

National Energy Board

Reasons for Decision

Information on Gas Supply Required to be
Provided by TransCanada PipeLines Limited in
Support of its 1991/92 and 1992/93 Facilities
Application

GHW-3-89

January 1990

Minister of Supply and Services Canada 1990

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Recital and Submitters

IN THE MATTER OF the National Energy Board Act, R.S.C. 1985, c. N-7 and the regulations made thereunder; and

IN THE MATTER OF the draft NEB Rules of Practice and Procedure dated 21 April 1987; and

IN THE MATTER OF National Energy Board Directions on Procedure GHW-3-89, as amended.

EXAMINED by means of written submissions.

BEFORE:

R. Priddle	Chairman
J.-G. Fredette	Vice Chairman
J.R. Jenkins	Member
R.B. Horner	Member
W.G. Stewart	Member
A.B. Gilmour	Member
A. Côte-Verhaaf	Member
D.B. Smith	Member
K.W. Vollman	Member

SUBMITTORS:

Alberta and Southern Gas Co. Ltd.
Alberta Northeast Gas Export Project
Alberta Petroleum Marketing Commission
Altresco, Inc.
Amoco Canada Petroleum Company Ltd.
ANR Pipeline Company
ATCOR Ltd.
Attorney General of Quebec
Canadian Hunter Exploration Ltd.
Canadian Occidental Petroleum Ltd.
Canadian Petroleum Association
CanStates Gas Marketing
Champlain Pipeline Company
C-I-L Inc.
CNG Transmission Corporation
Commercial Union Energy Corporation
The Consumers' Gas Company Ltd.
Direct Energy Marketing Limited

Director of Investigation and Research, Competition Act

1 J.R. Jenkin's period of appointment as a member of the National Energy Board expired on 12 November 1989. His name appears in the Recital since he was one of the members of the Board that rendered the 3 November 1989 Decision with reasons to follow in respect of this matter (Chapter 3 of these Reasons for Decision). As Mr. Jenkins was no longer a member of the Board at the time of the release of these Reasons for Decision, his signature does not appear in Chapter 4 - Disposition.

(ii)

Enserch Development Corporation
Esso Resources Canada Limited
Foothills Pipe Lines Ltd.
Gaz Métropolitain, inc.
Greater Winnipeg Gas Company and ICG Utilities (Manitoba) Ltd.
Husky Oil Operations Ltd.
ICG Utilities (Ontario) Ltd.
Indeck Gas Supply Corporation
Independent Petroleum Association of Canada
Industrial Gas Users Association
Iroquois Gas Transmission System
JMC Selkirk, Inc.
Minister of Energy for Ontario
Mobil Oil Canada
New England Power Company
North Canadian Marketing Inc.
Northridge Petroleum Marketing, Inc.
NOVA Corporation of Alberta
Pan-Alberta Gas Ltd.
PanCanadian Petroleum Limited
Petro-Canada Inc.
Power City Partners, L.P.
ProGas Limited
Rochester Gas and Electric Corporation
Sceptre Resources Limited
Shell Canada Limited
St. Clair Pipelines Ltd.
Suncor Inc.
Tennessee Gas Pipeline Company
TransCanada PipeLines Limited
Unigas Corporation
Union Gas Limited
Vermont Gas Systems, Inc.
Viking Gas Transmission Company
Western Gas Marketing Limited

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Abbreviations

the Act	National Energy Board Act
APMC	Alberta Petroleum Marketing Commission
the Board	National Energy Board
Consumers' Gas	The Consumers' Gas Company Ltd.
CPA	Canadian Petroleum Association
the Director	The Director of Investigation and Research, Competition Act
LDC	local distribution company
the Rules	draft NEB Draft Rules of Practice and Procedure dated 21 April 1987
TransCanada	TransCanada PipeLines Limited
Union	Union Gas 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).

In June 1989, TransCanada PipeLines Limited ("TransCanada") made application to the National Energy Board ("the Board") to construct pipeline facilities for service to commence in November of 1991 and 1992. TransCanada did not include some prospective shippers' volumes in the application because these shippers were not able to provide TransCanada with the information on supply that TransCanada understood it was required to provide to the Board. In particular, Union Gas Limited ("Union") made a request for firm transportation service that TransCanada excluded from its facilities application.

On 23 June 1989 Union filed an application with the Board requesting that TransCanada be ordered to include Union's request for service in its application for 1991/92 facilities.

The Board denied Union's application on the basis that the decision to apply for facilities is a pipeline company's prerogative and cannot be ordered by the Board. In an effort to remove the uncertainty that appeared to exist about information on gas supply required to be provided in support of TransCanada's 1991/92 and 1992/93 facilities application, the Board decided, in July 1989, to hold a public hearing. Pursuant to Hearing Order GHW-3-89, as amended, the Board conducted a hearing, by way of written submissions, during September and October 1989.

