more) should first be offered to members of the queue before the assignment provision would apply. Assignments for a duration of less than a cumulative term of one year would remain unchanged by its proposal.

Other intervenors, mainly the Manitoba and Ontario LDCs, disagreed with Polysar's proposal. These intervenors contended that the capacity assignments to WGML are fair, just and reasonable and that the Board should not become involved in the intricacies of capacity brokering at

this time, but should let the unbundled transportation arrangements evolve.

ICG (Ontario) and Consumers Gas assured the Board that all shippers, including those who have already made direct purchase arrangements, will have access to unutilized capacity.

ICG (Manitoba) and GWG submitted that the existing tariff accommodates the companies' requirements and the Board should make no amendments which might hinder their attempts to maximize utilization of their unutilized contracted capacity.

Views of the Board and Decision

The Board views deregulation of the natural gas industry as an evolving process. The signing of the LDC/WGML sales agreements, the related regulatory approvals and the resulting negotiated unbundling of the existing gas ales contracts into their merchant and transportation components represent a major step towards the completion of this process. The objective of a market-sensitive pricing environment has been brought one step closer to realization by these arrangements between the producing sector, the pipeline and the LDCs.

The Board sees no need to take any action with respect to the LDC/WGML transportation operating agreements. Any agreements between shippers and WGML regarding the operation of a shipper's transportation contract with TCPL must be within the context of the approved tariff. If unfair restrictions with regard to equal access to system capacity arise as a result of contractual arrangements, then the Board will take the necessary action to ensure that the terms of the approved tariff are applied.

9.4 Use-it-or-Lose-it Principle

The issue of use-it-or-lose-it arose as a result of a TCPL letter to all its customers dated 21 April 1988 respecting renewal rights.

The Board responded to TCPL's submissions on renewal rights in a reply letter dated 31 May 1988 stating, in part,

"In its 21 April 1988 Notice to all customers, TransCanada stipulated that the renewal option in respect of its displacement direct purchase contracts will be subject, inter alia, to the condition that <<the service hereunder has been and shall continue to be used at a reasonable level to serve the "plant(s)">> (clause 5.2 proposed for inclusion in the Term section of TransCanada's pro forma short term firm transportation contract for new displacement direct purchase shippers)".

In view of the fact that this particular condition of access was not addressed in the GH-2-87 proceedings, the Board, in its 31 May 1988 letter, directed TCPL not to implement such a condition until,

(i) it had been proposed for inclusion in TCPL's FS Toll Schedule, and

(ii) it had been considered by the Board in future proceedings.

As a result, the Board included this issue for examination in Phase II.

TCPL believed it unnecessary to implement, at this time, any use-it-or-lose-it principle. In TCPL's view any underutilization of contracted capacity and any delays to others seeking capacity can be alleviated, as currently occurs, through the assignment provision of the FS Toll Schedule. Any additional unutilized contracted capacity is available as IS.

As a result of the recent unbundling of sales and transportation components of the LDC gas sales contracts, and the aggregation of many of the direct purchase contracts under "master" FS or FST transportation contracts to be managed by the LDCs, TCPL believed there is a greater likelihood of available capacity being utilized. In addition, the demand charges, in TCPL's view, provide a large economic incentive for holders of capacity to use it.

TCPL expected that, for the foreseeable future, there will be sufficient demand for firm service and that capacity will be utilized at a high load factor. TCPL supported its expectation by referring to the number of recent facilities applications before the Board to meet service requests by customers and the likelihood of more requests for additional facilities in the near future.

TCPL also argued that if a use-it-or-lose-it principle is implemented, it should be applied only on a case-by-case basis and should not be used to free up capacity for new capacity requirements, nor should it operate as a mechanism to allow shippers to be relieved of their obligations.

Intervenors generally were supportive of TCPL's position on this issue. Intervenors emphasized that there is no evidence of a problem with the hoarding of capacity and that, in fact, demand charges are a powerful economic incentive for large shippers to utilize contracted capacity. Intervenors indicated that the existing system is working satisfactorily.

One distributor pointed out that such a principle would be at cross purposes with an LDC's prudent advance contracting of capacity. C-I-L indicated that with the unbundling of its sales contracts, there is an additional incentive for LDCs, who are now responsible for large amounts of aggregated capacity, to use it.

Cyanamid submitted that a use-it-or-lose-it principle might cause industrial users to be at risk of losing contracted space as a result of a short-run economic downturn. Cyanamid argued that the Board should not institute rules to deal with problems that do not exist.

Views of the Board

The Board disagrees that it should not institute rules to deal with problems that do not exist.

One basic reason for having a public tariff, for example, is to provide the public with the information necessary to determine the nature and operating characteristics of the service, the conditions of access, and the toll for transportation services. Tariff provisions are sometimes made in advance to protect the public interest and to prevent possible problems of access and unjust discrimination in the carriage of the commodity.

As a result, even though no identified problems may have arisen with respect to capacity transactions on the system, the Board believes it should take steps to forestall possible future problems, when appropriate.

In the current situation, the Board concurs with the views of TCPL and interested parties that the introduction of a use-it-or-lose-it principle is unnecessary. There was no evidence which indicated a problem existed or was likely to arise with respect to the hoarding of capacity. In addition, the demand charges provide a financial incentive to shippers to utilize or assign contracted capacity.

Decision

The Board will not introduce a use-it-or-loseit principle applicable to the retention or the renewal of contracted capacity at this time.

9.5 Availability of Short-Term FST

TCPL proposed that FST service be offered for any term of not less than one year. TCPL stated that, by its nature, incremental FST service must have a term which commences on November 1 and ends on any October 31 thereafter. However, displacement FST could commence at any time.

TCPL also stated that the right to elect a quantity between 90 percent and 100 percent of the annual contract quantity on 18 months notice would not be applicable to contracts of less than three years.

IPAC expressed concern with the potential effect on TCPL's facility design with the offering of short term FST for a period of one year, but IPAC did not recommend that the minimum term be longer than one year. IPAC stated further that it would continue to monitor the effect on facilities if this service is eroded or parties who contract for this service commence switching to firm service.

Views of the Board and Decision

TCPL's proposal, that FST be offered for any term of not less than one year, is consistent with the terms presently offered for FS. Accordingly, the Board approves TCPL's proposal.

9.6 Contract Renewal Notice Period

In its GH-2-87 Decision, the Board directed that the notice period for contract renewal rights for FS shippers be given in writing not less than six months prior to termination of the contract, or such shorter period as may be stipulated by TCPL. The Board further directed that this condition be included in the tariff by 1 November 1988.

However, in view of the limited evidence received from interested parties in GH-2-87, the Board included this issue in this hearing.

TCPL argued in this hearing that approximately two years is required between the time that the need for a system expansion is identified and the time that the necessary facilities are in place. TCPL recognized, however, that such a time period may be impractical for many end-user shippers, whose service contracts are for terms of one or two years. TCPL submitted that, if the Board maintained the status quo of a six-month renewal notice period, shippers should be required, on a best-efforts basis, to notify TCPL of their planned contract levels for a five-year period from the next contract anniversary date.

Union supported TCPL's position. ICG (Ontario) also supported this position noting that a sixmonth renewal notice period reasonably balances both TCPL's and the shippers' needs. However, ICG (Ontario) suggested that the matter could be left to negotiation.

Cyanamid believed that a 30-day renewal notice period was more typical from an industrial user's point of view, where 30-day renewal notice periods apply to one-year industrial contracts.

IPAC viewed a six-month contract renewal notice period as too long, and suggested that a 60 to 90day period would be more appropriate for contracts of two years or less in duration.

Other intervenors proposed that a best-efforts forecast of volumes be submitted to TCPL within the six-month renewal date, but that the actual contract renewal be required only three months prior to the date

of commencement of the contract, including a 10 percent tolerance level from the volumes previously forecast. Any such volume differences incurred by TCPL for toll-planning purposes could be deferred using the existing demand charge revenue deferral account.

IGUA argued for a reduced notice period and submitted that TCPL had not justified a six-month notice period.

Views of the Board

The Board heard no compelling evidence from intervenors which would cause it to question the reasonableness of a six-month contract renewal notice period.

However, if operational circumstances arise which would permit shorter contract renewal notice periods, then the tariff should be amended to reflect such a shorter period.

Decision

The Board affirms the existing tariff provision which requires a six-month contract renewal period. If, however, TCPL can meet operational needs with a shorter notice period the Board would expect a new tariff filing to bring such shorter period into effect.

9.7 Proposed FST Toll Schedule

TCPL filed an FST Toll Schedule to effect the conversion of ACQ to FST. The toll schedule was substantially similar to the existing ACQ Toll Schedule except for required changes to recognize that FST will be a tendered transportation service rather than a tendered bundled sales service.

Polysar raised certain concerns with respect to the wording of the toll schedule and, prior to the start of the hearing, TCPL filed an amended toll schedule which addressed those concerns.

During cross-examination, TCPL identified further changes which would be required and suggested that the toll schedule should be appropriately redrafted. Specific changes mentioned as being under consideration were the time for making and receiving tenders and nominations, the appropriate level of hourly flexibility, the conditions under which supplemental charges would apply and the provision of renewal rights for FST.

TCPL did not file the redrafted FST Toll Schedule before the close of the hearing. Polysar was of the view that all parties should have the opportunity to make further comments, in writing, to the Board when TCPL does make such a filing in order to ensure that the concerns identified during the hearing are adequately addressed in the redrafted toll schedule.

Views of the Board and Decision

The Board approves the currently filed version of the FST Toll Schedule and expects TCPL to file the redrafted version of the toll schedule as it indicated, during the hearing, that it would. The Board will consider any amendments to the FST Toll Schedule in the event that a revised toll schedule is filed and will allow interested parties an opportunity to provide their comments.

9.8 Deletion of SGS Toll Schedules

TCPL proposed to remove the SGS Toll Schedules from the tariff. SGS has not been utilized since 1 November 1982.

TCPL submitted that this firm service was designed to apply to the sale of gas by TCPL to a distributor for distribution to small communities in its franchise area.

The intention of SGS was to promote new gas service to small communities consisting primarily of residential and commercial space-heating loads where the low load factors would render any other sales service too expensive.

TCPL also noted that even though no toll has been set for this service for many years, the established toll design would render FS more attractive than SGS at low load factors. In TCPL's view it is obsolete as a promotional toll for attaching new communities to gas.

Given the current capacity limitations on its system, TCPL argued it would not be possible to provide SGS without constructing new facilities. The original purpose of SGS was to promote the use of natural gas.

TCPL submitted that it is now appropriate to delete the SGS Toll Schedules from the tariff.

No party opposed this proposal.

Views of the Board and Decision

The Board agrees with TCPL's proposal concerning the inappropriateness of retaining SGS in the current circumstances and, accordingly, approves the request by TCPL to delete the SGS Toll Schedules from the tariff.

9.9 Billing of Unauthorized Overrun Volumes

TCPL proposed to charge the IS-1 toll instead of the commodity toll for unauthorized overrun volumes under section XIX of the General Terms and Conditions, since the current tariff does not specifically provide a charge to be applied to these volumes.

The existing tariff provision, more particularly, section XIII, paragraph 2 of the General Terms and Conditions, provides that volumes in excess of those authorized will be deemed to be delivered at the commodity toll under the last class of service under which deliveries

were authorized.

TCPL explained that its proposal was meant to discourage intentional unauthorized overruns and to remove the unfair discrimination between shippers who contract and nominate for IS services and shippers who take unauthorized volumes. TCPL submitted that, under the existing provisions, some shippers may be abusing the system by knowingly taking 102 percent (or more, given TCPL's undertaking not to apply the penalty charges indiscriminately) of their ODVs while being required to pay only the FS commodity toll for volumes in excess of their ODVs. The intentional use of this overrun range by some parties is unfairly discriminatory to other parties who contract for and nominate IS or other higher priced services to meet their requirements in excess of their ODVs. TCPL's proposal removes this unfair discrimination by requiring all shippers to pay a toll equivalent to the service applicable to unauthorized deliveries, that is for volumes in excess of what a shipper actually nominated. It was not intended to replace the penalty charges set out in section XIX of the General Terms and Conditions.

The evidence indicated that overruns in excess of the 2 percent tolerance range of ODV had occurred regularly since early 1987, reaching peaks as high as 50 percent of ODV in the case of one shipper in 1988.

TCPL acknowledged that, since penalties were approved in accordance with section 10.2.1 of RH3-86, no such penalty charges had actually been imposed on shippers. TCPL testified that its policy is to impose an overrun penalty charge only when the incurrence was deliberate or when the overrun had an effect on service to others.

As a result of its examination of what constitutes a toll and of the penalty charge provision of section XIX, TCPL proposed to amend the language of the penalty charge provisions, outside of the context of these proceedings, to limit their application to circumstances of abuse, either a deliberately-incurred overrun by shippers, or an overrun which impairs or limits service to others.

Both the CPA and the APMC supported TCPL's proposal to apply the IS-1 toll to unauthorized overrun volumes within the existing specified range.

Polysar opposed the mandatory application of a penalty to excess overruns, but would review the forthcoming tariff amendment on this issue when filed. The APMC believed the language of the current tariff provision is mandatory and advocated that the charging of a penalty not be permissive or subject to TCPL concessions.

Views of the Board

The current tariff provision, which charges the FS commodity toll for the transportation of overrun volumes in excess of those authorized but within the specified tolerance range, is permissive and unfairly discriminatory to those shippers who actually contract for IS to

transport their additional volumes. TCPL's proposal to charge the IS-1 toll instead of the FS commodity toll for transportation of overrun volumes eliminates unfair discrimination and discourages potential abuse by shippers.

The Board concludes that the absence of a mandatory penalty provision in the tariff, when shippers can take volumes in excess of the tolerance range, as allowed by the tariff, and pay only the FS commodity charge, creates a situation of potential abuse and unfair discrimination.

In its RH-3-86 Decision the Board stated that penalty charges should act as a deterrent to actions by shippers that are detrimental to the operation of the system. The purpose of penalty charges is to instill discipline on shippers in their nominating practices.

Although the Board recognizes the exercise of discretion by TCPL in the imposition of penalty charges upon shippers which may not be deliberately overrunning nominated volumes, the Board believes that shippers should know definitely, through the tariff, the circumstances in which penalty charges will apply. The application of penalty charges would then be in accordance with the tariff and not be subject to the discretion of the pipeline.

Decision

The Board accepts TCPL's proposal, which was advanced in argument, to charge the IS-1 toll for all unauthorized overrun volumes.

The Board directs TCPL to file tariff provisions respecting the mandatory application of overrun penalties by 1 October 1989.

9.10 Queuing Procedures

In its GH-2-87 Decision, the Board decided that TCPL should develop tariff provisions which would provide equal access to capacity for all new shippers or for existing shippers, including WGML, who wished to obtain additional capacity. The concept of having shippers line-up for new capacity has been termed "queuing".

In that same Decision, the Board noted that the concept of queuing was not to be restricted to incremental facilities, but that there may come a time in the future where some long-term contracts are not renewed, or where shorter-term contracts which are not serving long-term markets are near the end of their terms. In these circumstances, just as in the case of capacity expansion, shippers seeking new contracts should know the process to be followed and have confidence that no competitor has "an inside track".

The Board stated that shippers seeking access to the queue would have to fulfill the following requirements;

(a) signing a letter of intent to commit to a transportation contract with TCPL,

(b) supplying the specific volume required,

(c) stating the receipt and delivery points,

(d) stating the date of commencement of service,

(e) giving an indication that the applicant can, or is likely to be able to, comply with the availability provisions of the tariff, and

(f) including any particular conditions of access which it wishes to make in obtaining access to the queue.

By fulfilling these requirements, an applicant would be awarded the next place in the queue.

The Board also stated that a potential shipper's place in the queue may be lost if;

(a) the applicant cannot meet any one of the tariff requirements,

(b) any of the conditions precedent specified by the applicant proves to be unreasonable or unattainable, or

(c) the applicant cannot enter into the firm transportation contract by the date specified in its request (however, if the applicant requests, it may be placed at the end of the queue).

In addition, TCPL would not be permitted to displace any other prospective shippers already in the queue, except with their consent. The Board noted that those tariff provisions should ensure equitable treatment for all, whether they be an LDC, a broker, a producer, a direct purchaser or WGML.

