



National Energy Board

Compilation of Key
Documents Related to
the Board's RH-2-95
Decisions

**TransCanada PipeLines
Limited**

RH-2-95 Summary

June 1996

1996 Tolls

National Energy Board

Compilation of Key Documents Related to the Board's RH-2-95 Decisions

In the Matter of

TransCanada PipeLines Limited

Application dated 5 July 1995

RH-2-95 Summary

June 1996

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as represented by the National Energy Board

Cat. No. NE22-1/1996-7E
ISBN 0-662-24411-7

This report is published separately in both official
languages.

Copies are available on request from:

Regulatory Support Office
National Energy Board
311 Sixth Avenue S.W.
Calgary, Alberta
T2P 3H2
(403) 292-4800

For pick-up at the NEB office:

Library
Ground Floor

Printed in Canada

© Sa Majesté la Reine du Chef du Canada 1996
représenté par l'Office national de l'énergie

N° de cat. NE22-1/1996-7F
ISBN 0-662-81072-4

Ce rapport est publié séparément dans les deux
langues officielles.

Exemplaires disponibles sur demande auprès du :

Bureau du soutien à la réglementation
Office national de l'énergie
311, sixième avenue s.-o.
Calgary (Alberta)
T2P 3H2
(403) 292-4800

En personne, au bureau de l'Office :

Bibliothèque
Rez-de-chaussée

Imprimé au Canada

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Chapter 1

Introduction

With respect to an application by TransCanada PipeLines Limited ("TransCanada", "the Company" or "TCPL") dated 5 July 1995 ("RH-2-95") for 1996 tolls, the National Energy Board ("the NEB" or "the Board"), in its Letter Decision dated 22 February 1996, indicated that it would, at a later date, be issuing a consolidated version of the decisions which would include under one cover, key documentation for both Phase 1 and Phase 2 of RH-2-95. In addition, the NEB indicated that it would include the complete text of the Incentive Cost Recovery and Revenue Sharing Settlement. For ease of reference and in order to assist parties, the NEB is now issuing a blue-cover compilation of certain key documents produced with respect to 1996 tolls. The NEB believes that this blue-cover compilation will provide an important legacy/reference document. In this regard, the NEB has included the following information:

Chapter 2 FST Settlement Agreement dated 16 November 1995 between the Canadian Association of Petroleum Producers ("CAPP"), The Consumers' Gas Company Ltd. ("Consumers"), Union Gas Limited ("Union"), and TransCanada.

Chapter 3 NEB Reasons for Decision regarding RH-2-95 Phase 1.

Chapter 4 TransCanada Incentive Cost Recovery and Revenue Sharing Settlement.

Chapter 5 NEB Reasons for Decision regarding RH-2-95 Phase 2.

Chapter 6 Interim Toll Order AO-1-TGI-3-95.

Chapter 7 Final Toll Order TG-2-96.

Chapter 8 List of Other Relevant Key Documents.

In order to minimize the number of pages of this blue-book document, the NEB has electronically scanned and inserted the settlement agreements contained in Chapters 2 and 4. As a result, the page numbers reflected in the blue book do not reconcile with those in the original agreements. In addition, the NEB is concerned that Chapters 2 to 7, inclusive may contain some discrepancies with the original documents as they were filed with or issued by the NEB. Therefore, in case of any discrepancy, the NEB directs readers to refer back to the original documents which constitute the official versions.

Chapter 2

FST Settlement Agreement

FST SETTLEMENT AGREEMENT

THIS AGREEMENT made as of the 16th day of November, 1995

BY AND AMONG:

CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS, a Canadian not-for-profit corporation ("CAPP")

- and -

THE CONSUMERS' GAS COMPANY LTD., an Ontario corporation ("Consumers Gas")

- and -

UNION GAS LIMITED, an Ontario corporation ("Union")

- and -

TRANSCANADA PIPELINES LIMITED, a Canadian corporation ("TransCanada")

WITNESSES THAT, WHEREAS:

- A. CAPP, Consumers Gas, and Union (collectively the "FST Parties" and individually an "FST Party") have a significant interest in TransCanada's transportation services and tolls in general and, in the context of this Agreement, Firm Service Tendered ("FST") and the FST differential and toll in particular.
- B. TransCanada is the applicant and the FST Parties are intervenors in the public hearing before the National Energy Board ("the Board") in respect of TransCanada's application for tolls effective January 1, 1996 (the "Application") pursuant to Hearing Order RH-2-95 (the "Hearing").
- C. Consumers Gas and Union have each exercised their contractual rights to convert two-thirds of their FST service entitlements to Firm Transportation Service entitlements, effective November 1, 1998, by giving TransCanada a timely notice to that effect, which TransCanada has accepted. The notice given by Consumers Gas also applies to the conversion of the remaining one-third of its FST service entitlement to a Firm Transportation Service entitlement, effective November 1, 1999.
- D. In the light of the conversion notices, TransCanada and the FST Parties have discussed and wish to implement a consultative process, involving a broad base of TransCanada's shippers and other

stakeholders, that will examine and eventually could determine the ways and means whereby TransCanada could maintain and possibly enhance, on a long-term basis, the operating flexibility that is currently provided by the service characteristics of FST, including the class(es) of transportation service that would achieve this end and the corresponding service characteristics and toll-making methodology(ies).