The Board's responsibility, when reviewing facilities applications under section 52 of the National Energy Board Act, is to assure itself that pipeline facilities will be required by the present and future public convenience and necessity. This proceeding addressed the role of both project-specific and overall supply information in providing this assurance.

In the Board's view, the willingness and ability of a producer to supply a market over the long term is a key factor in determining whether pipeline capacity will be required. Project-specific supply information is viewed by the Board as evidence that increases the level of assurance that a producer has supply that will flow to markets through the proposed facilities, thereby reducing the risk that capacity will be underutilized. Therefore, the Board decided not to allow flexibility with respect to the project-specific supply information specified in the draft NEB Rules of Practice and Procedure, except in circumstances when the incremental volume included in TransCanada's facilities application represents normal growth in a shipper's existing market. In these circumstances, TransCanada is required to provide evidence with respect to the shipper's existing gas supply arrangements and gas supply acquisition process, as well as the status of supply acquisition for the incremental volumes included in its facilities application.

The Board views an overall supply assessment as being necessary and complementary to project-specific supply information. An overall supply assessment provides an indication of the

supply available to meet existing base-load requirements and the requirements related to new facilities beyond the period for which gas supply contracts support the new facilities, neither of which are addressed by project-specific supply information. Therefore, the Board decided that TransCanada is required to provide evidence that there is, or will be, an adequate supply of natural gas to ensure sufficient utilization of its total pipeline capacity in the long term

In view of the impact of the decision on the 1991/92 and 1992/93 TransCanada facilities application, the Board released its Decision on 3 November 1989 with reasons to follow.

Chapter 1

Background

1.1 Gas Supply Information Required for Facilities Applications

Under section 52 of the National Energy Board Act ("the Act") (see Appendix I), the Board may issue a certificate in respect of a pipeline if the Board is satisfied that the pipeline will be required by the present and future public convenience and necessity. Section 52 further states that, in considering an application for a certificate, the Board shall take into account all such matters as to it appear to be relevant and that the Board may have regard to the availability of gas to the pipeline.

The gas supply information required to be filed by an applicant for a certificate pursuant to section 52 of the Act in respect of a gas pipeline is listed in paragraphs 3(a) and (b) of Part I of Schedule II of the draft NEB Rules of Practice and Procedure dated 21 April 1987 ("the Rules")¹, and is as follows:

"(3) For applications pursuant to Section 44 [now Section 52] of the Act, in respect of a gas pipeline, the following information shall be provided:

Supply of Gas

(a) With respect to the supply of gas:

(i) an estimate of all established reserves of gas available to the project under contract to the applicant or the owner(s) of the gas to be transported; and

(ii) a forecast of the supply capability for the reserves listed in subparagraph (i) above.

(b) In addition to the requirements of paragraph (a), for all new pipelines or where modifications to a pipeline will significantly affect its existing capacity:

(i) the names and specific locations of the pools, fields or areas from which it is proposed to produce, purchase or otherwise acquire gas for transmission;

(ii) estimates of initial and remaining established reserves of gas for each pool, field or area named in subparagraph (i), together with supporting data on which the estimates are based;

(iii) a deliverability schedule of the maximum daily and annual rates of contracted production for each pool, field or area named in subparagraph (i), together with supporting data and assumptions on which the deliverability schedule is based;

(iv) an estimate of any proposed reprocessing shrinkage, on both a volumetric and calorific basis, applicable to the quantities of gas dedicated to the project;

(v) a supply/demand balance demonstrating an adequate gas supply to meet project requirements; and

(vi) where authorization for the removal of gas is required by a statute of a province or territory, evidence on the status of any applications made in respect of such authorization."

The facilities application filed by TransCanada in June 1989 would, if approved, increase the capacity of the TransCanada system by a significant amount. Therefore the comprehensive list of information in paragraphs 3(a) and 3(b) above, would normally be required by the Board to be filed by TransCanada as part of the facilities application.

1 Subsection 29(1) of the Rules provides that all information listed in Schedule II thereof is to be furnished "unless the Board otherwise directs".

1.2 Gas Supply Information Required by TransCanada for its June 1989 Application

TransCanada, in its submissions to the Board with respect to GHW-3-89, briefly outlined the information on gas supply that it required of parties requesting service. TransCanada stated that in order to determine which parties were to be included in its 1991/92 and 1992/93 facilities application, it abided by the terms of its tariff and the Board's filing requirements, including those related to gas supply. In respect of gas supply, TransCanada stated that it complied with Part I of Schedule II to the Rules. TransCanada also stated that in the context of its 29 June 1989 facilities application, prior to the application being filed, it had required domestic and export shippers to provide it with binding precedent agreements (with a form of gas supply contract attached thereto) or an executed gas supply contract.

In certain instances prospective shippers' volumes were not included in TransCanada's facilities application because shippers were unable to provide TransCanada with the supply information that it required. In particular, Union's requested 1991/92 firm service volumes were excluded by TransCanada from its June 1989 facilities application for this reason.