9.10.1 Summary of TCPL's Proposed Queuing Procedures

By letter dated 1 December 1988, TCPL filed a proposed tariff document related to queuing. TCPL's interpretation of the intent of section 9.2.7 of GH2-87 was the basis for its submission.

On 16 December 1988, the Board acknowledged receipt of TCPL's proposed tariff document related to queuing, and indicated its proposal to include the tariff document in Phase II of the RH-1-88 hearing to allow parties the opportunity to discuss its merits.

TCPL's proposed queuing procedures were filed in the Phase II proceedings. These were to be revised further to reflect additional clarifications and revisions agreed to during the course of cross examination in respect of paragraphs 3.1(b), 3.4, 3.7, 3.8 and Appendix B.

The proposed tariff included the following provisions. The requests for service subject to the TCPL queuing procedure would pertain to an increase in system capacity (additional facilities) unless capacity is made available as a result of termination or non-renewal of existing

contracts.

Additional system capacity applied for would be provided if;

(a) there is a reasonable expectation of a long term requirement,

(b) the availability provisions of the applicable toll schedule are satisfied, and

(c) the service is not for PS, TWS or IS.

A list of those in the queue and their respective position would be made available upon request.

The queuing procedure would be applicable to requests for FS, FST, STS, PS and TWS. PS and TWS would be offered subject to pipeline availability, and upon TCPL first satisfying the requests for FS, FST and STS.

To qualify for inclusion in the queue for transportation service, the prospective shipper would first be required to submit and receive the acceptance by TCPL of a completed RFSF, which, along with volumes, delivery points, dates, etc. also would require the applicant to "represent" that either;

(a) it is an LDC and has a market for the gas to be transported, or

(b) it has a binding contract (subject to the fulfillment of the conditions precedent) for the sale of the gas to be transported.

By signing the RFSF, the applicant would agree to meet the requirements for access and to enter into the applicable transportation service contract upon receipt of all the authorizations and to finalize the necessary associated contractual arrangements. The applicant would also be required to complete a "Project Status Summary", indicating the dates upon which it expects to obtain a precedent gas sales agreement, gas supply contracts, upstream and downstream transportation arrangements, and any export or import authorizations.

Upon TCPL’s acceptance of the RFSF, the applicant would be admitted to the queue, together with all other applicants having requested equivalent priority services with commencement dates within the same 12-month period starting 1 November. The applicant’s specific position in the queue i’s determined by the date of receipt of the RFSF. Within 60 days of acceptance of the RFSF, the applicant would be required to execute a binding agreement with TCPL for the service requested.

Any amendments to the applicant’s request (i.e. volume, receipt or delivery points, delivery pressure, etc.) which would delay commencement of service, would be treated as a new RFSF for the purpose of redetermining the applicant’s position in the queue.

If pipeline capacity becomes available from existing facilities, and TCPL does not require such capacity to satisfy its then-current firm

obligations, TCPL would offer the capacity sequentially to the applicants in the queue until such capacity is totally committed to, and/or refused by, those applicants. Any remaining capacity would be offered to those in the queue wanting PS or TWS, for the same time period.

Upon accepting any portion of that capacity, the applicant would be required to provide TCPL with a deposit equivalent to two months' demand charges or sixty days' commodity charges in respect of services where no demand charge is applicable, after which the applicant would have 60 days within which to meet the conditions of access and to finalize the appropriate service agreement with TCPL. Failure to meet the 60-day requirement would result in the forfeiture of the deposit.

Failure to accept an entitlement to capacity would result in the applicant's removal from the queue unless

(a) the offered capacity is less than that requested, or

(b) the date of availability of that capacity was earlier than specified by the applicant.

9.10.2 Views of Intervenors

Several intervenors, including Polysar, Cyanamid, ICG (Ontario) and Consumers Gas, provided evidence and argument respecting TCPL's proposed queuing procedures. The main concerns expressed by intervenors included non-discriminatory access, TCPL's discretion in providing access to the queue and consistency with the GH-2-87 decision.

Non-Discriminatory Access

The principle of overriding concern to most parties was that applicants seeking capacity should have access to that capacity in a non-discriminatory manner. In argument Champlain referred to the "equal knowledge" and "equal treatment " principles that should be established by the Board in ensuring equal opportunity for access to capacity on TCPL's system.

TCPL's Discretion in Providing Access to the Queue

Another major area of concern to many intervenors, with respect to the proposed queuing procedures, was the excessive amount of discretion that was afforded TCPL in its right to deny a shipper entry into the queue based on its assessment of the "ripeness" of a particular shipper's project. The only recourse would be for the shipper to seek relief from the Board. Cyanamid believed that the exacting information originally required by TCPL to get into the queue should be reduced, and that any additional detail, as is required by the RFSF for a facilities application, could be obtained when such a facilities application is contemplated. In addition to this, Polysar believed that the onus for proof should be shifted to TCPL to prove that an applicant should not be in the queue.

Polysar recommended that clause 3.1 of the proposed procedures be revised to limit TCPL's discretion to refuse entry only in those circumstances where the applicant does not provide the minimum information specified in the GH-2-87 Decision.

Consistency With Intent of GH-2-87

A third area of concern with TCPL's proposed queuing tariff was that it did not accurately reflect the Board's GH-2-87 Decision. Consumers Gas believed that, to be consistent with the intent of GH-2-87, a shipper should gain entry to the queue upon completion of the RFSF, with or without Schedule A to the RFSF, the Project Status Summary. TCPL contemplated that a 60-day "rule of thumb" would be used in requiring shippers to file a completed Schedule A.

Polysar disagreed with TCPL that its proposed queuing tariff accurately reflects the Board's views as expressed in GH-2-87 and believed that the proposal requires significant redrafting since it would form part of the tariff and could not be amended unilaterally by a queue applicant or by TCPL.

Polysar believed that TCPL's proposed queuing procedure did not incorporate the following six points outlined in GH-2-87:

1. An applicant was allowed to enter the queue upon the signing of a letter of intent, committing itself to enter into a transportation contract with TCPL;

2. A letter of intent should indicate a specific volume, receipt and delivery points, the date of commencement and an indication that the applicant could meet the access conditions in the tariff;

3. An applicant's commitment to take capacity could be conditional on any event which the applicant wished to specify;

4. If TCPL judged the specified conditions to be unreasonable, or doubted whether the applicant could meet these conditions of access, then TCPL was to bring the matter to the Board for resolution, whereupon the position in the queue would be confirmed or lost;

5. TCPL and the applicant could choose to refine the applicant's letter of intent into a precedent agreement; and

6. An applicant would lose its place in the queue if it could not enter into the transportation contract by the date specified in its letter of intent.

In addition, Polysar viewed as unnecessary the following information to be filed by an applicant to obtain access to the queue; (i) the purpose of the service, (ii) the upstream and downstream transporters, (iii) representation that it is an LDC, or has a binding contract to sell the gas to be transported or will consume the gas itself and (iv) Schedule A completion.

Polysar submitted that TCPL is asking for far more information in the RFSF than what appears to be contemplated by the GH-2-87 Decision. Polysar argued that the more information that TCPL can request, the greater the opportunity that TCPL could claim that the RFSF is incomplete and accordingly could deny access to the queue.

Polysar also submitted that there be no requirement for any precedent agreement, and that section 3.3 of the proposed procedures should be deleted. If a precedent agreement is to be allowed, the 60-day period should only begin to run from the date the agreement is presented to the applicant.

9.10.3 Polysar's Alternative Queuing Proposal

Polysar presented a detailed description of alternative procedures for the establishment and operation of the queue

Polysar envisaged a two-stage procedure where, in the first stage, an applicant could enter the queue provided that it supplied the information specified in GH-2-87.

All information would be made public at the time of a facilities application. In Polysar's view, the type of information that should be made public at this step is:

1. Date of the request;

2. Volumes requested;

3. Start-up date of service; and

4. Delivery point.

Union submitted that the shipper's name should also be public information at this time.

TCPL submitted that only the name and rank need be public in order to protect the shipper's confidentiality.

In Polysar's view, the type of information that should be made public is important in order for any party in the queue to determine its position relative to other parties in the queue.

The second stage would arise at the time when TCPL applied for new facilities. TCPL would provide parties in the queue with a notice that a precedent transportation agreement must be entered into by a certain date (normally a 60-day lead time) in order for TCPL to prepare its facilities application. It would be at this stage that TCPL should be allowed to request the various types of information from the parties which it requires to support a facilities application.

At the cut-off date, the queue list would be ranked as to those parties in the queue who had entered into a precedent agreement ahead of those

parties who had not. This procedure would ensure that any additional capacity which results from a facilities application would be allocated to those parties on which the facilities expansion was based, but would still allow a party who was not in a position to enter into a precedent agreement, to remain in the queue and maintain its standing in respect of any excess capacity that might arise from the release of existing capacity.

9.10.4 Views of the Board

The Board generally supports the views and the three main concerns of intervenors respecting TCPL's proposed queuing procedures, and views a modification generally along the lines of Polysar's queuing proposal to be consistent with the Board's expressed intent in GH-2-87.

The TCPL queuing proposal affords too much discretion to deny a shipper entry into the queue based on its assessment of the "ripeness" of a particular shipper's project. Access to the queue should not be conditional on the filing or non-filing of facilities information as is required by Schedule A of the RFSF.

The Board directs TCPL to redraft its proposed queuing procedures to comply with the Board's decision in this hearing, and to resubmit them to the Board, by 1 October 1989, for approval prior to being incorporated in the tariff.

The queuing procedure as now seen by the Board involves a two-stage process:

Stage One - Access to Queue

Applicants can obtain access to the queue by fulfilling the following requirements:

(a) Stating the name and address of the applicant.

(b) Signing, within 60 days of notification of acceptance into the queue, a precedent agreement for transportation service requested.

(c) Stating the specific volume required.

(d) Stating the receipt and delivery points.

(e) Stating the dates of commencement and termination of service.

Prospective shippers accepted into the queue who cannot meet the 60-day time limit for signing a precedent transportation agreement shall have the right to drop to the last position in the queue or move to the bottom of the queue for a subsequent contract year.

If, notwithstanding that a prospective shipper has filed all the necessary information, TCPL believes that an applicant should not be allowed access to the queue, the onus is on TCPL to apply to the Board to have the prospective shipper removed from the queue. If conditions

of access were decided by the Board in favour of the applicant, then the date of acceptance into the queue would be the original date of receipt of the RFSF by TCPL.

At this stage, the information concerning the queue that would be made public would be:

(a) the name of the applicant;

(b) the original date of receipt by TCPL of the RFSF;

(c) the commencement and the termination dates of service requested; and

(d) the volume of service requested.

The Board considers that a certain minimum amount of information should be public in order for applicants to know whether they have been ranked properly by TCPL, and to know their positions relative to other parties in the queue. The original date of receipt by TCPL of the RFSF should be public so that applicants will know whether they have been ranked properly by TCPL at stage one. The commencement date should be public in order for applicants to know if their position in subsequent contract-years has been properly ranked by TCPL. Lastly, the term and volume of service are also required in order for applicants for subsequent contract-year queues to determine whether multiple contract year increases or decreases in volumes for specific services have been properly ranked by TCPL.

To summarize, at this stage no further information would be required to be supplied by a queue applicant than is outlined above. This would mean thatclause 3.1 of TCPL’s proposed queuing procedures would be revised to restrict TCPL’s discretion to limit entry of queue applicants to the minimum information discussed in section 9.2.7 of the GH-287 Decision (i.e. Schedule A to Appendix B would be eliminated, and Appendix B would be revised to include only the information required in the GH-287 Decision).

Stage Two - Access to New Capacity

Stage two would set out the additional information to be provided by a party in the queue, sufficient to enable TCPL to prepare and to submit to the Board a Part III application for new facilities (i.e. Schedule A to Appendix B appropriately amended). It is also at this stage that TCPL would provide parties with adequate notice that a precedent transportation agreement must be entered into by a date certain (normally a 60-day lead time).

As of the cut-off date for entering into a precedent agreement, the queue list would be ranked to indicate those parties in the queue who had entered into a precedent agreement. This procedure would ensure that any additional capacity which results from a facilities application would be allocated to those parties on which the facilities expansion was based, but would still allow a party who was not in a

position to enter into a precedent agreement to remain in the queue, and maintain its standing in respect of any capacity that might be released. All information requested by TCPL and filed by parties in the queue respecting a stage-two facilities application would be public. It is at this stage that TCPL would request parties who have signed precedent transportation agreements, to provide any additional information to support TCPL's facilities application.

Decision

The Board directs TCPL to redraft its proposed queuing proposal for inclusion in the general terms and conditions of the tariff in accordance with the views of the Board and to file it by 1 October 1989, for review by the Board. As part of this submission, TCPL is also directed to include draft procedures and additional information it would require to support a facilities application.

9.11 Pro Forma Contracts

In its GH-2-87 Decision the Board directed that:

"... pro forma contracts, in respect of all transportation services offered by TransCanada be filed as part of its tariff. These contracts need only include those terms and conditions which govern the provision of the transportation service to the extent that these are not otherwise included in the applicable toll schedules and the General Terms and Conditions."

TCPL submitted its response to this direction in a tariff filing with the Board, dated 28 December 1988. The Board decided to include it as an issue in this proceeding, in order to give parties an opportunity to review and to make comments on those pro forma contracts.

During the hearing, TCPL submitted that its standard form contracts are in a continual state of change. It added that the pro forma contracts filed were prepared before the Board's Decision on Phase I was released and, as such, they did not reflect the direction made in that Decision that;

"The filing of a contract purporting to amend the Board-approved tariff will not be effective unless, and until, TransCanada has specifically sought and received the Board's approval for the amendment.".

TCPL's stated policy was to have contracts for each service standardized to the extent possible, while recognizing that there will be differences among the contracts to deal with individual circumstances. As a starting point in negotiating transportation service with a prospective shipper, TCPL would utilize the pro forma contracts. The actual text of the contract which is executed by the parties may not conform strictly to the pro forma version, but would deal with the same essential contractual items.

The Decision on Phase I required TCPL to file a new tariff the earlier of 1 November 1989 or two months after the unbundling of TCPL's sales

contracts. TCPL submitted that this deadline would also be the appropriate time to supply final pro forma contracts which would apply after 1 November 1989.

Polysar submitted that pro forma contracts, filed as part of TCPL's tariff, would remove any perception of preference for one shipper over another. It encouraged the development of a "bare-bones" type of service contract with the majority of the operative aspects of the terms of transportation being contained in the tariff provisions.

Polysar agreed with IGUA that the 1 November 1989 deadline date was the latest date by which these tariff provisions should be incorporated. It also suggested that TCPL should obtain the comments and views of its shippers on the provisions and wording of its new tariff prior to filing it with the Board.

Views of the Board

The inclusion of pro forma contracts in the tariff informs prospective shippers of the basic terms of a contract for transportation service. An executed contract, not inconsistent with the pro forma contract, together with the approved tariff constitutes the transportation arrangement between the parties.

Decision

The Board directs TCPL to file, by 1 November 1989, pro forma transportation contracts to be included as part of its tariff.

In addition, pursuant to section 59 of the NEB Act, the Board directs TCPL to file copies of all executed transportation contracts beginning 1 November 1989. When filing such contracts, TCPL shall identify and explain any variations in the contracts from the approved tariff.

9.12 SGR Arrangements

In 1988, the OEB ruled that CMPs offered by WGML to certain natural gas customers through LDCs in Ontario would not be permitted beyond 31 October 1988. Subsequent to this ruling, WGML introduced SGRs so that the CMP discounts could be continued.

Under the initial SGR arrangements WGML bought natural gas from TCPL and sold it to an end-use customer at the Alberta border at an agreed-upon competitive price. That gas would be immediately resold to TCPL at the price which the customer's distributor paid for system gas. After the gas was sold to TCPL, TCPL in turn delivered the gas together with other system gas and sold it to the distributor under the existing long-term contracts. The gas then flowed from the distributor to the customer under a normal LDC sales contract.

The customer's saving was realized from the difference between the price at which gas was bought from WGML and the price at which it was sold to TCPL at the Alberta border. At the end of the month, the customer would send WGML a copy of its distributor invoice and WGML

would return a cheque for the difference between the purchase and sale price for the gas actually consumed.