- E. In order to allow the consultative process to proceed in a non-litigious atmosphere and to facilitate any transition required by the outcome of the consultative process, the FST Parties have negotiated a compromise of the positions that they would otherwise take on FST-related matters during the Hearing, by agreeing on a revised suite of services approach for calculating the FST differential and the allocation of it between upstream and downstream, as an interim measure applicable only to the 1996 test year.
- F. TransCanada will adopt and support, at the Hearing, the revised suite of services as a cost-based approach to calculating the FST Differential.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the FST Parties and TransCanada mutually covenant and agree as follows:

1. TransCanada and the FST Parties will co-operate and work together in order to implement a consultative process, involving a broad base of TransCanada's shippers and other stakeholders, that will examine and eventually could determine the ways and means whereby TransCanada could maintain and possibly enhance, on a long-term basis, the operating flexibility that is currently provided by the service characteristics of FST, including the class(es) of transportation service that would achieve this end and the corresponding service characteristics and toll-making methodology(ies). If the FST Parties and TransCanada are unable to achieve a consensus in this regard by March 1, 1996, each of them will be free thereafter to pursue its own interest on FST-related matters for the 1997 and subsequent test years.
2. In order to allow the consultative process referred to in paragraph 1 to proceed in a non-litigious atmosphere and to facilitate any transition that may be required by the outcome of the consultative process, the FST Parties hereby agree that a revised suite of services should be used to calculate the FST differential, in place of the suite of services proposed by CAPP and approved by the Board effective May 1, 1995, as an interim measure applicable only to the 1996 toll year. The revised suite of services is a compromise of the position that each FST Party would otherwise take on FST-related matters during the Hearing and, accordingly, the support of each FST Party for the revised suite of services is without prejudice to the position(s) of each FST Party on FST-related matters in past or future public hearings before the Board or otherwise.
3. TransCanada will file with the Board and serve on intervenors in the Hearing, together with a copy of this Agreement, additional written evidence that will describe the revised suite of services in detail and explain the rationale for the revised suite. TransCanada will also file and serve, in due course, corresponding amendments to the Application and related supporting material (collectively, with this Agreement and the additional written evidence, the "Amending Material").
4. Using the revised suite of services, TransCanada has calculated the FST differential to be \$50,038,768, based on the Application as filed, or a unit differential of \$10.030/10³m³, as shown in the revised Toll Design Schedule 5.1 attached hereto. The following is a brief description of the revised suite of services:

- (a) the unit toll for Short Term Firm Transportation Service (which shall be equal to the unit toll for Firm Transportation Service to the Eastern Zone when calculated at 100 percent load factor) is applied to 50 percent of the average daily winter capacity for all 152 days of the Winter Period;
 - (b) the minimum toll for Interruptible Service to the Eastern Zone (which shall be equal to the unit toll for Firm Transportation Service to the Eastern Zone when calculated at 200 percent load factor) is applied to 50 percent of the average daily winter capacity for 61 days of the Winter Period;
 - (c) the unit toll for Winter Firm Service to the Eastern Zone (which shall be equal to 1.4 times the unit toll for Firm Transportation Service to the Eastern Zone when calculated at 100 percent load factor) is applied to 50 percent of the average daily winter capacity for 91 days of the Winter Period; and
 - (d) the minimum toll for Interruptible Service to the Eastern Zone (which shall be equal to the unit toll for Firm Transportation Service to the Eastern Zone when calculated at 200 percent load factor) is applied to the entire average daily summer capacity for all 214 days of the Summer Period.
5. Subject to paragraph 6, TransCanada and the FST Parties will advocate and support the Amending Material in its substantial entirety throughout the Hearing, including the preliminary procedural stages and final argument, and in any subsequent review or appeal proceeding that relates to TransCanada's tolls for the 1996 test year. Nevertheless, if the Board does not approve the Amending Material in its substantial entirety, TransCanada and each FST Parties will be free to pursue its own interest in respect of FST-related matters for the 1996 test year.
6. If an intervenor in the Hearing (other than one of the FST Parties) proposes an alternative methodology for calculating the FST differential, and if TransCanada determines, acting in good faith having regard to the interests of all of its shippers and other stakeholders, that the alternative methodology, if supported by TransCanada and if adopted by the Board, would produce a greater overall benefit to its shippers and other stakeholders than the methodology contained in the Amending Material, TransCanada will immediately so advise the FST Parties. In that event, this Agreement will automatically terminate and TransCanada and each FST Party will be free thereafter to pursue its own interest in respect of FST-related matters for the 1996 test year and, as well, they will collectively request the Board to allow sufficient time for the preparation of written evidence on FST-related matters.
7. TransCanada and the FST Parties recognize that, under a suite of services methodology, there would be no need to allocate the FST differential or the unit differential between upstream and downstream. Nevertheless, as part of the compromise referred to in paragraph 2, CAPP, Consumers Gas, and Union have agreed that the unit differential should be allocated between upstream and downstream on the following basis:
- (a) if the Board-approved unit differential were \$0.25/GJ, the upstream differential would be \$0.04/GJ and the downstream differential would be \$0.21/GJ; and
 - (b) if the Board-approved unit differential were more or less than \$0.25/GJ, one-half of the difference between the Board-approved unit differential and \$0.25/GJ would be allocated to both upstream and downstream.

The unit differential of \$1.030/10³m³ referred to in paragraph 4 translates, based on TransCanada's estimated heat content for the 1996 test year, into \$0.266/GJ. Under the foregoing adjustment mechanism, the upstream differential would be \$0.048/GJ and the downstream differential would be \$0.218/GJ.

8. In negotiating the allocation of the unit differential between upstream and downstream and the adjustment mechanism referred to in paragraph 7, CAPP, Consumers Gas, and Union took into account the following factors:
 - (a) the suppliers of FST-type gas, as well as the FST shippers, take steps to accommodate the service characteristics of FST, which provides TransCanada with operating flexibility, and such suppliers thereby contribute to TransCanada's operating flexibility;
 - (b) in the Board's RH-1-88 Phase II Reasons for Decision dated June 1989, the Board found (at p. 43) 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";
 - (c) prior to the Board's RH-1-88 Phase II Reasons for Decision, but after TransCanada made its proposal to the Board to add an upstream differential, Consumers Gas and Union entered into certain gas supply contracts that provide for the addition of an upstream differential to the price otherwise payable for gas purchased thereunder, whenever a Board-approved upstream differential is in effect for toll-making purposes; and
 - (d) the desirability of reinstating the upstream differential for the 1996 Test Year, as a transitional measure, having regard to the foregoing factors.
9. TransCanada will include, in the Amending Material, the allocation of the unit differential between upstream and downstream and the adjustment mechanism referred to in paragraph 7, together with a request that the Board so allocate the approved unit differential.
10. This Agreement may be executed in counterparts.