1.3 Union Application

In February 1989, Union requested 1.3 million cubic metres per day (47 million cubic feet per day) of firm transportation service on the TransCanada system, to commence in part on 1 November 1990 and the remainder on 1 November 1991.

In May 1989, TransCanada informed Union that, on the basis of the information that Union had provided, TransCanada did not have confirmation that Union's project was sufficiently advanced in its contractual aspects to warrant inclusion in TransCanada's 1991/92 and 1992/93 facilities application. Specifically, Union had not provided TransCanada with a copy of a gas supply agreement in respect of the service requested.

On 23 June 1989, Union filed an application with the Board requesting that TransCanada be ordered to include Union's volumes in its application for 1991/92 and 1992/93 facilities. Union's arguments in support of its request included, among others:

- i) Union's tendering process for acquisition of firm gas supply, which was developed in accordance with the principle of market-sensitive gas pricing, did not allow it to provide the specific evidence on gas supply requested by TransCanada within the given time frame; and
- (ii) TransCanada's action was unfair to Union because Union had formed a reasonable reliance that past procedures would continue and that it was safe in continuing its market-oriented contracting practices based on a tendering process.

On 8 August 1989, the Board denied Union's application. The Board concluded that, while it has the jurisdiction to require a pipeline to provide transportation services and facilities, the decision to apply for facilities is a pipeline company's prerogative and cannot be ordered by the Board.

1.4 The Hearing

After considering issues raised in Union's application, as well as a letter from C-I-L Inc. asking the Board how it might obtain similar relief, the Board decided that the issue of the information on gas supply that should be filed by TransCanada in support of its 1991/92 and 1992/93 facilities application warranted further assessment involving public input. Therefore, the Board decided to conduct a hearing, by way of written submission, to obtain the views of interested parties on a number of issues respecting information on supply relevant to an individual shipper's request for service and respecting overall supply.

The 54 participants in this hearing consisted of natural gas producers, producer organizations, distributors, direct shippers, end-user organizations, exporters, marketers, U.S. purchasers, pipeline operators and governments. In addition to the original submissions, which were received in the last half of September, 15 parties filed reply submissions in early October.

In view of the impact of its Decision on the timing of any refiling of TransCanada's 1991/92 and 1992/93 facilities application, the Board issued its Decision on 3 November 1989 with reasons to follow. This report contains the Board's reasons for that Decision.

Chapter 2

Information Required on Supply

This chapter summarizes the views of parties and the Board on the issues contained in Appendix II to Hearing Order GHW-3-89. Issues with respect to project-specific supply (the supply underpinning new requests for service for the 1991/92 and 1992/93 contract years) are discussed first, followed by issues with respect to overall supply (the total supply of natural gas which will be available to the TransCanada system).

2.1 Project-specific Supply

This section reviews the views expressed by interested parties on each of the project-specific supply issues (each issue is first stated in bold type, as set-out in the Hearing Order). It concludes with the "Views of the Board" on project-specific supply.

2.1.1 Views of Submitters

(a)(1) " The extent to which flexibility (regarding timing or content) in the provision of supply information should be afforded to those shippers who have a proven track record, who have historically taken gas at high load factors and/or for whom the incremental capacity represents a relatively small portion of their total requirements."

The views of submitters were clearly divided with respect to the provision of flexibility regarding timing or content of submissions regarding supply information.

Many submitters (including most of the producers, TransCanada and the Alberta Petroleum Marketing Commission ("APMC")) were against the provision of flexibility with respect to the timing or content of project-specific supply information. The reasons given for not providing flexibility consisted of the following:

- i) flexibility would be arbitrary and discriminatory and would possibly reallocate risk to existing shippers;
- ii) exemption or special treatment would shift the competitive balance;
- iii) exemptions based on high-load factors would favour specific markets and shippers;
- iv) consistency simplifies filings and makes it easier to identify volumes that should be included in an expansion;
- v) consistency contributes to TransCanada having an effective system planning process; and

vi) flexibility leads to a need for conditional certificates and could lead to delays in construction start-up.

Parties opposing flexibility with respect to timing generally supported the inclusion of supply information at the time of filing of the facilities application because it allows for an expeditious and efficient hearing process, reduces the need for conditional certificates and reduces the risk of delays for other related expansions.

Submitters supporting the provision of flexibility with respect to the timing or content of projectspecific supply information (generally domestic direct shippers and U.S. buyers) suggested that flexibility should be granted under certain circumstances. Some submitters also suggested that the issuance of certificates under Part III of the Act contemplates flexibility.

The following factors were suggested for consideration in determining whether flexibility is warranted:

- i) the operating flexibility of a shipper's existing gas supply portfolio;
- ii) whether the shipper has substantial financial strength and has made a commitment to pay demand charges;
- iii) the duration of the commitment to pay demand charges; iv) the shipper's gas purchasing record;
- v) whether there is a history of stable gas requirements or markets;
- vi) the nature of the market (whether it is well-established or new, captive (core) and/or serviced only by TransCanada);
- vii) whether the incremental capacity requirement is small relative to existing capacity;
- viii) whether the required incremental volume is a small percentage of the shipper's overall gas supply; ix) the likelihood of obtaining supply; and x) the status of overall supply.