In the fall of 1988, WGML and the Ontario distributors renegotiated their respective gas sales contracts. Under these new contracts, the LDCs became the shippers for system gas to their franchise areas on the TCPL pipeline. Under this unbundled régime the SGR customer continues to purchase gas from WGML at a competitive price but now it sells it back to WGML who then sells the gas to the LDC at the Alberta border.

The SGR arrangements were discussed during Phase I of this hearing. In its decision on Phase I, the Board indicated that it would examine, in Phase II, whether SGR arrangements confer a transportation benefit on the parties involved that is not available to other shippers. TCPL maintained the SGRs were successors to CMPs and thus were gas-discounting mechanisms relating solely to the price of the commodity and having nothing to do with transportation service.

IPAC and GMI agreed with TCPL that there were no transportation benefits associated with SGRs.

IGUA, Polysar, NCMI and PPG maintained that SGRs were inappropriate and that some action by the Board was desirable.

IGUA stated that SGRs were a buy/sell transportation service provided by TCPL; that is, they were a means whereby customer-owned gas, acquired by way of direct purchase in western Canada, was moved to market. In support of this position IGUA stated that, since TCPL identified buy/sell as a form of capacity brokering, buy/sells are pipeline capacity-related transactions. According to IGUA, under the unbundled regime, TCPL would be removed from the SGR chain, and therefore, there would be no federal remedy. IGUA noted that a significant competitive advantage was accruing to SGRs as a result of the OEB’s decision to mandate the weighted average cost of gas (WACOG) as the buy price in LDC buy/sells. IGUA stated that it was pursuing remedies to the "SGR problem" at the provincial as well as the federal level.

IGUA’s position was that, in the absence of an unbundling of the LDC contracts, TCPL should be required to provide a buy/sell service for nonsystem gas. IGUA stated that, in the event of an unbundling of the LDC contracts, the issue of SGRs was academic.

Polysar and NCMI argued that SGRs should be disallowed. Polysar agreed with IGUA that SGRs were inappropriate. In addition, Polysar noted that SGRs were not available to any customer who has elected to follow the direct sale option. Polysar suggested that TCPL should not be a participant in a transaction which is not open to all and, therefore, that TCPL should be prohibited from participating in SGRs.

NCMI maintained that SGRs contravene various provisions of the NEB Act, that they fall under the Board’s jurisdiction and that they are contrary to the public interest.

NCMI stated that SGRs constitute deemed tariffs pursuant to section 60(2) of the NEB Act because they involve TCPL gas transmitted on the TCPL pipeline. Section 60(1) requires that TCPL file all contracts for the sale of gas. NCMI maintains that this would include the entire series of SGR contracts. Since these contracts have not been filed pursuant to this section, TCPL is in contravention of that provision of the NEB Act. Moreover, NCMI argued the SGR gas is being transported in contravention of section 60(1) since there is no tariff in effect within the meaning of the section, or in existence by Board order.

Furthermore, NCMI submitted that SGRs also contravene sections 62 and 67 of the NEB Act because two alike end-users, one being an SGR customer another being a sales service customer of the LDC, do not pay the same amount for the bundled service where, in NCMI's opinion, there are substantially similar circumstances and conditions with respect to traffic which is carried over the same route. Since SGRs are targetted at certain customers, their benefits and advantages are not available to non-system gas users, or system gas users who are not offered SGR sales. Therefore, there is not equal access to this discounted sales/ transportation service. Finally NCMI maintained that SGRs, in substance, constitute a rebate and thus are in contravention of section 69 of the NEB Act.

NCMI stated that the Board has exclusive jurisdiction to enquire into and hear whether SGRs contravene provisions of the NEB Act and, if so, to disallow SGRs in their entirety.

PPG argued that SGRs provide undue advantages to system gas. It maintained that if SGRs do not represent an unduly preferential combination of merchant and transportation functions by TCPL, or the LDCs under the new unbundled regime, then they represent, as IGUA suggested, delivery service arrangements that amount to agency buy/ sell arrangements that permit gas to access, travel on and exit from the pipelines of TCPL and Great Lakes under more advantageous conditions than non-system gas. PPG maintained that even if the LDCs were to become shippers, system gas would continue to enjoy advantages outlined by WGML in its promotional material. PPG maintained that non-system gas did not enjoy the same advantages and suggested that the Board has the power, through subsection 71(2) orders in conjunction with section 62 of the NEB Act, to require that system gas be transported under no more favourable terms and conditions than non-system gas.

TCPL dismissed the arguments of IGUA, Polysar, NCMI and PPG by asserting that SGRs provide commodity discounts and thus are outside of the Board's jurisdiction.

Views of the Board and Decision

The Board notes that the sole purpose of the SGR mechanism is to enhance WGML's market share. In order to meet average prices required by producers, WGML was able to offset the lower prices charged to SGR customers by higher prices negotiated for the captive core market.

Chapter 10

Disposition

The foregoing chapters, together with Order No. TG-6-89, constitute our Reasons for Decision on this matter.

Ottawa, Canada
June 1989

R. Priddle
Presiding Member

W.G. Stewart
Member

10.1 Dissenting Opinion of Mr. A.D. Hunt

With the sole exception of the majority's reasons and decisions respecting export transportation tolls (section 8.3), I concur fully with the reasons and decisions set out herein. Before setting out my reasons for failing to concur with the majority decision on this matter, it may be helpful to set out my understanding of what should be examined.

There is, I believe, no dispute respecting the essential facts. Natural gas entering the TCPL system at Empress, Alberta owned by many shippers, is delivered to many points on the main. TGlenvesa

over the same route. That finding was not contested in this hearing.

The evidence clearly shows that at Sabrevois gas destined for domestic consumption bears the FS Eastern zone toll, while gas destined for export bears the FS point-to-point toll. As a result effective 1 July 1989, the toll for export is some $3.30 10^3m^3 higher than the domestic toll (a difference of 13 percent). In my view this is clearly a situation where discrimination exists. However, to date the Board has not found such discrimination to exist because, in its view, the traffic for export is of a different description to that for domestic and the circumstances and conditions of carriage are not substantially similar. In my view, the two issues raised by the Board for examination in this hearing and quoted in section 8.3 require that the matter of the continuation of the discriminatory situation be re-examined. Admittedly, the word used is 'appropriateness', but the wording used to raise the issue does not make the discriminatory aspect disappear.

Before examining whether the difference between export and domestic tolls is or is not unjustly discriminatory, it is necessary to examine the Board's mandate under sections 62 and 63 of the Act. I understand the majority to have found that natural gas destined for export consumption is not traffic of the same description as that destined for domestic consumption nor that the circumstances and conditions with respect to that traffic are the same. Thus, in the view of the majority, the Act does not preclude establishing different tolls for the same firm transportation service. I cannot agree with the reasoning of the majority that the destination of natural gas transported on TCPL under firm service (FS) transportation contracts is a factor that may be used to conclude either that the circumstances and conditions differ or that the traffic is not of the same description.

My difference of opinion with the majority centres primarily around the broad definition given to the word traffic. I agree that the broad, everyday use of the word traffic would normally apply and thus the circumstances of the 'trade' could then be taken into account. It may be that the broad meaning gives the Board extensive jurisdiction under section 59 and I find no difficulty with such a conclusion. However, I consider the wording of section 63 in both the French and English versions to restrict the meaning of traffic for the purposes of both sections 62 and 63. I agree that the finding of GH-2-87 was unduly restrictive because it failed to take into account the French version of the Act. The English and French versions can readily be combined to give the meaning of traffic as used in sections 62 and 63. In my view, therefore, traffic in these two section means both that which is carried, i.e. the commodity and the operation of carrying it.

Section 63 in the English version says, "The Board may determine as questions of fact, whether or not traffic is or has been carried under substantially similar circumstances and conditions...." Surely, carried here means carried by the pipeline, and surely the pipeline can carry only a commodity. There may well be business arrangements respecting the transfer of ownership, price, origin, destination, etc. at either end of the TCPL system, but I fail to understand how such arrangements have any bearing on the carriage by TCPL of the gas. It should be noted

that the Board and TCPL are in some cases aware of an export's ultimate destination and other sales/purchase matters solely by virtue of the export licence procedure under Part VI of the Act and not by virtue of any difference in FS access or operating aspects.

Section 63 says, "L'Office peut déterminer, comme question de fait, si le transport a été ou est opéré dans les circonstances et conditions essentiellement similaires ..." This version seems to place even greater emphasis on the circumstances and conditions of operating the transportation (i.e. carriage) and gives no scope, in my view, to including factors not relevant to or associated with such activity. For example, at Sabrevois, TCPL delivers both domestic volumes to GMi and export volumes on behalf of Shell Canada Limited for transportation on GMi and Montreal Pipe Line Limited, both Canadian companies. TCPL may know, as general knowledge, that some of the gas delivered to GMi is for domestic consumption and some of the gas is destined for export, but it has no right to demand this information and such difference in eventual destination makes no difference whatsoever in how the transport is operated by TCPL.

The suggestion of the majority that my understanding of the word traffic is obsolete and the modern version must prevail would normally apply but again the context of sections 62 and 63 requires retention of the so-called "obsolete" meaning. This is not surprising when it is realized that the meaning originated in the Railway Act of the last century, over 100 years ago.

Although the intent of the legislators may be difficult to discern, I would refer to the comment in the Reasons for Decision of GH-2-87 that the use of the words in section 62 (then 52) "All tolls ... shall always ... be charged equally" is unusual. Why did the legislators not simply say, "All tolls should be just and reasonable" and stop there? Surely this is because they did not want to give the Board such broad discretion. However, if extraneous matters such as ownership, price, destination, market, etc. can be used to distinguish one packet of gas from another and then be used to justify a different toll for what is the same transportation service, surely this renders the intent of section 62 meaningless. The majority has, in my view, adopted an approach which in effect frustrates the basic intent of the legislation. If the Board may, in accordance with the Act, take into account "the business motives of the parties" (I assume that the majority intends to include, in addition to shippers and TCPL, producers-and customers of the gas), this may be seen as an invitation to negotiate differences in the sales contracts, having nothing to do with transportation as such, simply to provide a basis for seeking different toll treatment for the same transportation service. Although (assuming the Board has discretion to take such matters into account) the Board could decline such a request, it is, in my opinion, an undesirable policy to maintain and not consistent with the Board urging natural gas pipelines to unbundle i.e. separate to the greatest extent possible the merchant and transportation functions. To give weight to which markets are ultimately served, which is a merchant function, even though TCPL does not deliver all the way to such markets and intervening pipelines are beyond the reach of the Board's jurisdiction,

appears to me to be a contradiction of the unbundling policy.

I would apply much the same reasoning as before in a discussion of the meaning of "traffic of the same description". I agree with the GH-2-87 conclusion that for the purposes of the English version of section 62, the phrase refers to the commodity being carried and terms of trade do not modify the description of the traffic. It is co-mingled natural gas. This does not change because it has a different destination after leaving TCPL. The French version expands the sense by saying, "Les transports de même nature", which I take to mean the transportation or carriage of the same nature which surely cannot be taken to include the terms of trade but rather the type of transportation service offered e.g. firm service, interruptible service, etc.

I have considered the references to the Railway Act by the majority and fail to understand, particularly in relation to the French version of subsection 2(33), how a plain reading could suggest anything other than that ’transport’ or ’traffic’ means the transport (carriage) of passengers, goods and rolling stock. Only passengers, goods and rolling stock per se are mentioned.

With respect to subsection 339(2) of the Railway Act, the meaning of the words "other dealings with telegraphic and telephonic messages" is not crystal clear. However, the probable simple meaning would become clear if the phrase were read "other dealings by the company with telegraphic and telephonic messages." Thus, ’other dealings’, in my view, involves the operations and activities necessary to transmit the messages but surely the content of the messages and their impact on the sender or recipient would have no bearing in differentiating one message from another and using this to justify a different rate.

To conclude, the desire to avoid limiting the Board’s discretion with respect to sections 62 and 63 should not be taken to the extent of seeking to interpret the sections in such a way as to render them non-applicable, except for the portion requiring that all tolls should be just and reasonable.

If the majority is correct in its understanding of sections 62 and 63 of the Act, then I would agree with their finding. I would, however, amplify the reasons given.

Since the majority view prevails, then a decision must be reached respecting the ’appropriateness’ of the different ’treatment’ or in my words whether the existing difference in tolls should be regarded as not unjustly discriminatory and be allowed to continue.

I would then agree with the majority that the present situation should continue but, in my view, only until such time as the Board has an opportunity to examine the complete zone structure on TCPL. It is preferable to continue the present difference between domestic and export tolls (assuming it is lawful under the Act) until the zone review can be completed, since a change now e.g. all tolls to be the zone rate, might have to be reversed particularly were conversion to complete point-topoint tolls adopted. Equally important, in my view, is

the need to get the price signals right. To convert all export tolls from point-to-point to zone rate now would result in the real transportation cost for export volumes being masked. This, in turn, might influence decisions respecting export projects such as Iroquois and Champlain. In my view, point-to-point tolls reflect more closely the incurred real costs of transportation, whereas zone tolls result in cross-subsidization and are not consistent with the market-based approach. Thus, while zone or postage stamp tolls have been justified in the past and will, under certain circumstances, continue to be needed in the future, it seems to me that in addition to reviewing whether the Eastern zone toll should continue as at present, it will be necessary also to examine whether the Eastern zone should be divided into smaller zones, as suggested by TCPL when indicating in evidence its possible advocacy of a southwestern zone or even whether the zone system should be replaced by separate point-to-point tolls between all receipt and delivery points.

I also find difficulty with the concept that delivery points for exports are to be regarded as separate zones. In my view zones are not geographic areas but sections of the pipeline commencing at a defined kilometer point and ending at another. (See TCPL tariff.) Any delivery points between these ’markers’ fall within the zone. To say export delivery points are separate zones I suggest has little meaning and is hardly in and of itself any reason for charging different tolls. It is, in my view, a poor rationalization for what is being done and is not required.

In arguing that the continuation of different toll treatment for export and domestic volumes is not unjustly discriminatory and that it would be in the public interest to continue the situation until the zone system on TCPL could be re-examined, I am not unaware of the possible concerns that might arise elsewhere respecting this practice. While I do not agree with TCPL that it is inconsistent with the spirit of the Free Trade Agreement, since transportation in either country is not mentioned in the agreement, failing to treat export volumes on the same basis as domestic may not be to Canada’s advantage in the long run. In the past, Canadians, including the Board, have protested for example, FERC Opinion 256, but even the most vociferous could not claim it treated Canadian gas differently from U.S. domestic gas. Neither do postage stamp or zone rates on some U.S. pipelines. Where such tolls exist they apply equally to Canadian and U.S. gas. The effect may be to remove a proximity advantage otherwise enjoyed by Canadian gas and to emphasize the disadvantages of zoning, but it does not treat Canadian gas in a different manner. It is for this reason that I suggest the zone issue should be examined as soon as possible. However, since in my view sections 62 and 63 of the Act do not admit of taking terms of trade into account when determining whether or not traffic is of the same description or is carried under essentially similar circumstances and conditions, I would, having no option, require that export tolls conform to their respective zone tolls and would seek to review the zoning question at the earliest opportunity.

A.D. Hunt
Member

Appendix I **Order No. TG-6-89**

IN THE MATTER OF the National Energy Board Act (hereinafter referred to as "the Act") and the Regulations made thereunder; and

IN THE MATTER OF an application dated 5 February 1988 by TransCanada PipeLines Limited hereinafter referred to as "TCPL") pursuant to Part IV of the Act, seeking, inter alia, certain toll orders, filed with the National Energy Board (hereinafter referred to as "the Board") under File No. 1562-T1-26.

BEFORE the Board on Wednesday, 28 June 1989.