IN WITNESS WHEREFORE the FST Parties and TransCanada have duly executed and delivered this Agreement as of the date of the first above written.

(signed by)

CAPP

Consumers Gas

Union

TransCanada

Table 2-1
Calculation of the FST Toll and Differential
for the Test Year ending December 31, 1996

LINE NO. PARTICULARS	RATE DEMAND	COMMODITY	100% LF	VOLUME 10 ⁶ M ³	COST CDN(\$)	
(a)	(b)	(c)	(d)	(e)	(f)	
<u>(A) EQUIVALENT COST OF FIRM TRANSPORTATION SERVICE</u>						
1	Union	1,048.75	0.954	35.433	2 694.0	95,456,502
2	Consumers	1,048.75	0.954	35.433	2 295.0	81,318,735
3	TOTAL COST BASED ON FIRM TRANSPORTATION TOLL				4 989.0	176,775,237
<u>(B) COST BASED ON THE SUITE OF SERVICES</u>						
(1) STFT COMPONENT (50%)						
4	Winter		35.433	997.8	35,355,047	
5	Summer		35.433	0	0	
6	Total STFT Component			997.8	35,355,047	
(2) IT COMPONENT (100%) <u>200% LF TOLL</u>						
7	Summer	1,048.75	0.954	18.194	2 993.4	54,461,920
(3) CURTAILABLE COMPONENT (50%)						
8	Winter	* 61 DAYS IT (MIN)	18.194	400.4	7,284,878	
9		* 91 DAYS WFS (MAX)	49.606	597.4	29,634,624	
				997.8	36,919,502	
10	TOTAL COST BASED ON THE SUITE OF SERVICES			25.403	4 989.0	126,736,469
11	TOTAL DIFFERENTIAL (Line 3 - Line 9)			10.030 \$/10 ³ m ³		50,038,768

* Based on 152 days in the 1996 Winter Season

Chapter 3

NEB Decision - Phase 1 FST Settlement

**TransCanada PipeLines Limited ("TransCanada")
Application Dated 5 July 1995 for 1996 Tolls ("RH-2-95")
Reasons for Decision Regarding Phase 1**

Background

On 5 July 1995, TransCanada PipeLines Limited ("TransCanada") filed an application pursuant to Part IV of the *National Energy Board Act* ("the Act") for new tolls to be effective 1 January 1996.

On 1 September 1995, the National Energy Board ("the Board") issued Hearing Order RH-2-95 setting down the application for a public hearing to commence on 11 December 1995. Hearing Order RH-2-95 was amended by letters dated 12 October and 7 and 16 November 1995.

On 20 October 1995, the Board approved a request by TransCanada to divide the proceeding into phases. Phase 1 would deal with issues related to cost allocation, toll design and tariff matters. Phase 2, which would begin no earlier than 29 January 1996, would deal with cost of service and other matters. TransCanada submitted that phasing would allow it sufficient time to complete settlement negotiations respecting cost of service matters.

Phase 1 of the hearing took place in Ottawa, Ontario on December 11, 12, 13 and 14, 1995.

The matters considered in Phase 1 included: tolls and tariff issues resolved by the 1996 Tolls Task Force; issues related to Firm Service Tendered ("FST") and an application for interim tolls to be effective 1 January 1996.

The Board's Negotiated Settlement Guidelines

In examining agreements among parties to a proceeding, the Board is guided by its *Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs*, dated 23 August 1994, and the cover letter from the Board of the same date (the "Guidelines"). Of particular relevance in these proceedings are the following extracts from those documents:

- All parties having an interest in a pipeline's traffic, tolls and tariffs should have a fair opportunity to participate and have their interests recognized and appropriately weighed in a negotiated settlement. The settlement process should be open and all interested parties should be invited to participate in the actual settlement negotiations.
- Upon filing of [information related to the resolution of individual toll design, tariff or other matters], interested parties would be provided with an opportunity to comment on each resolution. Resolutions that were not opposed by any party would normally be accepted by the Board.
- The Board confirms that, when presented with a settlement package, it will either accept or reject the package in its entirety.

1996 Tolls Task Force Resolutions

TransCanada's application contained twenty-one resolutions which had received either the unanimous support of the 1996 Tolls Task Force or were unopposed. Three of the proposals had received expedited consideration and approval by the Board prior to the hearing. The remaining eighteen were unopposed at the hearing.

Decision

The twenty-one resolutions approved by the 1996 Tolls Task Force and put forward as part of this proceeding and as described in Attachment 1, meet the Board's Guidelines. The Board has considered and approves the resolutions in full and directs that they be incorporated into TransCanada's Transportation Tariff.

Firm Service Tendered ("FST") Settlement Agreement

In Phase 1 of the hearing, the Board was asked by The Consumers' Gas Company Ltd. ("Consumers"), Union Gas Limited ("Union") and the Canadian Association of Petroleum Producers ("CAPP"), collectively known as the FST Parties, and TransCanada to accept the FST Settlement Agreement dated 16 November 1995 (the "FST Agreement"), to which these parties were signatories. While acknowledging that certain interested parties were excluded from participation in the process which led to the signing of the FST Agreement and thus did not meet the requirements of the Board's Guidelines, the FST Parties characterized the FST Agreement as a joint proposal and urged the Board to accept it in its "substantial entirety". The proponents of the FST Agreement noted that it had been the intention of the FST Parties and TransCanada to include other parties in the negotiations; however, due to time constraints, this had not been possible.