The Consumers' Gas Company Ltd. ("Consumers' Gas") and the Director of Investigation and Research, Competition Act ("the Director") argued that project-specific supply information should not be required in assessing TransCanada's facilities application, but that an analysis of overall supply should be used as the basis for deciding whether the facilities expansion is required. Consumers' Gas noted that project-specific supply information should only be required if an overall supply/demand comparison indicates that established reserves could not sustain the production level required to meet overall end-use market demand over the succeeding ten-year period. Consumers' Gas also noted that it is inconsistent to focus on supply for incremental capacity while not examining supply supporting existing capacity.

Submitters supporting flexibility in timing argued that there were two alternatives to submission of supply information at the time of filing of the facilities application:

(i) before the start of the hearing, which would allow intervenors to scrutinize the information;
or

(ii) before the start of construction, thereby guaranteeing that facilities would be used before the major construction costs were incurred.

(a)(2) "The question of whether there are market or regulatory circumstances that warrant different minimum information requirements respecting gas supply among various shippers, for example:

(i) domestic direct gas purchasers; (ii) domestic distributors; (iii) exporters;

If so, the identification of these differences and the appropriate information requirements applicable to each."

The consensus of submitters was that there should be no preferential treatment of one class of shippers over another. Exporters and U.S. buyers often cited the provisions of the Free Trade Agreement between the Governments of Canada and the United States of America as mandating nondiscriminatory regulatory treatment. It was the view of some that different information requirements would create unwarranted interference with the competitive positions of shippers and that consistency avoids discrimination and inequity.

Some domestic distributors submitted that there are, or may be, regulatory or market differences that do warrant different minimum information requirements respecting gas supply. Consumers' Gas submitted that because domestic distributors generally have an obligation to provide service to customers who elect to purchase from them and must satisfy provincial boards as to the adequacy of their gas supply portfolio, different minimum information requirements may be warranted. ICG Utilities (Ontario) Ltd. submitted that because domestic local distribution companies ("LDCs") are regulated by provincial Boards, and LDCs east of Saskatchewan rely almost exclusively on gas from western Canada transported by TransCanada, domestic LDCs and reliable direct gas purchasers should only be required to provide the Board with information of a general nature on how and from where they plan to secure their gas supply.

(a)(3) "The question of whether TransCanada should be exempted, pursuant to section 29 of the draft NEB Rules of Practice and Procedure, from the requirement to provide supply information if the shipper has committed to pay demand charges at the time of filing of the facilities application. If so, the period of time over which this commitment should be in effect, and the manner in which the Board could make a finding of present and future public convenience and necessity in the absence of project-specific supply information."

Views on this issue also varied. Some parties (generally producers) submitted that a commitment to pay demand charges was not sufficient grounds for exempting TransCanada from the requirement to provide supply information. Others submitted that it was. A third view was that the commitment to pay demand charges should lead to a reduction in the level of detailed gas supply information required to be filed.

Submitters that argued that a commitment to pay demand charges should not be sufficient grounds for exempting TransCanada from the requirement to provide supply information did so because they believed that a commitment to pay demand charges does not provide sufficient assurance that gas will flow. They also felt that this approach could lead to speculative expansion proposals.

Those that supported reduced or no supply information based on a commitment to pay demand charges (generally domestic distributors and shippers and U.S. buyers) did so because they submitted that a commitment to pay demand charges provided a significant incentive for shippers to ensure that gas will flow. These submitters generally suggested that the commitment to pay demand charges should be for a period of ten to fifteen years and that the financial integrity of the shipper should be considered.

TransCanada noted that the fact that a shipper may be willing to pay demand charges pursuant to a long-term transportation contract does not ensure that gas will actually flow. It also noted that if the Board were to consider ordering TransCanada to build facilities in circumstances where no gas supply information is provided, but in circumstances where a shipper has committed to pay all the related demand charges over the life of the facilities, then it would only be just and reasonable that the Board assure TransCanada that its facilities will never be deemed not to be used and useful and, consequently, excluded from the rate base.

(a)(4) "The question of whether there is a difference in the lead time to secure supply versus the lead time to apply for, and construct, pipeline facilities; and the implications of any such timing difference on:

**(i) the gas supply acquisition process; and
(ii) the facilities approval and construction process."**

Submitters acknowledged that the lead time required to obtain supply is, at this time, generally less than the lead time required to construct pipeline facilities. However, the Canadian Petroleum Association ("CPA") noted that this could change as the volume of uncontracted gas diminishes.