WHEREAS Phase II of a public hearing has been held pursuant to Hearing Order RH-1-88, as amended, in the City of Calgary, in the Province of Alberta and in the City of Ottawa, in the Province of Ontario, at which the Board heard TCPL and all interested parties;

AND WHEREAS the Board's decisions on the application are set out in its Reasons for Decision dated June 1989 and in this Order;

IT IS ORDERED THAT:

1. TCPL shall, for accounting, toll-making and tariff purposes, implement procedure conforming to the Board's decisions outlined in the Reasons for Decision dated June 1989 and with this Order:

2. The tolls which were in effect for the period from 1 January 1988 to 30 June 1988 are final;

3. The tolls which were in effect for the period from 1 July 1988 to 31 December 1988 are final;

4. The tolls which were in effect for the period extending from 1 January 1989 to 30 June 1989 are final;

5. TCPL shall forthwith file with the Board and serve upon all parties to the hearing of this application, new tariffs, including general terms and conditions,and tolls conforming with the decisions outlined in the Reasons for Decision dated June 1989 and with this Order;

6. Notwithstanding the filing of the new tariffs and tolls, the same shall remain suspended and be of no effect until 1 July1989; and

7. Those provisions of TCPL's tariffs or tolls, or any portion thereof, that are contrary to any provision of the Act, to the Reasons for Decision dated June 1989, or to any Order of the Board, including this Order, are hereby disallowed, after 30 June 1989.

NATIONAL ENERGY BOARD

Louise Meagher Secretary

Appendix II

Functional Distribution and Classification of Revenue Requirement for the 1989 Test Year

	Total	Metering	Transmission -Fixed	Transmission -Variable	Unaccounted for Gas
Transmission by Others	$208,923,628		$127,126,412	$81,449,947	$347,269
Operation and Maintenance	159,884,931	$42,760,971	98,527,368	20,458,364	(1,861,772)
Depreciation	101,637,150	1,161,716	100,475,434		
Municipal and Other Taxes	43,396,824	426,351	42,970,473		
Income Taxes	77,578,660	990,962	76,587,698		
Regulatory Def. & Amort.	23,113,635		23,113,635		
Foreign Exchange Loss	(616,000)		(616,000)		
Other Operating Income	(556,264)		(556,264)		
Return on Rate Base	318,731,822	4,071,364	314,660,458		
Revenue Requirement	$932,094,386	$49,411,364	$782,289,214	$101,908,311	($1,514,503)
Miscellaneous Revenue	(46,025,753)	(2,892,130)	(40,682,959)	(2,440,417)	(10,247)
Interim Revenue Adjustment	(99,809,456)		(99,809,456)		
Revenue Requirement for Toll Design Purposes	$786,259,177	$46,519,234	$641,796,799	$99,467,894	($1,524,750)

1. The interim revenue adjustment has been doubled for the purpose of calculating tolls in order to amortize the adjustment in the six-month period ending 31 December 1989. Refer to Section 6.4 of the report.

Appendix III

TransCanada PipeLines Limited
Transportation Tolls Effective 1 July 1989

Canadian Service	Demand Toll ($/10^3m^3/mo)	Commodity Toll ($/10^3m^3)
(a)	(b)	(c)
Saskatchewan Zone		
FS	143.12	0.554
IS-1	6.436	
IS-2		5.782
PS		69.280
TWS		21.487
Manitoba Zone		
FS	233.62	1.052
IS-1		10.653
IS-2		9.586
PS		69.778
TWS		21.985
Western Zone		
FS	367.24	1.789
IS-1		16.881
IS-2		15.204
PS		70.515
TWS		22.722
Northern Zone		
FS	554.32	2.811
IS-1		25.591
IS-2		23.060
PS		71.537
TWS		29.034
Eastern Zone		
FS	662.36	3.446
FST		17.136
IS-1		30.666
IS-2		27.642
PS		100.412
TWS		31.439
TransGas Transportation:		
-from Empress & Richmound		
FS	123.45	0.444
-from Bayhurst Liebenthal		
FS	117.17	0.406

-from Success		
FS	94.11	0.284
-from Herbert		
FS	44.77	0.028

TransCanada PipeLines Limited

Transportation Tolls
Effective 1 July 1989

Miscellaneous Services	Demand Toll ($/10^3m^3/mo)	Commodity Toll ($/10^3m^3)
(a)	(b)	(c)
-from Herbert to Emerson		
FS	215.02	0.958
IS-1		9.794
IS-2		8.813
-from Empress to Spruce		
FS	252.80	1.164
IS-1		11.553
IS-2		10.399
-from Empress to Emerson		
FS	257.45	1.189
IS-1		11.769
IS-2		10.594
-from Empress to Dawn		
FS	579.00	2.893
IS-1		26.688
IS-2		24.044
-from Success to Niagara Falls		
FS	644.35	3.244
IS-1		29.724
IS-2		26.782
-from Empress to Niagara Falls		
FS	703.61	3.634
IS-1		32.549
IS-2		29.337
-from Empress to Cornwall		
FS	718.18	3.706
IS-1		33.220
IS-2		29.941

-from Empress to Sabrevois		
FS	749.51	3.877
IS-1		34.679
IS-2		31.256
-from Empress to Philipsburg		
FS	756.46	3.915
IS-1		35.002
IS-2		31.548

TransCanada PipeLines Limited

Transportation Tolls
Effective 1 July 1989

Miscellaneous Services	Demand Toll ($/10^3m^3/mo)	Commodity Toll ($/10^3m^3)
(a)	(b)	(c)
Interruptible Service:		
-from Bayhurst & Success to Belle Plaine & Regina		
IS-1		4.804
IS-2		4.311
-from Oakville to Trenton, Ontario		
IS-1		3.374
IS-2		3.021
Storage Transportation Service		
ICG (Ontario)-NDA	137.65	0.526
ICG (Ontario)-SSMDA	55.46	0.085
ICG (Ontario)-EDA	100.10	0.324
Kingston	94.40	0.293
GMi	152.67	0.606
Consumers Gas	68.65	0.155
Exchange Gas:		
Consumers Gas -Oakville/Victoria Sq.	35.56	
Consumers Gas -Oakville/Markham	37.96	
Delivery Pressure:		
Emerson	.16	
Dawn	5.29	

Niagara Falls	13.29
Sudbury	0.00

Code:	FS	Firm Service	
		FST	Firm Service Tendered
		IS-1	Tier One Interruptible Service
		IS-2	Tier Two Interruptible Service
		PS	Peaking Service
		TWS	Temporary Winter Service
		NDA	Northern Delivery Area
		SSMDA	Sault Ste. Marie Delivery Area
		EDA	Eastern Delivery Area

Appendix IV **Hearing Order No. RH-1-88**

File No. 1562-T1-26
19 February 1988

VIA TELECOPIER

Mr. J.W.S. McOuat, Q.C.
Vice-President, Law
TransCanada PipeLines Limited
P.O. Box 54
Commerce Court West
Toronto, Ontario
M5L 1C2

Dear Mr. McOuat:

Re: 1988/89 Toll Application

Further to the Board's letter of 29 January 1988 and your application dated 5 February 1988, the Board is today announcing that it will hold Phase I of its two-phase public hearing with respect to the above-referenced application for tolls effective 1 January 1988 and 1989 commencing on 16 May 1988 in Ottawa. The attached Hearing Order RH1-88 contains the Board's directions on procedure with respect to Phase I.

Due to the unavailability of appropriate accommodation in Calgary during the time frame contemplated by the Board for Phase I, the Board has deferred consideration of holding part of these proceedings in Calgary until the timing for Phase II has been finalized.

The Board is aware of the desirability of rendering a decision with respect to Phase I matters in a timely fashion in order to provide parties with sufficient time to take appropriate steps with respect to contracting for the 1988 gas year. For this reason the Board is prepared to defer certain matters that would normally fall within Phase I until Phase II of the hearing.

Appendices IV and V of Hearing Order RH-1-88 contain the Board's initial list of toll design and tariff issues to be dealt with during these proceedings. It is the Board's intention to examine certain of the issues referenced therein with a view to establishing consistent treatment between sales service and transportation service and further encouraging the move towards open access to the TransCanada system. These issues have been segregated into the following categories:

I - Issues to be addressed in Phase l;

II - Issues which could be addressed in Phase II.

The Board wishes to obtain the views of TransCanada and Interested Parties with respect to proceeding in this manner. As outlined in Paragraph 13 of Order No. RH-1-88, parties are asked to address the division of issues proposed by the Board. The Board considered disposing of certain matters in writing, but concluded that this would unduly confuse the process and result in possible overlap. The Board therefore concluded that it would not be appropriate.

Parties are asked to provide their comments in this regard by 3 March 1988, when they file their Notice of

Intervention.

TransCanada is required to serve a copy of this letter on all parties being served with a copy of Hearing Order RH-1-88.

Yours truly

J.S. Klenavic Secretary

Attachment

File Number: 1562-T1-26 Date: 17 February 1988

Hearing Order RH-1-88

Directions on Procedure

TransCanada PipeLines Limited
Application for Tolls Effective 1 January 1988
and 1989

By application dated 5 February 1988, TransCanada PipeLines Limited ("TransCanada" or "the Applicant") has applied to the National Energy Board ("the Board") for certain orders respecting tolls under Part IV of the National Energy Board Act.

Having considered the application on 17 February 1988, the Board decided to hold a public hearing in two phases. Phase I will commence on 16 May 1988 in Ottawa, Ontario. The Board directs as follows:

PUBLIC VIEWING

1. The Applicant shall deposit and keep on file, for public inspection during normal business hours, a copy of the application in its offices at Commerce Court West, 54th Floor, corner of King and Bay Streets, Toronto, Ontario and in its Calgary office, 530-8th Avenue S.W. A copy of the application is also available for viewing during normal business hours in the Board's Library, Room 962, 473 Albert Street, Ottawa, Ontario, and at the Board's Calgary office, 4500 - 16th Avenue. N.W.

METHOD OF HEARING

2. The hearing will be held in two phases: Phase I will deal with toll design and tariff matters, an initial list of which is identified in IV. Phase II will deal with all other issues, including throughput forecasts, rate base, rate of return and cost of service for the test years 1988 and 1989 and those issues identified in Appendix V.

INTERVENTIONS

3. Interventions are required to be filed with the Secretary by 3 March 1988. Interventions should include all the information set out in Section 32 of Part III to the Board's revised Draft Rules of Practice and Procedure dated 21 April 1987.

4. The Secretary will issue a list of intervenors shortly after 3 March 1988.

PHASE I

WRITTEN EVIDENCE OF THE APPLICANT

5. Any additional written evidence that the Applicant wishes to present with respect to Phase I shall be filed with the Secretary and served on all other parties to the proceeding by 25 March 1988.

INFORMATION REQUESTS TO THE APPLICANT

6. Information requests with respect to Phase I addressed to the Applicant are required to be filed with the Secretary and served on all other parties to the proceeding by 8 April 1988.

7. Responses to information requests made pursuant to paragraph 6, received within the specified time limit, shall be filed with the Secretary and served on all other parties to the proceeding by 19 April 1988.

WRITTEN EVIDENCE OF THE INTERVENORS

8. Intervenors' written evidence with respect to Phase I is required to be filed with the Secretary and served on all other parties to the proceeding by 26 April 1988.

LETTERS OF COMMENT

9. Letters of comment with respect to Phase I are required to be filed with the Secretary and served on the Applicant by 26 April 1988.

INFORMATION REQUESTS TO THE INTERVENORS

10. Information requests with respect to the material filed pursuant to paragraph 8 are required to be filed with the Secretary and served on all parties to the proceeding by 2 May 1988.

11. Responses to the information requests made pursuant to paragraph 10, received within the specified time limit, shall be filed with the Secretary and served on all parties to the proceeding by 9 May 1988.

HEARING

12. Phase I of the hearing will commence in the Hearing Room of the National Energy Board, 473 Albert Street, Ottawa, Ontario, on 16 May 1988 at 1:00 p.m. and will continue until 3 June 1988 at which time the hearing will adjourn for one week. The hearing will reconvene on Monday, 13 June 1988 at 1:00 p.m.

LIST OF ISSUES

13. The Board intends to examine in Phase I, but does not limit itself to, the issues specified in Appendix IV.

Appendix V identifies issues which the Board believes could be examined in Phase II. In their interventions parties are to address the following questions:

(a) Are there any additional issues which should be addressed and if so should they be addressed in Phase I or Phase II

(b) Are there any changes which should be made to the assignment of issues between Phase I and Phase II?

Shortly after the receipt of interventions the Secretary will issue an amended Appendix IV.

PRE-HEARING CONFERENCE

14. A pre-hearing conference to discuss procedural matters, clarify responses to information requests, if necessary, and to provide for the exchange of documents among parties, will be held on Thursday, 21 April 1988 at 9:00 a.m. in room 201BDF of the Metropolitan Toronto Convention Centre, 255 Front Street West, Toronto, Ontario.

SERVICE TO PARTIES

15. The Applicant shall serve one copy of these Directions on Procedure on all parties to RH3-86, all its shippers who were not parties to RH-3-86 and the parties listed in Appendix III of this Order. The Applicant is requested to file with the Board one copy of the list of all parties served.

NOTICE OF HEARING

16. The publications in which the Applicant is required to publish the Notice of Public are listed in Appendix II.

PHASE II

17. The Applicant shall file with the Secretary of the Board and serve on all parties who will have intervened pursuant to paragraph 3 of this order, supplementary evidence in support of the 1988 and 1989 tolls to be dealt with in Phase II by 4 July 1988.

18. Directions on Procedure for Phase II of the hearing will be issued at a later date.

PROCEDURE FOR HEARING OF EVIDENCE

19. For the purpose of the hearing of evidence in each phase, the following procedure shall apply

(a) the Applicant shall present its evidence;

(b) Intervenors and Board Counsel shall have the right to cross-examine the Applicant’s witnesses;

(c) Intervenors shall present their evidence in an order to be specified at the commencement of the proceedings; and

(d) after each Intervenor has presented its evidence, other Intervenors, the and Board Counsel shall have the right of cross-examination.

FILING AND SERVICE REQUIREMENTS

20. Where parties are directed by these Directions on Procedure or by the Board's revised Draft Rules of Practice and Procedure dated 21 April 1987, to file or serve documents on other parties, the following number of copies shall be served or filed.

(i) for documents to be filed with the Board, provide 35 copies;

(ii) for documents to be served on the Applicant, provide 3 copies;

(iii) for documents to be served on Internors, provide 1 copy.

21. Parties filing or serving documents at the hearing shall file or serve the number of copies specified in the preceding paragraph.

22. Persons filing letters of comments should serve one copy on the Applicant and file one copy with the Board, which in turn will provide copies for all other parties.

23. Parties filing or serving documents fewer than five days prior to the commencement of the hearing shall also bring to the hearing a sufficient number of copies of the documents for use by the Board and other parties present at the hearing.

SIMULTANEOUS INTERPRETATION

24. The proceeding including the pre-hearing conference will be conducted in either of the two official languages and simultaneous interpretation will be provided.

GENERAL

5. Unless otherwise directed by the Board, the hours of sitting shall be from 8:30 a.m. until 1:00 p.m. except Mondays when the hours shall be from 1:00 p.m. to 4:30 p.m.

26. All parties are asked to quote Order No. RH1-88 and File No. 1562-T1-26 when corre sponding with the Board in this matter.

27. Subject to the foregoing, the procedures to be followed in this proceeding shall be governed by the Board's revised Draft Rules of Practice and Procedure dated 21 April 1987.

28. For information on this hearing, or the procedures governing the hearing, contact Denis Tremblay, Regulatory Support Officer, at (613) 998-7199.