The Northeast Group and ProGas Limited ("ProGas") opposed the terms of the FST Agreement and urged the Board to reject it. The Northeast Group also opposed the process which resulted in the FST Agreement on the basis that, while it had a direct interest in the outcome, it had been excluded from the negotiations. Further, the Alberta Department of Energy ("ADOE"), while taking no position on the FST Agreement, urged the Board to adhere to its Guidelines.

Views of the Board

In applying the Guidelines to the FST Agreement, the Board agrees that this is not an agreement within the meaning of those Guidelines. Accordingly, the Board believes that it would be inappropriate to accept or reject the FST Agreement *per se*. However, the Board can review the particular components of the FST Agreement, as it would with the common position of parties to a proceeding, to determine whether each of the components is acceptable to the Board. Based on the decisions taken by the Board, it will then be up to TransCanada and the FST Parties to determine whether the terms of their FST Agreement have been met as a whole.

The two components of the FST Agreement which address issues relevant to Phase 1 of RH-2-95 relate to the appropriate "suite of services" methodology to be used in calculating the FST Differential and the appropriateness and level of a split of the FST Differential between upstream and downstream. In respect of each of these components, the Board has examined the evidence put forward by all parties to these proceedings to determine the justness and reasonableness of each proposal proposed jointly by the FST Parties and TransCanada.

The Board also took note of the exclusion of other parties from the FST Agreement negotiations and the reasons provided for their exclusion.

FST Differential Methodology for 1996

In this proceeding, TransCanada applied for a change to the existing "suite of services" methodology which was first applied to calculating the FST Differential as a result of the Board's decision in RH-3-94. The proposed "suite of services", which in TransCanada's view is a more appropriate cost-based application of the generic "suite of services" approach to calculating the FST Differential, and the existing "suite of services" are detailed below:

Proposed Suite of Services*

- Winter: 50% of volumes • 151 days as Eastern Zone Short-Term Firm Transportation ("STFT") at the 100% load factor toll
- 50% of volumes • 61 days at the 200% load factor Eastern Zone Interruptible Transportation ("IT") toll
- 90 days at the Winter Firm Service toll which is 1.4 times the Eastern Zone 100% load factor Firm Transportation ("FT") toll
- Summer: 100% of volumes • 214 days at 200% load factor Eastern Zone IT toll

Existing Suite of Services* (as clarified in Board letter dated 23 November 1995)

- Winter: 50% of volumes • 151 days as Firm Transportation ("FT") at the 100% load factor toll
- 50% of volumes • 151 days as the minimum Temporary Winter Service ("TWS") toll
- Summer: 50% of volumes • 194 days as Firm Transportation ("FT") at the 100% load factor toll
- 20 days as the minimum Eastern Zone IT toll at the 200% load factor
- 50% of volumes • 214 days as the minimum Eastern Zone IT toll at the 200% load factor

* The foregoing would be modified to add one additional day to account for the leap year which occurs in 1996.

TransCanada's proposed "suite of services" is based on two criteria: the level of operating flexibility which FST provides the system; and the contracting approach which a customer would likely take in order to ensure the highest degree of probability that it would receive its volumes during the respective seasons, in the most economical fashion. In order to appropriately reflect these criteria, TransCanada has developed a proposed "suite of services" which places greater reliance on the IT toll.

TransCanada was supported by the other parties to the FST Agreement, TransCanada Gas Services Limited ("TCGS") and the Ministry of Energy and Environment for Ontario. Opposition was expressed by The Northeast Group and ProGas, who submitted that there had not been a sufficient change in circumstances to warrant review of the existing "suite of services" approach, that the FST

Differential had been arrived at through negotiations and that the proposed "suite of services" injected an additional flavour of IT which did not accurately reflect the annual, seasonal and daily delivery obligations of TransCanada under FST service.

Views of the Board

The Board continues to support the use of the "suite of services" methodology in deriving the FST Differential.

The majority decision in RH-3-94 acknowledged that the "suite of services" approach, which was adopted at that time, might require reassessment in a future proceeding. Specifically, in that decision the majority stated:

"The Board recognizes that, if TransCanada or other parties believe that the value of FST service to its system is more appropriately reflected by an alternate suite of services from that proposed by CAPP or some other approach, there is an opportunity to bring forward a proposal either before the Tolls Task Force or in a future tolls application."

Upon reflection and after having experience with the "suite of services" approach, the FST Parties and TransCanada have brought forward a proposed "suite of services" for consideration by the Board. It is incumbent on those parties to satisfy the Board that the proposed "suite of services" will result in tolls that would be more just and reasonable than those which resulted from the decision of the Board in RH-3-94. As discussed above, the mere fact of agreement among some of the parties is not sufficient; each of those parties acknowledged that the negotiations of the FST Agreement involved compromises. Accordingly, the Board has carefully examined the evidence to determine whether the proposed "suite of services" is a better surrogate for the value of FST service than that approved in the RH-3-94 decision. No other alternatives were put forward for consideration by the Board.

The level of the FST Differential for 1995 which was calculated from the existing "suite of services" resulted in a decision by Consumers and Union to opt to convert FST volumes to FT volumes. This decision to convert the FST volumes to FT volumes is strong evidence, in the Board's view, that under the existing "suite of services", FST service is overpriced and, therefore, inappropriate.

The main difference between the proposed "suite of services" and the existing "suite of services" is the greater reliance on the IT toll. While certain assumptions made by TransCanada regarding the availability of IT and shipper behaviour may not be totally accurate, the Board is persuaded that, on balance, the proposed "suite of services" is a better proxy for the flexibility required by TransCanada and the surety of transportation service required by the customer.

Decision

The Board approves TransCanada's proposed "suite of services" proposal to calculate the FST Differential and the FST toll for the 1996 test-year.

FST Differential Split

Under the terms of the FST Agreement, it is proposed that an upstream and a downstream component to the FST Differential be designated for 1996. The allocation of the FST Differential was negotiated to be 4 cents/GJ to the upstream and 21 cents/GJ to the downstream, based on a 25 cents/GJ FST unit differential. In addition, it was agreed that, after TransCanada had applied an appropriate "suite of

services" approach and calculated an actual FST Differential, any difference between the calculated FST differential and the agreed-to 25 cents/GJ FST Differential would be applied equally (i.e. 50/50) to the upstream and downstream components.