Submitters indicated that the implication of the timing difference is that shippers must commit to gas supply contracts sooner than is currently necessary for gas procurement purposes because this commitment is determined by the longer lead time needed for a facilities hearing. Some parties argued that this might interfere with the competitive process of gas supply negotiations, while others argued that shippers should take the differing lead times into consideration and contract gas accordingly. The APMC suggested that parties could mitigate the impact of early commitment to gas supply contracts by including sufficient flexibility to adjust to changes that occur between the time of contracting and the time at which volumes begin to flow.

(a)(5) "The question of whether the requirement that shippers demonstrate adequate supply arrangements prior to the filing of a facilities application interferes with the competitive processes of the market, and whether current information requirements on supply give undue preference to shippers that purchase gas from large suppliers and supply aggregators."

There was no consensus in regard to this issue.

Several submitters, including producers, producer organizations and some exporters and U.S. buyers, submitted that the existence of a given set of rules for universal application supports competition. Other submitters, including Canadian distributors, generally argued that the current requirements do interfere with the normal functioning of the market and inappropriately affect the competitive negotiation process because shippers may be forced to procure supplies sooner than may be commercially optimal, which could interfere with the shipper's ability to obtain gas supplies on a least-cost basis. It was also submitted that because the information required on supply does not affect those shippers utilizing existing capacity, shippers requiring new facilities are at a competitive disadvantage.

Opposing views were also expressed as to whether the current information requirements give undue preference to shippers that purchase gas from large suppliers and supply aggregators. Some submitters argued that a requirement to contract for gas supplies well in advance of the first delivery date hampers the competitive process and forces purchasers into the hands of large suppliers and supply aggregators. It was suggested that this would occur because large and established suppliers and aggregators are generally better equipped to move quickly to meet the gas supply assurance requirements than are smaller producers.

Some submitters (mainly producers) stated that, in relation to the current information requirements, they were unable to identify any undue preference to shippers who purchase gas from large suppliers and supply aggregators.

(a)(6) "The question of whether TransCanada should demonstrate as part of its application that its shippers have executed binding supply agreements, whether these agreements should be long term, and what constitutes a "binding supply agreement" and "long term"."

Views on whether TransCanada should demonstrate that its shippers have executed binding supply agreements can generally be divided into two groups. Some submitters, including most of the producers and producer associations and TransCanada submitted that TransCanada should demonstrate as part of its application that shippers have executed either gas supply contracts or precedent supply agreements that outline the major contract provisions and conditions. Before the commencement of construction, executed long-term supply contracts should be required. The purpose of the contracts, according to these submitters, is to provide an indication that there is a firm supply backing the transportation contract, thereby providing assurance that the new facilities will be used. Some exporters stated that binding precedent supply agreements are required in support of facilities applications filed in the U.S. and therefore pose no hardship on the exporter.

The opposing view, expressed by the majority of Canadian distributors, among others, was that TransCanada should not be required, as part of its application, to demonstrate that its shippers have executed binding supply agreements. Submitters representing this view suggested that:

i) good faith letters of intent reflecting active negotiations towards a contract should be sufficient;

ii) a commitment to pay demand charges is likely to be a better indication of a long-term transaction than is a gas supply contract which may contain a re-opener clause and be subject to renegotiation and possibly termination;

iii) for shippers that must demonstrate gas supply, it should be sufficient to do so during the hearing process; and

vi) since circumstances vary from case to case, and since flexibility is required to deal with individual cases, there should not be arbitrary rules requiring contracts to be binding or long-term.

Most parties supporting the requirement for executed, binding gas supply contracts submitted that they should be long-term and that "long-term" was in the range of ten to fifteen years. Several submitters were of the view that facilities expansions should be supported by interlocking long-term supply and transportation contracts. However, others argued that contracts need not necessarily be longterm, one reason being that a shipper should be able to contract for the term of gas supply that is commercially optimal and prudent in the circumstances. Domestic distributors and shippers noted that their purchasing strategy was directed to developing a portfolio of both short-term and longterm supply arrangements.

Submitters that expressed a view on this issue defined binding supply agreements as:

i) being legally enforceable in accordance with their terms;

ii) requiring interlocking arrangements for gas supply, transportation, regulatory permits and downstream purchases; or

iii) something that can be determined only by evidence presented to the Board.

(a)(7) "The question of whether the current provisions of the Rules of Practice and Procedure in respect of gas supply for facilities proceedings under Part III of the National Energy Board Act are consistent with, and complementary to, the information required in respect of applications for gas export licences under Part VI of the Act."

The consensus of submitters was that the information required for facilities proceedings under Part III of the Act are for the most part consistent with and complementary to the information required in respect of gas export applications under Part VI of the Act. However, some said that the following differences exist:

i) the Board has a discretionary supply test under Part III and a mandatory test under Part VI of the Act;

ii) project-specific gas supply information is not necessary in all cases involving Part III applications, but it is necessary with respect to Part VI applications in order for the Board's complaints procedure" to function; and

iii) the supply requirements under Part VI are more onerous.