National Energy Board

J.S. Klenavic Secretary

APPENDIX I To Order RH-1-88

NATIONAL ENERGY BOARD

NOTICE OF PUBLIC HEARING

TransCanada PipeLines Limited
Application for Tolls Effective 1 January 1988
and 1989

The National Energy Board ("the Board") will conduct a hearing into an application dated 5 February 1988 by

John S. Klenavic
Secretary
National Energy Board
473 Albert Street
Ottawa, Ontario
K1A 0E5

(Telex No. 0533791)
(Telecopier No. 990-7900)

February 1988

APPENDIX II to Order RH-1-88

"The Times Colonist" Victoria, British Columbia

"Sun", "Vancouver Province" and Vancouver, British Columbia
"Le Soleil de Colombie"

"Herald" and "Sun" Calgary, Alberta

"The Edmonton Journal", and Edmonton, Alberta
"Le Franco-Albertain"

"The Leader-Post" and Regina, Saskatchewan
"Journal L'eau Vive"

"The Winnipeg Free Press" Winnipeg, Manitoba

"La Liberté" St. Boniface, Manitoba

"Le Devoir", "La Presse", and Montreal, Quebec
"The Gazette"

"Le Journal de Québec", "Le Soleil" Quebec, Quebec
and "The Chronicle Telegraph"

"The Globe and Mail", Toronto, Ontario
"Toronto Star",
"The Financial Post", "Financial
Times of Canada", and "L'Express"

"The Ottawa Citizen", "Le Droit" Ottawa, Ontario
and the "Canada Gazette"

APPENDIX III to Order RH-1-88

Assistant Deputy Minister for Energy
Ministry of Energy, Mines and Petroleum Resources
Parliament Buildings Victoria,
British Columbia
V8V 1X4

Mr. Geoffrey Ho
Senior Solicitor
Department of Energy and Natural Resources
10th Floor, South Tower
Petroleum Plaza
9915 - 108th Street
Edmonton, Alberta
T5K 2C9

Attorney General for the Province of Saskatchewan
Department of Justice
8th Floor
1874 Scarth Street
Regina, Saskatchewan
Attention: Mr. Greg Blue

General Manager
British Columbia Petroleum Corporation
6th Floor
1199 West Hastings Street
Vancouver, B.C.
V6E 3T5

Commission Secretary
British Columbia Utilities Commission
4th Floor, 800 Smithe St.
Vancouver, B.C.
V6Z 2E1

Procureur général du Québec
Edifice Delta
1200 route de l'église
Ste Foy (Québec)
G1R 4X7

Vice President, Corporate Secretary
Canadian Gas Association
55 Scarsdale Road
Don Mills, Ontario
M5B 2R3

APPENDIX IV To Order RH-1-88

INITIAL LIST OF ISSUES TO BE ADDRESSED IN PHASE I

A - Displacement and Operating Demand ("OD") Methodology

1. Self-displacement, including the following considerations:

(a) Should self-displacement be allowed?

(b) If "no", what should the restrictions be?

(c) If"yes":

(i) When should self-displacement begin and should it be phased-in?

(ii) Is there a necessity to maintain the OD concept?

(iii) Under what circumstances should OD relief be granted for selfdisplacement volumes?

(iv) For OD purposes should selfdisplacement volumes be included in the formula for prorating displacement volumes?

(v) Are there any other considerations in allowing self-displacement?

2. The application of OD methodology to Annual Contract Quantity ("ACQ") service.

3. TransCanada’s proposed tariff amendment to calculate a weighted average daily OD Volume based on the number of days during the month for which an OD Volume is in effect relative to the total number of days in such .

B - Other Toll Design Issues

1. The disposition of the balances in deferral accounts as of 31 December 1987 for toll purposes .

2. TransCanada’s proposed change in the cost allocation process in respect of Interruptible Service ("IS").

3. The toll design and Toll Schedules for Storage Transportation Service ("STS").

4. The allocation of administrative costs for toll design purposes (Sec. 9.7 of RH-3-86).

C - Other Tariff Matters

1. The appropriateness of Sections 1.1(e) and (f) of the Firm Service ("FS") and Peaking Service ("PS") Toll Schedules, Sections 1.1(f) and (g) of the Temporary Winter Service ("TWS") Toll Schedules and Sections 1.1(d) and (e) of the IS Toll Schedules. These sections require the shipper to obtain all certificates, permits or other authorizations and to have assurances of gas supply before being eliible to receive service.

2. An examination of any possible refinements to the existing procedures respecting the provision of fuel by shippers, including the use of monthly versus annual fuel ratios.

3. Re-examination of the need for a tendering process for the company-use gas requirements in light of the majority of shippers electing to provide their own fuel.

4. The offering of ACQ as a transportation service to non-system gas shippers.

5. The continuation of the need to distinguish between Shippers and Buyers in TCPL's Tariff, Toll Schedules, and the General Terms and Conditions.

6. The amalgamation of the Uniform Toll Schedule and the General Terms and Conditions.

7. The restriction of the availability of TWS service to customers who also have contracts for service under TCPL's FS, SGS and/or ACQ Toll Schedules (Section 1.1(a) of the TWS Toll Schedule).

8. The elimination from the tariff of all matters which are purely related to gas sales and marketing and not to transportation; for example, Section 7 of the FS Toll Schedule, Section 1.1 (b) of the TWS Toll Schedule and Section 1.1 (a) of the IS Toll Schedule.

9. The desirability of standard transportation contracts for each service.

10. TransCanada's proposed tariff amendment to set the level of delivery obligations under transportation services at the delivery point.

11. Section 2.4 of the IS Toll Schedule which denies service to customers that fail to provide a customer forecast by the date required.

12. Section 3.2 of the IS Toll Schedule which states that if the capacity available for interruptible service is sufficient to fully satisfy the requirements of all interruptible customers requesting service then, notwithstanding that customers may have nominated IS-1, interruptible service provided shall be classified as IS-2 and the toll payable shall be the applicable IS-2 toll.

13. The priority of IS for deliveries of volumes for from Canada.

APPENDIX V To Order RH-1-88

ISSUES WHICH COULD BE ADDRESSED IN PHASE II

A - Displacement and OD Methodology

(Issues on displacement and OD methodology are to be considered in Phase I.)

B - Other Toll Design Issues

1. The toll design for ACQ service including the method of calculating the ACQ differential.

2. The appropriateness of designing tolls for volumes delivered to the export market on a point-to-point basis when tolls for domestic volumes are designed on a zone basis.

3. The appropriateness of the Eastern zone FS toll for deliveries of export volumes to Dawn, .

C · Other Tariff Matters

1. The Transportation Service Agreements between WGML and TCPL for gas destined for the export market and whether these contractual arrangements result in any advantages to WGML that are not available to other shippers. Refer to the Board's letter to TCPL dated 30 October 1987.

APPENDIX VI
To Order RH-1-88

TIMETABLE

A	TCPL Filed Application	5 Feb. 88	
B	Issue Hearing Order - Initial Issues List	19 Feb. 88	
C	Intervention + Response to Initial Issues List	3 Mar. 88	
D	Distribute List of Intervenors	11 Mar. 88	
E	Amend Issues List	14 Mar. 88	
F	TCPL Files Evidence	25 Mar. 88	
G	Information Requests to TCPL	8 Apr. 88	
H	Reply by TCPL	19 Apr. 88	
I	Pre-hearing Conference (Toronto)	21 Apr. 88	9:00 a.m.
J	Intervenors File Evidence or Comments	26 Apr. 88	
K	Information Request to Intervenors	2 May 88	
L	Reply by Intervenors	9 May 88	
M	Phase I Hearing Starts (Ottawa)	16 May 88	1:00 p.m.
N	Phase I Hearing Breaks	3 Jun. 88	
O	Phase I Hearing Resumes (Ottawa)	13 Jun. 88	1:00 p.m.
P	TCPL Files Evidence for Phase II	4 Jul. 88	

Q	Issue Phase I Decision Tentative	31 Aug. 88
R	Phase II Begins (Calgary) Tentative	19 Sep. 88
S	Phase II Breaks Tentative	3 Oct. 88
T	Phase II Resumes (Ottawa) Tentative	11 Oct. 88

Appendix V

Amending Order No. AO-1-RH-1-88

File: 1562-T1-26
14 March 1988

VIA TELECOPIER

Mr. J.W.S. McOuat, Q.C. Vice President Legal and Regulatory Affairs, Pipeline TransCanada PipeLines Limited P.O. Box 54 Commerce Court West Toronto, Ontario M5L 1C2

Dear Mr. McOuat:

Re: Hearing Order RH-1-88
Directions on Procedures

The Board has considered the views of intervenors to RH-1-88 concerning additional issues which could be addressed in the above-referenced hearing and the assignment of issues between Phase I and Phase II.

The Board continues to find it appropriate to defer certain toll design matters until Phase II and has revised the list of issues accordingly. The attached revised lists will replace the initial lists provided by Appendices IV and V to Order RH-1-88.

In addressing the question of the additional issues to be dealt with in Phase I and the assignment of issues between Phase I and II, the Board was guided by the following:

(1) Some of the proposed additional issues and concerns identified by parties fall within the scope of the issues identified by the Board. Therefore, while not specifically cited in the revised list, the Board expects many of these matters to be addressed in the direct evidence, during cross-examination and in final argument;

(2) Some of the issues proposed by intervenors are currently being dealt with in the GH-2-87 proceedings. Depending on the Board's decision in that hearing, it may be appropriate to examine further some of those issues in Phase II of RH-1-88;

(3) The Board considers it appropriate to examine at this hearing those traffic, toll and tariff issues directly related to establishing consistent treatment between TransCanada's gas sales customers and transportation service customers and where any discrimination may exist, to ensuring it is not unjust discrimination;

(4) With respect to certain other issues raised by intervenors, the Board is not persuaded that it is appropriate to re-examine these issues at this time. The Board is of the view that no undue hardship will result from this decision;

(5) The Board is aware of the desirability of rendering a decision with respect to Phase I matters in a timely fashion in order to provide parties with an early opportunity to take the implications of any changes in toll methodology into account when contracting for gas supplies.

TransCanada is required to serve a copy of this letter and the amended Hearing Order on all intervenors to RH-1-88

Yours truly

J.S. Klenavic Secretary

Attachment

14 March 1988

ORDER AO-1-RH-1-88
(Amending Hearing Order RH-1-88)
Amendment to Directions on Procedure
TransCanada PipeLines Limited

Application for Tolls Effective 1 January 1988 and 1989

On 17 February the Board issued Hearing Order RH-1-88. In Appendix IV and Appendix V thereof the Board identified certain issues to be addressed in Phase I and Phase II, respectively. In paragraph 13 of the Order the Board requested intervenors to suggest any additional issues that should be addressed and to comment on the assignment of issues between Phase I and Phase II.

The Board has considered the issues identified by intervenors and their indicated preference for dealing with issues between Phase I and Phase II.

Accordingly, Appendix IV and Appendix V of Hearing Order RH-1-88 are revoked and replaced by "Appendix IV, as amended" and "Appendix V, as amended", attached hereto.

NATIONAL ENERGY BOARD

J.S. Klenavic
Secretary

APPENDIX IV, as amended,

To Order RH-1-88

ISSUES TO BE ADDRESSED IN PHASE I

A - Displacement and Operating Demand ("OD") Methodology

1. Displacement, including the following considerations:

    (a) Should self-displacement be allowed?

    (b) If "no", what should the restrictions be?

    (c) If"yes":

        (i) When should self-displacement begin and should it be phased-in?

        (ii) Under what circumstances should OD relief be granted for selfdisplacement volumes?

        (iii) For OD purposes should selfdisplacement volumes be included in the formula for prorating displacement volumes?

        (iv) Are there any other considerations in allowing self-displacement?

    (d) Is there a necessity to maintain the OD concept?

2. The application of OD methodology to Annual Contract Quantity ("ACQ") service including considerations relating to the maintenance of the flexibility provided by the current level of ACQ service.

3. TransCanada’s proposed tariff amendment to calculate a weighted average daily OD Volume based on the number of days during the month for which an OD Volume is in effect relative to the total number of days in month.

4. The prorating of OD reductions.

B - Other Toll Design Issues

1. The disposition of the balances in deferral accounts as of 31 December 1987 for toll purposes.

C - Other Tariff Matters

1. The appropriateness of Sections 1.1(e) and (f) of the Firm Service ("FS") and Peaking Service ("PS") Toll Schedules, Sections 1.1(f) and (g) of the Temporary Winter Service ("TWS") Toll Schedules and Sections 1.1(d) and (e) of the Interruptible Service ("IS") Toll Schedules. These sections require the shipper to obtain all certificates, permits or other authorizations and to have assurances of gas supply before being eligible to receive service.

2. An examination of any possible refinements to the existing procedures respecting the provision of fuel by shippers, including the use of monthly versus annual fuel ratios.

3. Re-examination of the need for a tendering process for the company-use gas requirements in light of the majority of shippers electing to provide their own fuel.

4. The elimination from the tariff of all matters related to gas sales and marketing, thereby removing the need to distinguish between Shippers and Buyers in TCPL's Tariff, Toll Schedules, and General Terms and Conditions. Examples of matters related to gas sales and marketing are Sections 1.1(a) and 7 of the FS Toll Schedule, which place restrictions on the ultimate disposition of gas sold by TransCanada. Further examples are Section 1.1(b) of the TWS Toll Schedule and Section 1.1(a) of the PS Toll Schedule which include the proviso

"PROVIDED ALWAYS, that no Buyer will sell gas purchased hereunder to any other Buyer or exchange gas purchased hereunder with any other Buyer ..."

5. The amalgamation of the Uniform Toll Schedule and the General Terms and Conditions.

6. The restriction of the availability of TWS service to customers who also have contracts for service under TCPL's FS, SGS and/or ACQ Toll Schedules (Section 1.1(a) of the TWS Toll Schedule).

7. TransCanada's proposed tariff amendment to set the level of delivery obligations under transportation services at the delivery point.

8. Section 2.4 of the IS Toll Schedule which denies service to customers that fail to provide a customer forecast by the date required.

9. Section 3.2 of the IS Toll Schedule which states that if the capacity available for interruptible service is sufficient to fully satisfy the requirements of all interruptible customers requesting service then, notwithstanding that customers may have nominated IS-1, interruptible service provided shall be classified as IS-2 and the toll payable shall be the IS-2 toll.

10 The priority of IS for deliveries of volumes for export from Canada.

11. The availability of a Temporary Summer Service ("TSS").

12. The Toll Schedules for Storage Transportation Service ("STS").

APPENDIX V, as amended, To Order RH-1-88

TOLL DESIGN AND TARIFF MATTERS TO BE ADDRESSED IN PHASE II

A - Displacement and OD Methodology

(Issues on displacement and OD methodology are to be considered in Phase I.)

B - Other Toll Design Issues

1. The tariff and toll design for ACQ service including the method of calculating the ACQ differential

2. The appropriateness of designing tolls for volumes delivered to the export market on a point-to-point basis when tolls for domestic volumes are designed on a zone basis.

3. The appropriateness of the Eastern zone FS toll for deliveries of export volumes to Dawn, Ontario.

4. The disposition of any interim toll period revenue deficiency or surplus.

5. TransCanada’s proposed change in the cost allocation process in respect of IS.

6. The toll design for STS.

7. The allocation of administrative costs for toll design purposes (Sec. 9.7 of RH-3-86).

C - Other Tariff Matters

1. The Transportation Service Agreements between WGML and TCPL for gas destined for the export market and whether these contractual arrangements result in any advantages to WGML that are not available to other shippers. Refer to the Board’s letter to TCPL dated 30 October 1987.

2. The desirability of standard transportation contracts for each service.

3. The appropriateness of the restrictions on diversion rights.

4. The offering of additional ACQ as a transportation service to non-system gas shippers.

Appendix VI

Amending Order AO-2-RH-1-88
Phase II Directions
on Procedure

File No. 1562-T1-26

14 July 1988

TransCanada PipeLines Limited -
Application for Tolls
Effective 1 January 1988 and 1989

On 17 February 1988 the National Energy Board issued Hearing Order RH-1-88 setting out the Directions on Procedure for a public hearing on an application by TransCanada PipeLines Limited ("TransCanada" or "the Applicant") for, among other things, orders respecting tolls under Part IV of the National Energy Board Act. The Board directed that the public hearing be held in two phases.

This amendment to Hearing Order RH-1-88 establishes the timing and filing requirements for Phase II. The procedure for public viewing, filing and service, hearing of evidence, and other general matters shall be that established pursuant to Hearing Order RH-1-88.

Accordingly, the Board directs that Hearing Order RH-1-88 be amended by adding thereto the following:

SUBMISSION AND WRITTEN EVIDENCE OF THE APPLICANT

29. The Applicant’s submission and additional written evidence with respect to Phase II shall be filed with the Secretary and served on all other parties to the proceeding by 8 September 1988.

INFORMATION REQUESTS TO THE APPLICANT

30. Information requests with respect to Phase II are required to be filed with the Secretary and served on all parties to the proceeding by 20 September 1988.