Under the "avoided cost" methodology used prior to the Board's decision in RH-3-94, the FST Differential was designated between upstream and downstream components. Under that methodology, the split, which was first introduced in RH-1-88, Phase 2, was a recognition by the Board that both upstream suppliers and downstream shippers/users contributed to the flexibility and other benefits afforded by FST service. Certain parties, TCGS [formerly known as Western Gas Marketing Limited ("WGML")], Consumers and Union, in placing reliance on that split, included in their gas sales contracts a pass-through of the upstream component of the FST Differential to TCGS. The non-identification by the Board of a split of the FST Differential in its RH-3-94 decision has created contractual uncertainty among the parties to those contracts.

Parties supporting the allocation of the FST Differential between upstream and downstream components, although acknowledging that the split was a negotiated element of the FST Agreement, argued for the inclusion in the Board's decision of an approval of the split for the following reasons:

- It would assist parties to achieve their expectations under the contracts since the gas supply contracts contemplate cost sharing on the basis of a split of the FST Differential.
- It would recognize that the upstream component is an element of the value captured in the price for FST service.
- It would be consistent with the decision in RH-1-88, Phase 2, which recognized the appropriateness of an upstream component of the FST Differential.
- Non-FST tollpayers are unaffected by any splitting of the FST Differential between upstream and downstream components.

The parties who opposed the approval of the split argued that it was not required for toll-setting purposes, that it is only required to resolve a private contractual dispute and that the determination of the split was not an independent valuation of the components but was subject to private negotiations.

Views of the Board

The Board must first decide whether approval of a split of the FST Differential between upstream and downstream is within its jurisdiction. In that regard, the Board notes that its jurisdiction in respect of traffic, tolls and tariffs, as set out in Section 59 of the Act, is very broad and extends beyond the mere setting of tolls. The Board's decisions may properly affect private contractual rights provided that the impacts on contract arrangements are incidental to the Board's exercise of its regulatory powers. As discussed below, an element of the FST Differential is the value to the TransCanada system of the flexibility provided both upstream and downstream by FST. In these circumstances, the Board is satisfied that an identification and approval of an FST Differential split is a matter related to TransCanada's system flexibility and, thus, to traffic, tolls and tariffs. Therefore, after reviewing the arguments presented by parties on this point, the Board has concluded that an approval of the FST Differential split is within its jurisdiction.

Secondly, the Board must be satisfied that a recognition of the split, as put forward by TransCanada, is also appropriate. In that regard, the Board notes that:

- Parties to the FST gas supply contracts entered into those contracts, in part, in reliance on a pass-through of the split as set out in the then-existing FST methodology.
- The allocation is intended to recognize that the operating flexibility provided by FST is due to the ability of both suppliers and the FST shippers to accommodate the service characteristics of FST.
- Parties supporting the FST Differential split have asked for the approval of the split as a transitional measure to facilitate contractual matters and to encourage a positive and cooperative approach to the upcoming consultative process for addressing FST conversion issues.
- The "suite of services" methodology does not, in and of itself, require or produce a split of the FST Differential.
- While there is no direct evidence on the record which could lead to an objective calculation of a split of the FST Differential, all parties directly affected by the FST Differential split in this proceeding have agreed to the value of each of the upstream and downstream components.

Decision

The Board also approves, as a transitional measure, the allocation of the FST Differential between upstream and downstream components as per the terms of the FST Agreement for the 1996 test-year.

Process to Address FST Conversion Issues

The Board's 12 October 1995 amendment to Hearing Order RH-2-95 identified Issue 3 b) as the toll and tariff impact of conversion from FST to FT. It was evident during the hearing that, at this time, parties were of the view that this issue related to an upcoming process wherein the views of all parties would be sought with respect to determining the ways and means by which TransCanada might be able to maintain a suitable level of flexibility once existing levels of FST had been converted to FT.

Within the text of the FST Agreement, it was noted that TransCanada and the FST Parties would co-operate and work together in an FST Study in order to implement a consultative process, involving a broad base of TransCanada's shippers and other stakeholders. This FST Study would examine and eventually could determine the ways and means whereby TransCanada could maintain and possibly enhance, on a long-term basis, the operating flexibility that is currently provided by the service characteristics of FST, including the classes of transportation services that would achieve this end and the corresponding service characteristics and toll-making methodologies.

In final argument, TransCanada indicated that such an examination to effect the conversion would be broad in scope and a fully-open process. TransCanada indicated that the intent of this broad and open approach is to recognize and address as many concerns as may be raised by different stakeholders and that the objective of the discussions will be to identify the optimum scenario which considers both the economic and operational aspects of the conversion.

TransCanada also indicated that it supports the proposal made by The Northeast Group regarding an overall review of alternate firm transportation services and that this proposal would be addressed, as part of the FST Study in 1996, by all participants in the 1997 Tolls Task Force.

TransCanada further stated that the results and conclusions from all discussions and analyses in the consultative process will be included in the comprehensive FST Study. This Study will be filed with the Board when TransCanada ultimately seeks approval from the Board to effect the conversion of FST to FT.

Views of the Board

In the Board's view, the comprehensive nature of the Study and the consultative process to be used by TransCanada should address the concerns of all stakeholders to RH-2-95 including those of The Northeast Group and ProGas.

Decision

The Board does not consider it necessary to issue specific directions in this area at this time.