2.1.2 Views of the Board

Several parties can be affected by new facilities construction:

- existing shippers, because of the rolled-in toll methodology, could be subject to increased tolls; as a result of higher tolls, producers may receive reduced netbacks, shippers may suffer reduced profits and end-users may see increased prices;
- buyers or shippers may bear the risk for demand charges if gas were not to flow;
- TransCanada bears the risk of reduced profitability if the cost of "unnecessary facilities" were removed from the rate base; and
- the public in general would be affected if "unnecessary" projects were undertaken, thereby resulting in inefficient utilization of resources.

It is therefore incumbent upon the Board to be reasonably assured that pipeline capacity will be required in the long term before approving a facilities application.

From a supply perspective, the Board views the willingness and ability of a producer to supply a market over the long term as a key factor in determining whether pipeline capacity will be required over an extended period. Project-specific supply information is evidence that increases the level of assurance that a producer has supply that will flow to markets through the proposed facilities, thereby reducing the risk that the pipeline capacity will be underutilized. This information also assists in determining whether the timing of construction of new facilities is appropriate.

The Board recognizes that the specific contractual arrangements supporting an application for pipeline expansion will be of varying duration. In the Board's view, there is no sound basis for specifying, in advance of an application, a minimum contract duration that would apply to all prospective shippers. The Board has therefore concluded that it would be inappropriate to specify, in these Reasons, a minimum contract term that would be defined as "long-term". The onus is on TransCanada to determine whether the contract term for a specific shipper is sufficient to warrant inclusion of the project in the application.

The principal issue with respect to project-specific supply is the extent to which flexibility as provision of this information is warranted. Views on this issue could generally be divided into two groups. The first group, composed mainly of producers, submitted that contractual arrangements are the fundamental basis of a deregulated natural gas market and that long-term supply arrangements are the only effective means of ensuring that supply will be available to serve particular markets and that flexibility in the provision of supply information should therefore not be allowed. The second group, comprised mainly of domestic shippers and purchasers, submitted that the strict application of the existing requirements for project-specific supply information impedes the efficient operation of a competitive market and is inconsistent with the objectives of deregulation and therefore flexibility should be allowed.

With regard to the content of project-specific supply information, the Board is of the view that flexibility can be afforded in certain specific circumstances. Specifically, the Board believes that flexibility in the provision of information on gas supply at the time of the filing of the application is warranted where an incremental volume included in the application represents normal growth in a shipper's existing market. The Board's view is that to require detailed information on supply for normal growth in an established market at the time of filing the facilities application represents an undue regulatory burden. This conclusion derives from the Board's familiarity with the past record of take by the market and supply by the shipper and from the Board's view that normal growth would require a relatively small increase in capacity on the TransCanada system relative to the shipper's existing firm service.

In considering volumes included in the application that serve normal growth in an existing market, the Board considers it necessary that the application include information regarding the shipper's existing gas supply arrangements and gas supply acquisition process, as well as information on the status of supply acquisition for the incremental volumes. In these cases where detailed projectspecific supply information is not required to be provided at the time of filing of the application, it may be required to be filed at a later date. This matter can be addressed during the hearing of TransCanada's facilities application.

In all other instances, the Board will continue to require the detailed information specified in the Rules. In these instances project-specific supply information should be included at the time of filing the application. This will allow the Board and intervenors sufficient time to assess the information and will contribute to an efficient hearing process.

The Board recognizes that the requirement that supply information be included at the time of the filing of TransCanada's facilities application may require shippers to secure supply sooner than might otherwise be necessary. However, this requirement is necessary in order that the Board may properly carry out its mandate under section 52 of the Act.

The Board agrees with the position of the majority of submitters that there should not be different minimum information requirements between classes of shippers, such as domestic direct gas purchasers, domestic distributors and exporters. However, the Board is of the view that in certain circumstances differentiation based on market characteristics is appropriate. More specifically, as discussed above, less stringent information requirements are justifiable when facilities are required to meet normal growth in an existing market.

With respect to the issue of exempting TransCanada from the provision of supply information if the shipper has committed to pay demand charges, the Board is of the view that a commitment to pay demand charges does not replace the role of supply information in the Board's determination as to whether facilities are in the public convenience and necessity. The Board requires supply information in order to be reasonably confident that gas will flow and that facilities will therefore be used.

The Board believes that the current provisions of the Rules in respect of gas supply for facilities proceedings under Part III of the Act are generally complementary to and consistent with the information required in respect of export licence applications under Part VI of the Act. However,

the Board recognizes that the information requirements in the Rules are not always consistent with current gas purchasing practices. In particular, the Rules anticipate individual pools being dedicated to a project. This is not always the case. It is the Board's view, therefore, that replacing the words in subparagraph 3(b)(iii) with "a supply/demand balance for each supplier of gas to the project, demonstrating an adequate supply to meet that supplier's commitment to the project;", provides a better description of the information required by the Board when specific pools are not dedicated to a project.