31. Responses to the information requests made pursuant to paragraph 30 are required to be filed with the Secretary and served on all parties to the proceeding by 30 September 1988.

WRITTEN EVIDENCE OF INTERVENORS

32. Intervenor written evidence on Phase II is required to be filed with the Secretary and served on all parties to the proceeding by 12 October 1988.

LETTERS OF COMMENT

33. Letters of comment with respect to Phase II from parties who are not active intervenors are required to be filed with the Secretary and served on TransCanada by 12 October 1988.

INFORMATION REQUESTS TO INTERVENORS

34. Information requests with respect to the material filed pursuant to paragraph 32 are required to be filed with the Secretary and served on all parties to the proceeding by 20 October 1988.

35. Responses to the information requests made pursuant to paragraph 34 are required to be filed with the Secretary and served on all parties to the proceeding by 28 October 1988.

PRE-HEARING CONFERENCE

36. A pre-hearing conference to discuss procedural matters, clarify responses to information requests, if necessary, and to provide for the exchange of documents among parties, will be held in Calgary in the Clarence Room of the Carriage House Inn, 9030 Macleod Trail South, on Tuesday,4 October 1988 at 9:00 a.m.

HEARING

37. Phase II will commence in Calgary in the Centennial Room of the Sandman Inn, 8887th Avenue S.W. on Monday, 7 November 1988 at 9:30 a.m. and will continue until 18 November 1988, at which time the hearing will adjourn for one week. The hearing will reconvene in the Hearing Room of the National Energy Board, 473 Albert Street, Ottawa, Ontario on Tuesday, 29 November 1988 at 1:00 p.m.

SERVICE TO PARTIES

38. The Applicant shall serve one copy of these Directions and the Notice of Public Hearing, attached as Appendix I, by 25 July 1988, on interested parties who have intervened pursuant to paragraph 3 of Hearing Order RH-1-88, and parties listed in Appendix III to this Order.

NOTICE OF HEARING

39. The publications in which the Applicant is required to publish the Notice of Public Hearing, on or before 25 July 1988, are listed in Appendix II.

STRUCTURE AND SCOPE OF HEARING

40. At the hearing, unless otherwise authorized by the Board, the evidence will be heard in the order:

(1) Tariff Matters;
(2) Toll Design;
(3) Cost of Capital;
(4) Rate Base; and
(5) Cost of Service excluding Cost of Capital

The Board will hear first all of the evidence of TransCanada on all of the items and then will hear all of the evidence of each intervenor in turn. For each item, before hearing evidence on subsequent items, the Board will hear all of the evidence for both periods under consideration, ie. calendar years 1988 and 1989.

41. As well as the issues raised by TransCanada’s submission to be filed on 8 September 1988 the Board intends to examine, but does not limit itself to, the issues specified in Appendix IV to this Order (formerly Appendix V to AO1-RH-1-88).

GENERAL

42. Unless otherwise directed by the Board, the hours of sitting in Calgary shall be from 8:30 a.m. until 1:00 p.m. except on Monday, 7 November 1988, when the hearing will commence at 9:30 a.m. In Ottawa, the hours of sitting shall be from 8:30 a.m. until 1:00 p.m. except Mondays and Tuesday, 29 November, when the hours shall be from 1:00 p.m. to 5:00 .m.

43. For information on this hearing, or the procedures governing the hearing, contact Mr. Denis Tremblay, Regulatory Support , at (613) 998-7199.

NATIONAL ENERGY BOARD

J.S. Klenavic Secretary

Appendix I to Order AO-2-RH-1-88

NATIONAL ENERGY BOARD
NOTICE OF PUBLIC HEARING

PipeLines Limited
Application for Tolls Effective
1 January 1988 and 1989

On 17 February 1988 the National Energy Board directed that a public hearing be held in two phases for the purpose of examining an application dated 5 February 1988 made by TransCanada PipeLines Limited ("TransCanada") pursuant to Part IV of the National Energy Board Act for certain orders respecting tolls that TransCanada may charge for services rendered for the period commencing 1 January 1988 and concluding 31 December 1989.

Phase I of the hearing commenced on 16 May 1988.

Phase II will start in Calgary on Monday, 7 November 1988, at 9:30 a.m. in the Centennial Room of the Sandman Inn, 888 - 7th Avenue S.W.

A pre-hearing conference to discuss procedural matters will be held in Calgary in the Clarence Room of the Carriage House Inn, 9030 Macleod Trail South, on Tuesday, 4 October 1988 at 9:00 a.m.

Information on the procedures for Phase II may be obtained by writing to the Secretary or telephoning the Board’s Regulatory Support Office at (613) 998-7204.

John S. Klenavic
Secretary
National Energy Board
473 Albert Street

Ottawa, Ontario
K1A 0E5
Telex: 0533791
Telecopier: (613) 990-7900

Appendix II to Order AO-2-RH-1-88

"The Times Colonist"	Victoria, British Columbia
"Sun", "Vancouver Province" and "Le Soleil de Colombie"	Vancouver, British Columbia
"Herald" and "Sun"	Calgary, Alberta
"The Edmonton Journal", and "Le Franco-Albertain"	Edmonton, Alberta
"The Leader-Post" and "Journal L'eau Vive"	Regina, Saskatchewan
"The Winnipeg Free Press"	Winnipeg, Manitoba
"La Liberté"	St. Boniface, Manitoba
"Le Devoir", "La Presse", and "The Gazette"	Montreal, Quebec
"Le Journal de Quebéc", "Le Soleil" and "The Chronicle Telegraph"	Quebec, Quebec
"The Globe and Mail", (National edition) "Toronto Star", "The Financial Post", "Financial Times of Canada", and "L'Express"	Toronto, Ontario
"The Ottawa Citizen", "Le Droit" and the "Canada Gazette"	Ottawa, Ontario

Appendix III

to Order AO-2-RH-1-88

Mr. Geoffrey Ho
Senior Solicitor
Department of Energy and
Natural Resources
10th Floor, South Tower
Petroleum Plaza
9915- 108th Street
Edmonton, Alberta
T5K 2C9

Attorney General for the
Province of Saskatchewan
Department of Justice
8th Floor
1874 Scarth Street
Regina, Saskatchewan
Attention: Mr. Greg Blue

Commission Secretary
British Columbia Utilities Commission
4th Floor, 800 Smithe St.
Vancouver, B.C.
V6Z 2E1

Procureur général du Quebéc
Edifice Delta
1200 route de l'église
Ste Foy (Québec)
G1R 4X7

Appendix IV to Order AO-2-RH-1-88

ISSUES TO BE ADDRESSED IN PHASE II

A - Tariff Matters

1. The Transportation Service Agreements between WGML and TCPL for gas destined for the export market and whether these contractual arrangements result in any advantages to WGML that are not available to other shippers. Refer to the Board's letter to TCPL dated 30 October 1987.

2. The desirability of standard transportation for each service.

3. The appropriateness of the restrictions on diversion rights.

4. The offering of additional ACQ as a transportation service to non-system gas shippers.

5. The brokering of unused contracted capacity.

B - Toll Design Issues

1. The tariff and toll design for ACQ service including the method of calculating the ACQ differential.

2. The appropriateness of designing tolls for volumes delivered to the export market on a point-to-point basis when tolls for domestic volumes are designed on a zone basis.

3. The appropriateness of the Eastern zone FS toll for deliveries of export volumes to Dawn, Ontario.

4. The disposition of any interim toll period revenue deficiency or surplus.

5. TransCanada’s proposed change in the cost allocation process in respect of IS.

6. The toll design for STS.

7. The allocation of administrative costs for toll design purposes (Sec. 9.7 of RH-3-86).

8. The appropriateness of implementing tolladjustment procedures to allow tolls to be adjusted during a test year.

Appendix VII

Amending Order No. AO-3-RH-1-88

File No.: 1562-T1-26

17 August 1988

Mr. J.W.S. McOuat, Q.C.
Vice-President
Legal and Regulatory Affairs, Pipeline
TransCanada PipeLinesLimited
P.O. Box 54
Commerce Court West
Toronto, Ontario
M5L 1C2

Dear Mr. McOuat:

Re: RH-1-88 - 1988/89 Toll Hearing - Phase II

Attached is a copy of Amending Order AO-3-RH-188, which changes the hearing dates and locations for Phase II of the RH-1-88 hearing. All other dates mentioned in Amending Order AO-2-RH-1-88, dated 14 July 1988, remain the same.

Yours truly,

J.S. Klenavic
Secretary

File No.: 1562-T1-26 17 August 1988

ORDER AO-3-RH-1-88
(Amending Hearing Order RH-1-88)

Amendment to Directions on Procedure
TransCanada PipeLines Limited

Application for Tolls Effective
1 January 1988 and 1989

WHEREAS on 14 July 1988 the Board issued Amending Order AO-2-RH-1-88 to Hearing Order RH-1-88 which established the timing and filing requirements for Phase II of the RH-1-88 hearing:

AND WHEREAS on 12 August 1988, pursuant to Hearing Order GH-4-88, the Board has set down for a hearing commencing on 18 October 1988 the application of TransCanada PipeLines Limited dated 28 July 1988 for a Certificate of Public Convenience and Necessity;

AND WHEREAS the Board is of the view that it would be preferable not to schedule two major hearings involving TransCanada PipeLines Limited at the same time;

THEREFORE, the Board has decided to change the hearing dates and locations for Phase II and accordingly amends Sections 37 and 42 of Hearing Order RH-1-88 as follows:

"37. Phase II will commence in the Hearing Room of the National Energy Board, 473 Albert Street, Ottawa, on Monday, 28 November 1988 at 1:00 p.m. and will continue until 16 December 1988 at which time the hearing will adjourn. The hearing will reconvene in Salons A & B of the Delta Bow Valley, 209-4th Avenue S.E., Calgary, on Monday, 9 January 1989 at 9:30 a.m. for a duration of up to 2 weeks. If necessary, the hearing will reconvene shortly thereafter in Ottawa on a date to be determined."

"42. Unless otherwise directed by the Board, the hours of sitting in Calgary shall be from 8:30 a.m. until 1:00 p.m. except on Monday 9 January 1989, when the hearing will commence at 9:30 a.m. In Ottawa, the hours of sitting shall be from 8:30 a.m. until 1:00 p.m. except Mondays when the hours shall be from 1:00 p.m. to 5:00 p.m."

NATIONAL ENERGY BOARD

J.S. Klenavic
Secretary

c.c. Interested Parties to RH-1-88

Appendix VIII

Amending Order No. AO-4-RH-1-88

File No.: 1562-T1-26

6 September 1988

Mr. Robert B. Cohen
Senior Legal Counsel
TransCanada PipeLines Limited
P.O. Box 54
Commerce Court West
Toronto, Ontario
M5C 1C2

Dear Mr. Cohen:

Re: RH-1-88 - 1988/89 Toll Hearing - Phase II

Further to your letter dated 25 August 1988 wherein you requested an extension of the filing date respecting rate of return evidence, from 8 September 1988 to 30 September 1988, the Board has decided to grant your request.

Attached is a copy of Amending Order AO-4-RH-188, which changes filing dates relating to rate of return matters for the above-referenced hearing. The deadlines contained in the Board's previous Orders remain in place for all other matters to be considered in Phase II.

TransCanada is required to serve a copy of this letter together with Order AO-4-RH-1-88 on all interested parties to RH-1-88.

Yours truly

J. S. Klenavic
Secretary

File no: 1562-T1-26

6 September 1988

ORDER AO-4-RH-1-88
(Amending Hearing Order RH-1-88)

Amendment to Directions on Procedure
PipeLines Limited
Application for Tolls Effective
1 January 1988 and 1989

WHEREAS on 14 July 1988 the Board issued Amending Order AO-2-RH-1-88 to Hearing Order RH-1-88 which established the timing and filing requirements for Phase II of the RH-1-88 hearing;

AND WHEREAS on 25 August 1988 TransCanada PipeLines Limited requested the Board to amend the filing date respecting rate of return evidence from 8 September 1988 to 30 September 1988;

AND WHEREAS the Board has decided to grant TransCanada's request;

THEREFORE, Sections 29 to 35 inclusive of Hearing Order RH-1-88, as amended, are varied as follows:

SUBMISSION AND WRITTEN EVIDENCE OF THE APPLICANT

"29. The Applicant's submission and additional written evidence, other than rate of return evidence with respect to Phase II, shall be filed with the Secretary and served on all other parties to the proceeding by 8 September 1988. The applicant's rate of return evidence shall be filed with the Secretary and served on all other parties to the proceeding by 30 September 1988."

INFORMATION REQUESTS TO THE APPLICANT

"30. Information requests with respect to Phase II dealing with matters other than rate of return evidence are required to be filed with the Secretary and served on all other parties to the proceeding by 20 September 1988. Requests dealing with rate of return evidence shall be filed with the Secretary and served on all other parties to the proceeding by 12 October 1988."

"31. Responses to the information requests made pursuant to paragraph 30 dealing with matters other than rate of return evidence are required to be filed with the Secretary and served on all other parties to the proceeding by 30 September 1988. Responses dealing with rate of return evidence shall be filed with the Secretary and served on all other parties to the proceeding by 2 November 1988."

WRITTEN EVIDENCE OF INTERVENORS

"32. Intervenor written evidence other than rate of return evidence on Phase II is required to be filed with the Secretary and served on all other parties to the proceeding by 12 October 1988. Rate of return evidence shall be filed with the Secretary and served on all other parties to the proceeding by 2 November .

LETTERS OF COMMENT

"33. Letters of comment with respect to Phase II on matters other than rate of return from parties who are not active intervenors are required to be filed with the Secretary and served on TransCanada by 12 October 1988. Letters of comment on rate of return evidence shall be filed with the Secretary and served on all other parties to the proceeding by 2 November 1988."

INFORMATION REQUESTS TO INTERVENORS

"34. Information requests with respect to the material filed pursuant to paragraph 32 on matters other than rate of return evidence are required to be filed with the Secretary and served on all other parties to the proceeding by 20 October 1988. Requests concerning rate of return evidence shall be filed with the Secretary and served on all other parties to the proceeding by 10 November 1988."

"35. Responses to the information requests made pursuant to paragraph 34 dealing with matters other than rate of return evidence are required to be filed with the Secretary and served on all other parties to the proceeding by 28 October 1988. Responses dealing with rate of return evidence shall be filed with the Secretary and served on all other parties to the proceeding by 18 November 1988."

NATIONAL ENERGY BOARD

J. S. Klenavic Secretary

Appendix I to Order
AO-4-RH-1-88

Revised Phase II Timetable

A.	Issue Hearing Order	3-Aug-88
B.	TCPL Files Submission on Phase II	8-Sep-88
C.	TCPL Files Evidence on Phase II Excluding Rate of Return Evidence	8-Sep-88
D.	Information Requests (IR's) to TCPL Concerning Matters other than Rate of Return	20-Sep-88
E.	TCPL Files Rate of Return Evidence	30-Sep-88
F.	Reply by TCPL to IR's on Matters other than Rate of Return	30-Sep-88
G.	Pre-Hearing Conference (Calgary) 9:00 a.m.	4-Oct-88

H.	IR’s to TCPL on Rate of Return Evidence	12-Oct-88
I.	File Evidence or Comments on Matters other than Rate of Return	12-Oct-88
J.	IR’s to Intervenors on Matters other than Rate of Return	20-Oct-88
K.	Reply by TCPL to IR’s on Rate of Return	24-Oct-88
L.	Reply by Intervenors to IR’s on Matters other than Rate of Return	28-Oct-88
M.	Intervenors File Evidence or Comments on Rate of Return	2-Nov-88
N.	IR’s to Intervenors on Rate of Return	10-Nov-88
O.	Reply by Intervenors to IR’s on Rate of Return	10-Nov-88
P.	Phase II Hearing Starts (Ottawa) 1:00 p.m.	28-Nov-88
Q.	Phase II Adjourns	16-Dec-88
R.	Phase II Resumes (Calgary) 9:30 a.m.	9-Jan-89

Appendix IX **Amending Order No. AO-5-RH-1-88**

File No.: 1562-T1-26
29 September 1988

BY TELECOPIER

Mr. Robert B. Cohen
Senior Legal Counsel
TransCanada PipeLines Limited
P.O. Box 54
Commerce Court West
Toronto, Ontario
M5L 1C2

Dear Mr. Cohen:

RE: RH-1-88 - 1988/89 Toll Hearing - Phase II

The Board has considered TransCanada's application dated 26 September 1988 for an extension of time to apply to Information Requests and has decided to grant an extension in the circumstances. Accordingly, the Board has agreed to extend the time for TransCanada to reply to Information Requests from 30 September 1988 to 11 October 1988.