Interim Toll Request

By letter dated 6 December 1995, TransCanada applied, pursuant to Sections 19(2), 59 and 64 of the Act, for an Order establishing interim tolls effective 1 January 1996. The attached Order TGI-3-95 establishes revised interim tolls effective 1 January 1996 to reflect the approval of the proposed "suite of services" in this Decision as well as to reflect the change in TransCanada's approved rate of return on common equity in accordance with the Board's letter dated 6 December 1995. Order TGI-1-95 is not revoked and continues to apply for the 1995 test-year pending final disposition by the Board of the issue before it re: RH-3-94 on FST. TransCanada will be required to file all affected schedules and revised tolls in compliance with the Phase 1 decisions and the approved rate of return on common equity for 1996.

Disposition

The foregoing together with Order No. TGI-3-95 constitute our Decision and Reasons for Decision on this matter.

(signed by)

J.A. Snider
Presiding Member

K.W. Vollman
Member

R. Illing
Member

Calgary, Alberta
December 1995

1996 Tolls Task Force Resolutions

Resolution 96-1 Tariff Amendment - Sales Meter Stations Charges

The General Terms and Conditions ("GTC"), Section VII will be amended to lower the threshold volume to which additional charges apply to $100 \times 10^3 \text{m}^3$ from $1250 \times 10^3 \text{m}^3$ for sales meter stations regardless of when the meter station was put into service.

Resolution 96-2 Tariff Amendment - FST Curtailment Responsibilities

The FST Toll Schedules will be amended to clarify the wording of the GTC - Section XV such that an FST Shipper is not obligated to accept a Revised Tender unless that Revised Tender is a curtailment.

Resolution 96-3 IT Toll Design Review

The IT Toll Design will remain in effect for the 1996 test-year as agreed upon in Resolution 95-1 by the 1995 Tolls Task Force and as approved by the Board in RH-3-94 with the exception of those changes to the IT Bidding Ceiling and the method of determining the applicable nominated toll level as described in Resolution 96-14. It was further agreed that this issue would be revisited by the 1997 Tolls Task Force.

Resolution 96-4 Tariff Amendment - Imbalances Held at Primary Receipt Points

The GTC, Section II - "APPLICABILITY AND CHARACTER OF SERVICE" and Section XXII - "NOMINATIONS AND UNAUTHORIZED VOLUMES" will be amended such that imbalances will be deemed to have occurred and shall be held at the primary receipt point for the purposes of paying back recorded imbalances.

Resolution 96-5 Tariff Amendment - Nomination Time Change

The nomination time will remain in effect as agreed in Resolution 95-14 by the 1995 Tolls Task Force, and as approved by the Board in RH-3-94, for the 1996 test-year. It was agreed that this issue would be reviewed by the 1997 Tolls Task Force.

Resolution 96-6 Tariff Amendment - IT Nominating Discipline

In an Application dated 23 August 1995, TransCanada requested that the Board approve the Tariff Amendments to the IT Nominating Discipline that were agreed upon by the Tolls Task Force members. In a letter dated 21 September 1995, the Board approved the applied-for tariff amendments. This issue is to be reviewed by the 1998 Tolls Task Force.

Resolution 96-7 Tariff Amendment - IT Bidding Process

In an Application dated 23 August 1995, TransCanada requested that the Board approve the Tariff Amendments to the IT Bidding Process that were agreed upon by the Tolls Task Force. In a letter dated 21 September 1995, the Board approved the applied-for tariff amendments.

Resolution 96-8 TransGas Tolling

The toll design for TransGas will be modified effective 1 January 1996 under which TransGas tolls will be based on the distance from weighted average receipt points to weighted average delivery points in either the Saskatchewan Zone or under the Intra-Saskatchewan contract.

Resolution 96-9 Tariff Amendment - Contract Pressure

The GTC, Section XII - "DELIVERY PRESSURE" will be amended to relieve TransCanada of the responsibility to maintain contract delivery pressure at times, such as during peak loads, when the delivery pressure falls despite reasonable preventative measures taken by TransCanada's to maintain it.

Resolution 96-10 Tariff Amendment - STS Service Classification

The GTC, Section XV - "IMPAIRED DELIVERIES" will be amended to reflect changes to the order of priority of both daily and seasonal curtailments of STS. This issue is to be reviewed by the 1997 Tolls Task Force.

Resolution 96-11 Expedited Processing of Resolutions 96-6 and 96-7

It was resolved that TransCanada would file an application with the Board requesting expedited processing of Resolutions 96-6 and 96-7.

Resolution 96-12 Winter Firm Service (WFS) Price Cap

In its applications dated 5 and 10 July 1995, TransCanada requested Board approval of deviations from TransCanada's Transportation Tariff as it applies to Winter Firm Service for the bid period covering the 1995/96 winter season. In letters dated 7 and 11 July 1995, the Board approved Resolution 96-12 in its entirety.

Resolution 96-13 Temporary Winter Service (TWS) Price Cap

The Tolls Task Force agreed to amend the TWS toll schedule to reflect changes to the TWS price cap and the length of service entitlement for the bid period covering service for the 1995/96 winter season.

Resolution 96-14 IT Service Bidding

The IT Toll Schedule will be amended to change the criteria for the determination of a successful IT bid to the basis of the maximization of financial benefit to the system. For the 1996 test-year, the ceiling for bids east of the Manitoba Delivery Area ("MDA") will be at the 50% load factor of the Philipsburg toll. The ceiling for bids from Empress to and including all of the MDA and south to Emerson ("the West") will be at the 50% load factor level of the Philipsburg toll less the East/West Differential. The IT Service Bidding floors will remain at the 200% load factor level for each domestic toll zone and export point. Nominations are to be evaluated on a maximum net revenue basis. The East/West Differential will be added to each bid from the West for the purpose of assessing financial benefit to the system.

Resolution 96-15 Appropriateness of Basing Other Tolls on the FST Downstream Differential

As a result of the approval of the "suite of services" approach in RH-3-94, there is no longer the identification of an upstream and downstream component of the FST Differential. Consequently, the derivation of certain tolls (i.e. PS, WFS and TWS) which previously relied upon the specification of a downstream differential were required to be changed for 1996. This Resolution is intended only as a temporary measure pending potential resolution by the 1997 Tolls Task Force.