2.2 Overall Supply

This section summarizes the views of parties and the Board on the overall supply issues listed in Appendix II to the Hearing Order. Views of submitters with respect to each issue are presented, followed by the "Views of the Board" on overall supply.

2.2.1 Views of Submitters

(b)(8) "The alternatives for providing supply information to demonstrate whether sufficient supply is available to support the applied-for facilities, having regard to:

- (i) expiring licences and export contracts currently flowing on the TransCanada system; and**
- (ii) the existence and potential expansion of other pipeline systems which will draw upon the same natural gas supplies as TransCanada."**

The Independent Petroleum Association of Canada, several producers, most domestic distributors and purchasers, the Industrial Gas Users Association, most exporters, TransCanada, the Minister of Energy for Ontario and the Director supported an assessment of overall supply, suggesting that it is critical to the determination of the long-term usefulness of facilities. Western Gas Marketing Limited stated that the existence of short-term services and "de facto" short-term services, in the form of expiring service agreements, creates a need for continuous monitoring and evaluation of overall gas supply.

Those submitters supporting an overall supply assessment suggested two alternatives for providing information

- (i) TransCanada would provide overall supply and demand studies similar to the Sproule¹ study submitted in the GH-1-89 proceedings²; or
- (ii) Board staff supply/demand reports would provide the basis for an assessment of overall supply.

Submitters advocating the use of Board staff reports made a number of related suggestions:

- i) reports could be more frequent;
- ii) they could be generated through a more formal solicitation of input; and

iii) they could be compared with supply and demand studies submitted by TransCanada.

TransCanada submitted that it would be prepared to continue to file overall supply studies such as the aforementioned Sproule study and that these studies should consider gas supply in the Western Canadian Sedimentary Basin and any other area that can be connected to its system.

Several submitters expressed the view that the overall supply assessment should be part of the hearing record and subject to the scrutiny of cross-examination.

Husky Oil Operations Ltd. and the CPA suggested that evidence and analysis regarding overall supply should not be considered as a substitute for project-specific information. Reasons given included:

- (i) an overall supply analysis is of questionable merit because of the associated uncertainty;
- (ii) overall supply analysis requires the unwarranted assumption that gas is dedicated to the TransCanada system; and
- (iii) without an identified supply source, there can be no assurance of upstream transportation arrangements nor of other regulatory approvals.

Gaz Métropolitain, inc. did not support an assessment of overall supply with respect to facilities applications but stated that an overall supply/ demand analysis is required in order for the Board to fulfill its mandate under Part VI of the Act.

(b)(9) "The extent to which reduced export regulation, the separation of TransCanada's merchant and transmission functions, and the emergence of TransCanada as an open-access carrier with a significant portion of the services being short term, have affected the ability of TransCanada to provide the required supply information."

1 The Future Natural Gas Supply Capability of the Western Canada Sedimentary Basin, Sproule Associates Limited, March 1989.

2 The GH-1-89 proceedings consisted of a public hearing held in 1989 to consider TransCanada's application for 1990/91 facilities and applications by various parties for licences to export natural gas via the TransCanada system.

The position of submitters was that TransCanada does not have direct access to the same supply information as it had in the past and that TransCanada's ability to provide overall gas supply evidence has therefore been reduced. Several submitters pointed out that the information is still available from shippers and they might have to provide TransCanada with their project-specific supply information.

(b)(10) "The extent to which the Board should take account of supply arrangements underpinning existing shippers' short-term firm service in dealing with applications for facilities expansion."

Several parties submitted that the Board should not take into account supply arrangements underpinning short-term firm service but that the existence of short-term services creates a need for continuous monitoring and evaluation of overall supply. In addition, some parties suggested that the Board should assume that a portion of overall supply will be needed to serve markets being met by short-term service.

(b)(11)"The question of how much "project-specific" supply information is required by TransCanada to determine the adequacy of "overall" supply, and whether this information needs to be filed as part of the initial facilities application, as opposed to being filed during the course of the facilities proceedings or in compliance with a certificate condition."

Views related to how much project-specific supply information is required to determine the adequacy of overall supply included:

- i) if project-specific supply information includes a binding supply contract there is no need to determine the adequacy of overall supply;
- ii) project-specific data should be viewed as being entirely separate and distinct from overall supply information; and
- iii) substantial project-specific supply information is not required in order to determine the adequacy of overall supply.

Several submitters were of the opinion that project-specific supply information should be included as part of the initial facilities application or at least be filed prior to the commencement of the hearing, in order that it be scrutinized during the hearing process. Others submitted that it would be sufficient to provide project-specific information in compliance with a certificate condition.