As a result of the above-noted extension the Board has also decided to postpone the pre-hearing conference which will now be held in Ottawa at the offices of the National Energy Board on the afternoons of 18-19 October 1988.

These changes will necessitate a further amendment to the filing requirements as set out in Order AO-4-RH-1-88. An amending Order to that effect is attached.

Yours truly,

J. S. Klenavic
Secretary

c.c. All Interested Parties to RH-1-88

File No.: 1562-T1-26

29 September 1988

ORDER AO-5-RH-1-88
(Amending Hearing Order RH-1-88)

Amendment to Directions on Procedure
TransCanada PipeLines Limited
Application for Tolls Effective
1 January 1988 and 1989

WHEREAS on 14 July 1988 the Board issued Amending Order AO-2-RH-1-88 to Hearing Order RH-1-88 which, in paragraph 36, established the date and location of a pre-hearing conference for Phase II of the RH-1-88 hearing;

AND WHEREAS on 6 September 1988 the Board issued Amending Order AO-4-RH-1-88 to Hearing Order RH-1-88 which established the timing and filing requirements for Phase II of the RH-1-88 hearing;

AND WHEREAS on 26 September 1988 TransCanada PipeLines Limited requested the Board to amend the filing date respecting responses to Information Requests from 30 September 1988 to 14 October 1988;

AND WHEREAS the Board has decided to amend the filing date respecting responses to Information Requests from 30 September 1988 to 11 October 1988;

AND WHEREAS this decision necessitates amendments to the timing of other filing requirements for Phase II of the RH-1-88 hearing;

THEREFORE, Sections 31 to 36 inclusive of Hearing Order RH-1-88, as amended, are varied as follows:

INFORMATION REQUESTS TO THE APPLICANT

"31. Responses to the information requests made pursuant to paragraph 30 dealing with matters other than rate of return evidence are required to be filed with the Secretary and served on all other parties to the proceeding by 11 October 1988. Responses dealing with rate of return evidence shall be filed with the Secretary and served on all other parties to the proceeding by 24 October 1988."

WRITTEN EVIDENCE OF INTERVENORS

"32. Intervenor written evidence other than rate of return evidence on Phase II is required to be filed with the Secretary and served on all other parties to the proceeding by 21 October 1988. Rate of return evidence shall be filed with the Secretary and served on all other parties to the proceeding by 2 November 1988."

LETTERS OF COMMENT

"33. Letters of comment with respect to Phase II on matters other than rate of return from parties who are not active intervenors are required to be filed with the Secretary and served on TransCanada by 21 October 1988. Letters of comment on rate of return evidence shall be filed with the Secretary and served on all other parties to the proceeding by 2 November 1988."

INFORMATION REQUESTS TO INTERVENORS

"34. Information requests with respect to the material filed pursuant to paragraph 32 on matters other than rate of return evidence are required to be filed with the Secretary and served on all other parties to the proceeding by 28 October 1988. Requests concerning rate of return evidence shall be filed with the Secretary and served on all other parties to the

proceeding by 10 November 1988."

"35. Responses to the information requests made pursuant to paragraph 34 dealing with matters other than rate of return evidence are required to be filed with the Secretary and served on all other parties to the proceeding by 7 November 1988. Responses dealing with rate of return evidence shall be filed with the Secretary and served on all other parties to the proceeding by 18 November 1988."

PRE-HEARING CONFERENCE

"36. A pre-hearing conference to discuss procedural matters, clarify responses to information requests, if necessary, and to provide for the exchange of documents among parties, will be held in the Hearing Room of the National Energy Board, 473 Albert Street, Ottawa, Ontario on Tuesday, 18 October, and Wednesday, 19 October 1988 at 2:30 p.m."

H.	Pre-Hearing Conference (Ottawa)	18-19-Oct-88 2:30 p.m.
I.	Intervenors File Evidence or Comments on Matters other than Rate of Return	21-Oct-88
J.	Reply by TCPL to IR's on Rate of Return	24-Oct-88
K.	IR's to Intervenors on Matters other than Rate of Return	28-Oct-88
L.	Intervenors File Evidence or Comments on Rate of Return	2-Nov-88
M.	Reply by Intervenors to IR's on Matters other than Rate of Return	7-Nov-88
N.	IR's to Intervenors on Rate of Return	10-Nov-88
O.	Reply by Intervenors to IR's on Rate of Return	18-Nov-88
P.	Phase II Hearing Starts (Ottawa) 1:00 p.m.	28-Nov-88
Q.	Phase II Adjourns	16-Dec-88
R.	Phase II Resumes (Calgary) 9:30 p.m.	9-Jan-89

Appendix X

Amending Order No. AO-6-RH-1-88

File: 1562-T1-26

26 October 1988

BY TELEX

To: Interested Parties RH-1-88

Re: Hearing Order RH-1-88 Phase II Pre-Hearing Conference

Further to the pre-hearing conference held on 18 October 1988, the Board has rendered the following procedural decisions.

1. Timing of Phase II

The Board has considered IPAC's motion dated 12 October 1988 to adjourn the commencement of the Phase II portion of the hearing to 9 January 1989. It has also considered the alternate proposal TransCanada made at the pre-hearing conference that the rate of return portion of Phase II, including argument, be heard in November and December and the balance of the hearing be continued on 9 January 1989. TransCanada also asked that the Board render its decisions on rate of return matters my mid-January.

While the Board recognizes that some adjustment to the previously established schedule is necessary, it does wish to proceed with the hearing with as much expedition as is reasonably possible. To make the most effective use of the available hearing time and at the same time to provide some relief from what has become a tight filing schedule, the Board has decided to maintain the established calendar but to reorder the items to be dealt with in Phase II. The Board now intends to proceed in the following manner:

(a) During the sitting commencing 29 November 1988 (not 28 November as previously announced), the Board will hear evidence in the following order: rate of return, rate base, cost of service, and toll design and tariff matters.

On 16 December the Board will adjourn until 9 January 1989.

(b) For rate of return only, the Board will first hear all of the evidence of TransCanada and then will hear all of the evidence of intervenors.

(c) During the 9 January 1989 sitting, the Board will continue to hear the remaining evidence until completion. This will be followed by final argument on all of the matters dealt with in Phase II.

(d) The Board will not render a decision on rate of return matters in advance of its other matters.
The filing dates for the hearing have been adjusted accordingly. The new schedule is set out in the attached copy of Board Order AO-6RH-1-88.

2. Level of Tolls for Interruptible Service ("IS")

The Board does not wish to hear evidence about the level of the IS-1 and IS-2 tolls. However, this hearing Panel will propose to the Board that there be a thorough examination of Interruptible Service, including the number of levels of service and the toll design for each level, at the next toll hearing.

3. Umbrella T-Service

The Board will hear evidence about Umbrella T-Service. This service involves the disposition of contracted capacity and as such can be examined in the context of issue A-3.

4. System Gas Resales (SGR's) The Board is prepared to hear evidence on the transportation arrangements associated with SGR's and on whether such arrangements confer a transportation benefit to the parties involved that is not available to other shippers.

5. Reversion of Capacity

The Board will hear evidence on reversion in the context of the disposition of contracted capacity.

6. Contract Renewal Rights

The Board does not wish to hear evidence on the generic issue of renewal rights. This issue was comprehensively examined in the GH-287 proceeding. However, as stated in issue A-4 the Board will examine the "use it or lose it" principle as it applies to contract renewal rights.

7. Comprehensive List of Issues

The Board sees no need to issue a list of every issue to be examined at the hearing. TransCanada's application speaks for itself and the Board has clearly identified the additional issues it wishes to examine.

Yours truly

Louise Meagher

Secretary

File: 1562-T1-26

26 October 1988

ORDER AO-6-RH-1-88
(Amending Hearing Order RH-1-88)

Amendment to Directions on Procedure
TransCanada PipeLines Limited
for Tolls Effective

1 January 1088 and 1989

WHEREAS on 14 July 1988 the Board issued Amending Order AO-2-RH-1-88 to Hearing Order RH-1-88 which established the timing and filing requirements for Phase II of the RH-1-88 hearing and which has subsequently been amended by Board Orders No. AO-2-RH-1-88 to AO-5-RH-1-88;

AND WHEREAS the Board has decided it is necessary to make further changes to the timing and filing requirements;

THEREFORE, the following paragraphs of Hearing Order RH-1-88, as amended, are amended as follows, and paragraph 31.1 is added.

INFORMATION REQUESTS TO THE APPLICANT

"31. Responses to the information requests made pursuant to paragraph 30 dealing with matters other than rate of return evidence are to be filed with the Secretary and served on all other parties to the proceeding by 11 October 1988. Responses dealing with rate of return evidence shall be filed with the Secretary and served on all other parties to the proceeding by 28 October 1988."

SUPPLEMENTAL EVIDENCE OF THE APPLICANT

"31.1 The Applicant’s evidence on the additional issues outlined in Appendix IV of the Board’s letter dated 23 September 1988 is required to be filed with the Secretary and served on all other parties to the proceeding by 7 November 1988."

WRITTEN EVIDENCE OF INTERVENORS

"32. Intervenor written evidence on rate of return and all other matters in Phase II is required to be filed with the Secretary and served on all other parties to the proceeding by 14 November 1988."

LETTERS OF COMMENT

"33. Letters of comment on rate of return and all other matters from parties who are not active intervenors are required to be filed with the Secretary and served on TransCanada by 14 November 1988."

INFORMATION REQUESTS TO INTERVENORS

"34. Information requests with respect to the material filed pursuant to paragraph 32 on matters other than rate of return evidence are required to be filed with the Secretary and served on all other parties to the proceeding by 18 November 1988. Requests concerning rate of return evidence shall be filed with the Secretary and served on all other parties to the proceedings by 17 November 1988."

"35. Responses to the information requests made pursuant to paragraph 34 dealing with matters other than rate of return evidence are required to be filed with the Secretary and served on all other parties to the proceeding by 29 November 1988. Responses dealing with rate of return evidence shall be filed with the Secretary and served on all other parties to the proceeding by 25 November 1988."

HEARING

"37. Phase II will commence in the Hearing Room of the National Energy Board, 473 Albert Street, Ottawa, on

Tuesday, 29 November 1988 at 8:30 a.m. and will continue until 16 December 1988 at which time the hearing will adjourn. The hearing will reconvene in Salons A and B of the Delta Bow Valley, 209 4th Avenue S.E., Calgary, on Monday, 9 January 1989 at 9:30 a.m. for a duration of up to 2 weeks. If necessary, the hearing will reconvene shortly thereafter in Ottawa on a date to be determined."

NATIONAL ENERGY BOARD

Louise Meagher
Secretary

Appendix 1 to Order AO-6-RH-1-88

Revised Phase II Timetable

A Reply by TCPL to IR's on Rate or Return	28-Oct-88
B TCPL Files Supplemental Evidence on Additional Issues	7-Nov-88
C Intervenors File Evidence or Comments on Rate of Return	14-Nov-88
D Intervenors File Evidence or Comments on Matters Other Than Rate of Return (Including Additional Issues)	14-Nov-88
E IR's to Intervenors on Rate of Return	17-Nov-88
F IR's to Intervenors on Matters Other Than Rate of Return	18-Nov-88
G Reply by Intervenors to IR's on Rate of Return	25-Nov-88
H Phase II Hearing Begins (Ottawa) 8:30 a.m.	29-Nov-88
I Reply by Intervenors to IR's on Matters Other Than Rate of Return	29-Nov-88
J Phase II Adjourns	16-Dec-88
K Phase II Resumes (Calgary)	9-Jan-89 9:30 a.m.

Appendix XI

Amending Order No. AO-7-RH-1-88

File No.: 1562-T1-26

22 November 1988

BY TELECOPIER

To: Interested Parties RH-1-88

Re: RH-1-88 - 1988/89 Toll Hearing - Phase II

The Board acknowledges receipt of the application by TransCanada dated 21 November 1988 requesting an adjournment of the commencement of Phase II to the RH-1-88 proceeding from 29 November 1988 in Ottawa to 9 January 1989 in Calgary.

The Board has reviewed the comments of TransCanada and recognizes the difficulty of proceeding under the circumstances with the continuation of the hearing as scheduled on 29 November 1988. Accordingly, the Board has decided to adjourn the commencement of Phase II to Monday, 9 January 1989 in Calgary and will reconvene in Ottawa on Wednesday, 25 January 1989.

Attached is a copy of Amending Order AO-7-RH-188 outlining these changes. Also included is a change to the order of evidence as set forth in the order.

L. Meagher
Secretary

File No.: 1562-T1-26

22 November 1988

ORDER AO-7-RH-1-88
(Amending Hearing Order RH-1-88)

Amendment to Directions on Procedure
Limited
Application for Tolls Effective

1 January 1988 and 1989

WHEREAS on 14 July 1988 the Board issued Amending Order AO-2-RH-1-88 to Hearing Order RH-1-88 which established the timing and filing requirements for Phase II of the RH-1-88 hearing and which has subsequently been amended by Board Orders No. AO-2-RH-1-88 to AO-6-RH-1-88;

AND WHEREAS on 21 November 1988 TransCanada requested the Board to adjourn the commencement of the Phase II proceedings from 29 November 1988 in Ottawa to 9 January 1989 in Calgary;

AND WHEREAS the Board has decided to grant TransCanada's request;

THEREFORE, the following paragraphs of Hearing Order RH-1-88, as amended, are amended as follows, and paragraph 31.1 is added.

HEARING

"37. Phase II will commence in Salons A & B of the Delta Bow Valley, 208-4th Avenue S.E., Calgary, on Monday, 9 January 1989 at 9:30 a.m. and will continue until 20 January 1989 which time the hearing will adjourn. The hearing will reconvene in the Hearing Room of the National Energy Board, 473 Albert Street, Ottawa on Wednesday, 25 January 1989 at 8:30 a.m.

STRUCTURE AND SCOPE OF HEARING

"40. At the hearing, unless otherwise authorized by the Board, the evidence will be heard in the following order:

(1) Rate Base;

(2) Income and Provincial Taxes;

(3) Transmission by Others;

(4) Salaries and Benefits (Policy);

(5) Deferral Accounts and Disposition;

(6) Volume Forecast, Toll Design and Tariff Matters;

(7) Cost of Service; and

(8) Rate of Return

The Board will hear first all of the evidence of TransCanada on all of the items and then will hear all of the evidence of each intervenor in turn. For each item, before hearing evidence on subsequent items, the Board will hear all of the evidence for both periods under consideration, i.e. calendar years 1988 and 1989."

NATIONAL ENERGY BOARD

L. Meagher
Secretary

Appendix I to Order AO-7-RH-1-88

Revised Phase II Timetable

A	Reply by Intervenors to IR's on Rate of Return	25-Nov-88
B	II Hearing Begins (Calgary)	9-Jan-89 9:30 a.m.
C	Reply by Intervenors to IR's on Matters Other Than Rate of Return	29-Nov-88
D	Phase II Adjourns	20-Jan-89
E	Phase II Resumes (Ottawa)	25-Jan-89 8:30 a.m.

Appendix XII

NEB Letter Dated 23 September 1988
Revising List of Issues Included in Order No. AO-2-RH-1-88

File No.: 1562-T1-26

23 September 1988

VIA TELECOPIER

To: All Interested Parties - RH-1-88

Re: Hearing Order RH-1-88, Phase II Pre-Hearing Conference

Pursuant to paragraph 36 of Hearing Order No. AO-2-RH-1-88, the Board directed that a prehearing conference be held on Tuesday, 4 October 1988 commencing at 9:00 a.m. in the Clarence Room of the Carriage House Inn, 9030 Macleod Trail South, Calgary, Alberta. This conference is held pursuant to Section 15 of the Draft NEB Rules of Practice and Procedure. Representatives of TransCanada PipeLines Limited and representatives of any Intervenor are invited to attend.