Resolution 96-16 General Terms and Conditions Update

Amendments to various sections of TransCanada's GTC will be made to reflect several new services approved in RH-3-94: Long-term Winter Firm Service (LT-WFS), Enhanced Capacity Release Service (ECR) and Firm Backhaul Transportation Service.

Resolution 96-17 Tariff Update re: "TransCend"

Amendments to the GTC will be made to remove all references to the word "TransCend".

Resolution 96-18 Tariff Amendment - Billings and Payments

Amendments to the GTC will be made so that the billing date for all shippers will be the 10th of each month and the invoice payment date will be the 20th of each month. All export customers will continue to pay on the 25th of each month until expiration of each shipper's export contract. The payment date for all renewals and new export contracts will reflect a payment date of the 20th of the month.

Resolution 96-19 Diversion Policy Adjustment

The GTC, Section XV - "IMPAIRED DELIVERIES" will be amended to give the diversion of gas away from firm contractual delivery points, which are downstream of the system restriction, priority over the diversion of gas away from firm contractual delivery points which are not downstream of the system restriction.

Resolution 96-20 Single Handshakes

Single Handshakes will be incorporated into TransCanada's Transportation Tariff to provide shippers and gas suppliers assurances of service. This will also enable TransCanada to avoid operational imbalances in excess of a certain level by nominating against Handshake Account Holders where parties have not honoured their Handshake arrangements.

Resolution 96-21 Tariff Update re: "ISW-1"

The GTC, Section XVI - "DETERMINATION OF DAILY DELIVERIES" will be amended to update references to "ISW-1" to read "Maximum IT Toll between those two points or areas..." to reflect the removal of the IT tiers.

ORDER TGI-3-95

IN THE MATTER OF the *National Energy Board Act*
("the Act") and the Regulations made thereunder; and

IN THE MATTER OF a request dated 6 December 1995
by TransCanada PipeLines Limited ("TransCanada")
requesting the Board to issue an Order establishing interim
tolls effective 1 January 1996.

BEFORE the Board on 21 December 1995.

WHEREAS the Board has received a request from TransCanada, dated 6 December 1995, pursuant to Sections 19(2), 59 and 64 of the *National Energy Board Act*, for an Order establishing interim tolls effective 1 January 1996;

IT IS ORDERED, Pursuant to Sections 19(2), 59 and 64 of the Act that:

1. Effective 1 January 1996, TransCanada's current interim tolls pursuant to TGI-1-95 shall be revised by Order TGI-3-95 to reflect the approval of the proposed "suite of services" as set out in the Phase 1 Decision for RH-2-95 as well as the change in TransCanada's approved rate of return on common equity in accordance with the Board's letter dated 6 December 1995; and
2. TransCanada is directed to file with the Board and serve copies on parties to RH-2-95 and its shippers forthwith all schedules and resulting tolls reflecting this decision.

NATIONAL ENERGY BOARD

(signed by)

J.S. Richardson
Secretary

Chapter 4

Incentive Cost Recovery & Revenue Sharing Settlement

TransCanada PipeLines Limited Incentive Cost Recovery and Revenue Sharing Settlement

Article 1 Introduction

- 1.1 TransCanada PipeLines Limited ("TCPL") and its stakeholders, as represented by the Tolls Task Force, (collectively "the Parties") propose the implementation of this Incentive Cost Recovery and Revenue Sharing Settlement which will be applied to determine the Net Revenue Requirement utilized by TCPL in the calculation of tolls for the transportation of natural gas on the TCPL system, in accordance with the toll methodology and pursuant to the TCPL Transportation Tariff approved from time to time by the National Energy Board ("NEB").
- 1.2 The primary objectives of this Settlement are the following:
- i) to more closely align the interests of the Parties by providing a framework which encourages efficiency gains, cost minimization and maximization of system utilization;
 - ii) to provide for the lowest possible costs and the highest possible throughput without compromising pipeline efficiency and reliability or adversely impacting safety or the environment;
 - iii) to result in tolls to shippers that will be lower than they otherwise would have been if determined under traditional cost of service regulation;
 - iv) to maintain or improve the historic high level of service quality of the TCPL system;
 - v) to maintain or improve the financial integrity of TCPL;
 - vi) to preserve firm shippers' flexibility and ability to fully utilize their transportation contracts. The service attributes of FT service such as diversions, single handshakes, assignments, capacity release and enhanced capacity release, each reflecting their current Transportation Tariff and TCPL policy provisions, will be maintained or enhanced, subject to possible change by the Tolls Task Force and the NEB; and
 - vii) to provide for the active management by TCPL of its foreign exchange and debt management programs in order to minimize costs.

- 1.3 This Settlement shall apply only to the mainline business of TCPL which is subject to the jurisdiction of the NEB.
- 1.4 The Parties enter into this Settlement with the understanding that no single component of the Settlement is to be construed as representing the position of either TCPL or any stakeholder on the appropriate result that would be obtained in the absence of the Settlement. The Parties intend this Settlement to be viewed as a whole, and that there should be no prejudice to the positions of TCPL or any stakeholder in the future. No element of the Settlement should be considered as acceptable to either TCPL or any stakeholder in isolation from all other aspects of the Settlement. All elements of the Settlement are inextricably linked.
- 1.5 The Parties intend that the Settlement be applicable solely to TCPL and will have no application to, or form a precedent for, TCPL beyond the term of this Settlement.
- 1.6 The Parties agree that if this Settlement is not approved in its entirety by the NEB, or if it is subsequently materially varied by an NEB Order, the Settlement will terminate.
- 1.7 The Parties acknowledge that the NEB has exclusive jurisdiction over the establishment of TCPL's tolls and that any matters respecting the derivation of tolls under this Settlement shall be determined by the NEB.
- 1.8 Furthermore, the Parties contemplate that the NEB will play the following role regarding the implementation of this Settlement and the resulting calculation of TCPL tolls:
 - i) review and approve the reasonableness of the forecast of items covered in the Flow-Through Cost Envelope;
 - ii) adjudicate all disputes which arise out of this Settlement and which cannot be resolved amongst the Parties in accordance with the terms of this Settlement;
 - iii) be the arbiter of matters involving additions or changes to Rate Base, except to the extent it is affected by a Capital Efficiency Mechanism;
 - iv) review and adjudicate on the disposition of Flow-Through Deferral Accounts pursuant to Section 8.5 and rule on any complaints filed in connection with such matter; and
 - v) generally fulfil its mandate as required under the *National Energy Board Act*.
- 1.9 The Parties intend this Settlement to be interpreted and applied in good faith and in a manner consistent with the spirit of the primary objectives set out in Section 1.2.