2.2.2 Views of the Board

The Board considers overall supply to be an important consideration in determining whether pipeline facilities such as those proposed in the TransCanada application are and will be in the present and future public convenience and necessity. In the current gas market, a significant portion of the services on the TransCanada system is of a short-term nature and limited information is available regarding the supply arrangements underlying these shipments. In addition, the large number of shippers that have emerged on the TransCanada system since TransCanada became an open-access carrier has made it increasingly difficult to track the supply arrangements supporting utilization of the existing system capacity. An overall supply assessment provides an indication as to the supply available to keep existing pipeline capacity utilized. Overall supply is also a consideration in assessing the economic feasibility of a facilities expansion because the terms of underlying contracts are often for shorter periods than the economic life of new facilities. The Board is therefore of the view that an overall supply assessment is necessary and complementary to project-specific supply information, particularly in the current gas market.

Several submitters said that Board staff reports could provide the basis for an assessment of overall supply. It is the Board's view, however, that TransCanada, as the applicant, has the onus to demonstrate through its evidence that there is, or will be, adequate natural gas supply to justify the expansion. Although TransCanada may choose to rely to some extent on information contained in Board staff reports, the Board's position is that TransCanada should submit studies that in its view demonstrate that the proposed facilities are supported by long-term supply. The Board agrees that the overall supply assessment should be part of the hearing record and subject to the scrutiny of cross-examination.

The Board notes the views of some submitters that a more formal solicitation of input to Board staff reports could be adopted and will consider these comments in planning the consultative process for the next supply and demand report.

The Board agrees with the view of some submitters that an overall supply assessment can be made in the absence of project-specific supply information, although it does recognize that a good understanding of the nature of the supply supporting total shipments on the TransCanada system would aid in an overall supply assessment.

The Board believes that the assessment of overall supply should address all supply sources that could be used to satisfy markets served via the TransCanada system.

Chapter 3

Decision

[This Decision was issued on 3 November 1989 with reasons to follow, in order to facilitate the timely submission of TransCanada's revised 1991/92 and 1992/93 facilities application.]

Having considered the written submissions and the replies of all parties to the hearing held pursuant to Hearing Order No. GHW-3-89, as amended, the Board directs that the information on gas supply outlined below be provided by TransCanada PipeLines Limited as part of its 1991 and 1992 facilities application.

A. Project-Specific Supply

1) The Board is prepared to provide flexibility regarding the provision of information on gas supply in those cases where an incremental volume included in the application represents normal growth in a shipper's existing market. In making this determination, TransCanada may consider, among other factors, the history of producers providing gas to the market, the reliability of the market, and whether the incremental capacity required is small, relative to the shipper's existing firm service on the TransCanada system.

In these cases TransCanada is required to provide evidence with respect to:

- i) the shipper's existing gas supply arrangements;
- ii) the shipper's gas supply acquisition process; and
- iii) the status of supply acquisition for the incremental volumes included in the facilities application.

2) In those cases where incremental volumes are included in the application that do not result from normal growth in a shipper's existing market, the Rules will apply as follows:

- i) when specific pools are contractually dedicated to the project, TransCanada is required to provide the gas supply information specified in Part I of Schedule II of the Rules; and
- ii) when specific pools are not contractually dedicated to the project, TransCanada is required to provide the gas supply information specified in Part I of Schedule II of the Rules, with the exception that subparagraph 3(b) (iii) thereof is to be replaced by

"(iii) a supply/demand balance for each supplier of gas to the project, demonstrating an adequate supply to meet that supplier's commitment to the project;"

B. Overall Supply

TransCanada shall provide evidence that it has assured itself that there is, or will be, adequate natural gas supply to ensure sufficient utilization of its total pipeline capacity in the long term,

taking into consideration all potential supply sources that could be reasonably expected to be connected to the TransCanada system and the domestic and export demand for Canadian gas that could be reasonably expected to be served via the TransCanada system.

Chapter 4

Disposition

The foregoing chapters set forth our Reasons for Decision and our Decision in the matter of information on gas supply to be provided by

TransCanada in support of its 1991/92 and 1992/93 facilities application.

R. Priddle
Chairman

J.-G. Fredette
Vice Chairman

W.G. Stewart
Member

A. Côté-Verhaaf
Member

K.W. Vollman
Member

R.B. Horner, Q.C.
Member

A.B. Gilmour
Member

D.B. Smith
Member

Appendix I

Section 52 of the National Energy Board Act

Issue of Certificates for Pipelines and International Power Lines

52. The Board may, subject to the approval of the Governor in Council, issue a certificate in respect of a pipeline or an international power line if the Board is satisfied that the line is and will be required by the present and future public convenience and necessity and in considering an application for a certificate, the Board shall take into account all such matters as to it appear to be relevant and, without limiting the generality of the foregoing, the Board may have regard to the following:

- (a) the availability of oil or gas to the pipeline, or power to the international power line, as the case may be;
- (b) the existence of markets, actual or potential;
- (c) the economic feasibility of the pipeline or international power line;
- (d) the financial responsibility and financial structure of the applicant, the methods of financing the line and the extent to which Canadians will have an opportunity of participating in the financing, engineering and construction of the line; and
- (e) any public interest that in the Board's opinion may be affected by the granting or the refusing of the application.