The purpose of the conference is to provide an informal forum in which parties can discuss the application and examine ways to streamline the hearing procedure. There will be no discussion of the merits of the application, nor will any decision as to the disposition of the application flow from the conference. A transcript of the conference will be made, though it will not form part of the Phase II record to the RH-1-88 proceedings.

The Board views the conference as providing parties with an opportunity to exchange information, to remedy any deficiencies in the numerical data filed in support of the application and to clarify the issues. In addition, the Board sees the conference as an occasion for parties to discuss and present their views on any procedural matters which they may wish to raise. Following the conference the Board will review the transcript of the proceedings and will make any necessary decisions.

The Board wishes to confirm that attendance by Intervenors at the conference is not mandatory nor essential to their participation at the hearing. On the other hand, the success of the conference will depend upon the active participation of Intervenors. As soon as possible after the conference, the Board will issue a summary of the results of the pre-hearing conference to all Interested Parties.

A detailed Agenda for the conference is attached as Appendix I. Also enclosed is Appendix IV, as amended, to Order AO-2-RH-1-88, which is a revised list of issues to be addressed in Phase II.

Yours truly,

J.S. Klenavic

Secretary

Attach.

Appendix I

Agenda for a Phase II Pre-Hearing Conference RH-1-88

Date: 4 October 1988

Location: Clarence Room, Carriage House Inn, 9030 Macleod Trail South, Calgary, Alberta

Time: Commencing at 9:00 a.m.

This agenda accompanies the Board's letter dated 23 September 1988, which outlined the purpose and scope of the pre-hearing conference to be held pursuant to paragraph 36 of Hearing Order No. RH-2-88. The conference will be chaired by Richard Graw, National Energy Board Counsel.

The following agenda is meant only as a general guideline to the proceeding:

1. Opening remarks by the Chairman.

2. Registration of parties

Parties will introduce themselves in the order that they appear in the order of appearances (to be distributed at the opening of the meeting) and indicate whether or not they will participate actively in the conference.

3. Clarification of issues

This process is intended to provide parties with an opportunity to obtain as clear and understanding as possible of the issues to be addressed during Phase II.

4. Clarification of information requests, information responses and evidence

Parties will be called in the order that they appear in the order of appearances to raise any matters of clarification stemming from information requests, the responses provided thereto and the evidence filed to date.

5. Additional matters parties may wish to bring forward

Parties will be called upon in the order that that they appear in the order of appearances to raise any additional matters not covered above and to offer any additional suggestions as to steps which might streamline the hearing process.

6. Closing remarks by the Chairman.

General: The conference commences at 9:00 a.m. and will close on or before 5:00 p.m.. They will be two coffee breaks, one at 10:30 a.m. and the other at 3:30 p.m.. The conference will adjourn for lunch at 12:00 p.m. and will reconvene at 1:30 p.m..

APPENDIX IV, as amended, to Order AO-2-RH-1-88

ISSUES TO BE ADDRESSED IN PHASE II

Included in this list are those issues which the Board wishes to examine in addition to the issues raised by TransCanada's submission. Issues which were previously included and are addressed in TransCanada's submission have been removed from the list.

A - Tariff Matters

1. The contractual arrangements for transportation between WGML and TCPL and whether these contractual arrangements result in any advantages to WGML that are not available to other shippers.

2. The appropriateness of the restrictions on diversion rights.

3. The brokering or other disposition of contracted capacity and TransCanada's role in h transactions.

4. The desirability of introducing a "use it or lose it principle" applicable to the retention or the renewal of contracted capacity.

5. The appropriateness of making short-term ACQ service available to shippers. (Reference: Section 9.1.2 of GH-2-87 Reasons for Decision)

6. The appropriateness of the six-month contract renewal notice period. (Reference: Section 9.2.4 of GH-2-87 Reasons for Decision)

B - Toll Design Issues

1. The tariff and toll design for ACQ service including the method of calculating the ACQ differential.

2. The appropriateness of designing tolls for volumes delivered to the export market on a point-to-point basis when tolls for domestic volumes are designed on a zone basis.

3. The appropriateness of the Eastern Zone FS toll for deliveries of export volumes to Dawn, Ontario.

Appendix XIII

NEB Letter Issued 18 April 1989 Regarding Northridge Petroleum Marketing, Inc. Application dated 12 December 1988.

File Nos: 1562-T1-26, 1540-N48

18 April 1989

VIA TELECOPIER

To: Mrs. Judith A. Snider
Code Hunter
Barristers and Solicitors
Suite 1900
736-6th Avenue S.W.
Calgary, Alberta
T2P 3W1

And to: Mr. J.W.S. McOuat
Vice-President, Legal and Regulatory Affairs
TransCanada PipeLines Limited
P.O. Box 54
Commerce Court West
Toronto, Ontario
M5L 1C2

Re: Northridge Petroleum Marketing, Inc. ("Northridge") Application Dated 12 December 1988 for Certain Orders Pursuant to Subsections 19(2) and 71(2) and Section 20 of the National Energy Board Act

The Board has considered the above-noted application, the related tariff amendment filed by TransCanada PipeLines Limited ("TransCanada") as Exhibit B-156, and the evidence and arguments thereon presented by parties during the Phase II portion of the hearing held pursuant to Hearing Order RH-1-88, as amended.

The Application

Northridge applied for an order, or orders, pursuant to Subsections 19(2) and 71(2) and Section 20 of the NEB Act requiring TransCanada to receive, transport and deliver gas offered by Northridge for transmission through the TransCanada system from Empress, Alberta to Emerson, Manitoba. Northridge also applied for approval of the appropriate toll for deliveries to Emerson.

Views of the Board

The principal issue to be addressed is whether approval of the Northridge application would impair the

integrated nature of the TransCanada/ Great Lakes system to an extent that would not be in the public interest.

Upon review of the evidence and arguments presented in connection with this issue, the Board finds that the physical pipeline system of Great Lakes Gas Transmission Company ("Great Lakes") does not itself form part of the integrated TransCanada/ Great Lakes system. Rather, it is TransCanada's contracted transportation capacity on the Great Lakes system that is part of the integrated system. Similarly, it is TransCanada's contracted capacity on the Union Gas and TQM systems that also forms part of the integrated TransCanada system. Therefore, if the application were approved, Northridge would not be utilizing the integrated TransCanada system beyond the Emerson export point because Northridge has arranged for its own transportation capacity on Great Lakes.

Based on this finding, the Board concludes that the Agreement dated 4 October 1966 between TransCanada and the Government of Canada does not apply to the Northridge volumes. As Northridge would not be utilizing the integrated TransCanada system beyond Emerson, TransCanada would not therefore be transporting those volumes from western Canada for use in eastern Canada as provided in the Agreement. Accordingly, the Board does not consider it necessary to address any of the other aspects raised in connection with the Agreement.

The Board also concludes that approval of the Northridge application, in and of itself, does not automatically lead to the need for the creation of a Southwestern Toll Zone nor does it necessitate a complete review of domestic zoning.

An examination of Northridge's arrangements has shown them to be innovative and consistent with deregulation in providing an alternative to TransCanada as a transporter of gas to the east. Moreover, Northridge's access to the storage facilities of Michigan Consolidated would provide a benefit to Northridge that would not otherwise be available if the application were not approved.

In view of the foregoing, the Board has decided to grant the order requested by Northridge. A copy of Order TG-4-89 is attached.

In the event that there is insufficient capacity on the TransCanada system to accommodate Northridge's firm service requirements to Emerson, TransCanada shall seek further directions from the Board.

With respect to TransCanada's proposed tariff amendment that was subsequently withdrawn, the Board views that proposal as an attempt by TransCanada to limit the movement of gas from western Canada to the east by other transportation systems. TransCanada's proposal would have resulted in the Eastern zone toll being charged to all volumes of gas leaving the TransCanada integrated system at Emerson and ultimately re-entering eastern Canada.

The Board does not consider that such a tariff amendment would be appropriate in the light of the 31 October 1985 Agreement on Natural Gas Markets and Prices and the Board's policy on open access to pipelines.

Finally, the Board considers that TransCanada's proposed tariff amendment was not consistent with the requirements of Section 62 of the NEB Act.

Yours truly

Louise Meagher
Secretary

c.c. Interested Parties to RH-1-88

ORDER NO. TG-4-89

IN THE MATTER OF the National Energy Board Act and the Regulations made thereunder; and

IN THE MATTER OF an application by Northridge Petroleum Marketing, Inc. ("Northridge") dated 12 December 1988 for interim and final orders pursuant to Subsections 19(2) and 71(2) and Section 20 of the National Energy Board Act (the "Act") directing TransCanada PipeLines Limited ("TransCanada") to transport and deliver natural gas offered by Northridge, and fixing the toll that TransCanada may charge for the service, filed with the Board under File Nos. 1562-T1-26 and 1450-N48.

BEFORE the Board on 18 April 1989.

WHEREAS, Northridge intends to ship natural gas on the TransCanada system from Empress, Alberta to Emerson, Manitoba; on the Great Lakes Gas Transmission system from Emerson to Belle River Mills, Michigan; on the Michigan Consolidated Gas Company system from Belle River Mills to the St. Clair river; and on the St. Clair Pipelines system to be delivered to Union Gas Limited; and

WHEREAS, TransCanada has refused to carry the gas on its system from Empress to Emerson; and

WHEREAS, by application dated 12 December 1988, Northridge has applied for interim and final orders pursuant to the Act requiring TransCanada to receive, transport and deliver natural gas offered by Northridge for transmission from Empress to Emerson, and fixing the toll that TransCanada may charge for firm and interruptible deliveries to Emerson; and

WHEREAS, the Board has considered the application and the evidence and arguments thereon presented by interested parties during the Phase II portion of the hearing held pursuant to Hearing Order RH-1-88. as amended; and

WHEREAS, the Board has found that it would be in the public interest to grant the applied-for order on a final basis.

IT IS THEREFORE ORDERED THAT pursuant to Subsection 71(2) and Section 59 of the Act:

1. TransCanada shall, in accordance with the terms and conditions of TransCanada’s FS Toll Schedule, receive, transport and deliver natural gas offered by Northridge for a term of ten (10) years commencing on the date when Northridge first delivers natural gas to TransCanada for transmission on a firm basis from Empress, Alberta to Emerson, Manitoba on its system, up to a level of 425 10^3m^3/day.

2. TransCanada shall, in accordance with the terms and conditions of TransCanada’s IS Toll Schedule, receive,

transport and deliver natural gas offered by Northridge for a term of ten (10) years commencing on the date when Northridge first delivers natural gas to TransCanada for transmission on an interruptible basis from Empress, Alberta to Emerson, Manitoba on its system.

3. The tolls for the transportation services ren dered pursuant to paragraphs 1 and 2 shall be equal to the tolls approved for FS and IS deliv eries to Emerson from time to time.

NATIONAL ENERGY BOARD

Louise Meagher Secretary

Appendix XIV

Order No. TGI-1-89

File No.: 1562-T1-26

1 February 1989

VIA TELECOPIER

Union Gas Limited
c/o Blake, Cassels & Craydon
100 York Blvd.
Richmond Hill, Ontario
L4B 1J8

Attention: Mr. Peter Gilchrist

Dear Mr. Gilchrist:

Re: Application dated 23 January 1989, for Orders Under Subsections 19(2) and 71(2) and Sections 59, 60(1) and 65 of the NEB Act

The Board has approved the request for an interim order which is contained in the above-noted application. Attached is a copy of Order TGI-1-89.

Yours truly,

Louise Meagher
Secretary

Att.

c.c. TransCanada PipeLines Limited
Western Gas Marketing Limited and to
Interested Parties to RH-1-88

ORDER NO. TGI-1-89

IN THE MATTER OF the National Energy Board Act and the Regulations made thereunder; and

IN THE MATTER OF an application by Union Gas Limited ("Union") dated 23 January 1989 for interim and final orders pursuant to subsections 19(2), 60(1) and 71(2) and sections 59 and 65 of the National Energy Board Act (the "Act") directing TransCanada PipeLines Limited ("TransCanada") to transport natural gas for Union, and fixing the toll that TransCanada may charge for the service, filed with the Board under File No. 1562-T1-26; and

BEFORE the Board on Wednesday, the 1st day of February 1989.

WHEREAS, Union has entered into a gas sales contract with Western Gas Marketing Limited ("WGML") which contract was made as of the 1st day of February 1989 (the "Gas Sales Contract"); and

WHEREAS, the Gas Sales Contract requires that Union obtain either an appropriate transportation contract with TransCanada or an appropriate order under the Act requiring TransCanada to carry the natural gas, either of which transportation arrangements shall be effective as of 1 February 1989; and

WHEREAS, by application dated 23 January 1989, Union has applied for interim and final orders pursuant to the Act requiring TransCanada to receive, transport and deliver natural gas offered by Union for transmission from Empress, Alberta to the delivery points in the Eastern Zone of TransCanada's pipeline system where TransCanada has immediately prior to 1 February 1989, delivered natural gas to Union, on terms and conditions as more particularly set out in the application; and

WHEREAS, the Board has considered the application for interim relief and the comments of interested parties thereon; and

WHEREAS, the Board has found that it would be in the public interest to grant an interim order pending a final decision of the Board in respect of Union's application dated 23 January 1989.

NOW, THEREFORE, it is ordered that pursuant to subsections 19(2), 60(1) and 71(2) and sections 59 and 65 of the Act:

1. TransCanada shall receive transport and deliver natural gas offered by Union for transmission from Empress, Alberta to the delivery points in the Eastern Zone of TransCanada's pipeline system where TransCanada has, immediately prior to 1 February 1989, delivered natural gas to Union:

(a) pursuant to CD Service contracts (the "CD Service"), a volume of natural gas equal to the OD volume for CD Service as of 1 February 1989 on terms and conditions as set out in TransCanada's FS Toll Schedule and on the same terms and conditions, including delivery pressure, that natural gas has been delivered by TransCanada under the CD Service;

(b) pursuant to ACQ Service contracts (the "ACQ Service"), a volume of natural gas equal to the OD volume for ACQ Service as of 1 February 1989 on terms and conditions as set out in TransCanada's ACQ Toll Schedule and on the same terms and conditions, including delivery pressure, that natural gas has been delivered by TransCanada under the ACQ Service.

2. The tolls for the transportation services ren dered pursuant to paragraph 1 shall be as set out in the said Schedules with Union provid ing its own fuel gas.

3. This Order shall come into force on the day when Union first delivers natural gas to TransCanada for transmission in accordance with paragraphs 1 and 2 herein, or is deemed to have delivered natural gas to TransCanada in accordance with paragraphs 1 and 2 herein pursuant to the terms and conditions as set out in the Gas Sales Contract, and shall remain in effect until the Board's final decision in respect of Union's application dated 23 January 1989.

NATIONAL ENERGY BOARD

Louise Meagher,
Secretary

Appendix XV Order No. RO-TGI-1-89

File No.: 1562-T1-26

30 June 1989

VIA TELECOPIER

Mr. Peter Gilchrist
Blake, Cassels & Graydon
Barristers & Solicitors
York Corporate Centre
100 York Blvd.
Richmond Hill, Ontario
L4B 1J8

Dear Sir:

RE: Union Gas Limited - Section 71(2)
Application for Transportation

Act (the "Act") directing TransCanada PipeLines Limited ("TransCanada") to transport natural gas for Union, and fixing the toll that TransCanada may charge for the service, filed with the Board under File No. 1562-T1-26

BEFORE the Board on Wednesday, the 28th day of June 1989.

WHEREAS by letter dated 20 June 1989 Union has advised the Board that it has entered into a transportation agreement with TransCanada for the volumes of natural gas which are the subject of its application; and

WHEREAS Union has withdrawn the aforesaid application for a final order; and

WHEREAS the Board considers that it would be in the public interest to discontinue the said application and to rescind Interim Order TGI-1-89;

IT IS ORDERED THAT:

1. Interim Order TGI-1-89 is hereby rescinded.

2. The application by Union dated 23 January 1989 for interim and final orders pursuant to subsections 19(2), 60(1) and 71(2) of the Act, is discontinued.

NATIONAL ENERGY BOARD

Louise Meagher
Secretary