Article 2 Definitions

- 2.1 In this Settlement the following terms have the meanings set out below:
 - (1) **Actual Debt Portfolio** means TCPL's debt portfolio comprised of funded debt as at 31 December, 1995 and as amended from time to time to reflect fluctuations in TCPL's debt position.

- (2) **Base Discretionary Miscellaneous Revenue** means the annual benchmark revenue level for Discretionary Miscellaneous Revenue to be applied in the sharing mechanisms discussed in Article 15.
- (3) **Capital Efficiency Mechanism** means that mechanism referred to in Article 11.
- (4) **Carrying Charges** means the carrying charges that will be applied monthly to the average of the month's opening and closing balances in each deferral account at a monthly rate equivalent to i) in the case of deferral account balances related to the Interest Rate Management Program and the Foreign Exchange Management Program, the monthly average of the one month bankers acceptance rate for the month immediately preceding the current month, as reported by Reuters Information Services, page CDOR, plus applicable stamping fees, and ii) in the case of balances in all other deferral accounts, one-twelfth of TCPL's annual Rate of Return on Rate Base. Carrying Charges will apply to all Flow-Through Deferral Accounts and all Incentive Based Deferral Accounts.
- (5) **Cash Flow** means the net of all monies received and paid in each Test Year of this Settlement in respect of current Test Year hedge transactions under the Interest Rate Management Program. For greater certainty, monies received or paid in a Test Year in respect of future years shall be amortized over the term of the underlying hedge instrument.
- (6) **Cost of Service** means the annual owning and operating costs of the TCPL pipeline system.
- (7) **Depreciation Expense** means the product obtained by multiplying the depreciation rates for the TCPL system in effect at 31 December, 1995, by the actual balance of gross plant included in Rate Base.
- (8) **Discretionary Miscellaneous Revenue** means revenue calculated from the Imputed Fixed Cost component of the applicable toll for all new and existing services not included within the definitions of Firm Service Revenue and Non-Discretionary Miscellaneous Revenue. Discretionary Miscellaneous Revenue will include, but is not limited to, revenue from downstream diversions, STFT service, FBT service, ECR service, TWS, PS, IT service, IT Backhaul service, WFS, FT overrun and STS overrun.
- (9) **FERC** means the Federal Energy Regulatory Commission of the United States of America.
- (10) **FT, FST, LT-WFS, STS, STFT, TWS, PS, IT, IT Backhaul, FBT and ECR** have the meanings ascribed to such terms in the TCPL Transportation Tariff, as it may be amended from time to time (see Schedule 2.1).
- (11) **Fixed Cost Allocation Units** means the measurement units associated with the forecast of fixed volume and fixed volume distance for all firm transportation services not afforded by-product treatment for the Test Year.

- (12) **Firm Service Revenue** means gross toll revenue from the sale of FT and FST services.
- (13) **Flow-Through Cost Envelope** means those costs under this Settlement which flow through directly to shippers, namely Depreciation Expense; Income Taxes; Insurance Deductible Costs; Foreign Exchange on Debt Retirements; Foreign Exchange Costs related to TBO Costs and Interest Expense (exclusive of the effect of the Foreign Exchange Management Program); Return on Rate Base; and SCC Costs.
- (14) **Flow-Through Deferral Account** means each of the deferral accounts where annual variances between actual and Test Year Costs relating to Depreciation Expense; Income Taxes; Insurance Deductible Costs; Foreign Exchange on Debt Retirements; Foreign Exchange Costs on TBO Costs and Interest Expense; Return on Rate Base; SCC Costs; and certain other flow-through mechanisms or revenue sharing programs described in this Settlement will be recorded, together with applicable Carrying Charges, and, subject to the specific limitations set out in this Settlement, applied to the Cost of Service in the year immediately following the Test Year.
- (15) **Foreign Exchange Benchmark** means the arithmetic average of the noon day Bank of Canada spot exchange rate of the applicable foreign currency over the calculation period. The calculation period for Interest Expense shall commence six months in advance of and include the Interest Expense payment due date and three months in advance of and include the TBO Cost payment due date for TBO Costs. The foreign exchange rates to be referenced for each day of the calculation period will be those rates reported by Reuters Information Services, page BOFC on each such day.
- (16) **Foreign Exchange on Debt Retirements** means the foreign exchange expense incurred on the date of retiring those debt obligations denominated in currencies other than Canadian dollars.
- (17) **Foreign Exchange Cost** means the foreign exchange cost incurred in respect of TBO Costs and Interest Expense denominated in currencies other than Canadian dollars, exclusive of the effect of the Foreign Exchange Management Program.
- (18) **Foreign Exchange Management Program** means that program referred to in Article 13.
- (19) **Fuel Incentive Mechanism** means that mechanism referred to in Article 12.
- (20) **Gas Related Expense** means provincial sales and use taxes on natural gas consumed as fuel by TCPL's natural gas fuelled compression facilities and costs of electric power consumed by TCPL's electrical power driven compression facilities, as such natural gas and electrical power facilities exist as at 31 December, 1995.
- (21) **GLGT** means Great Lakes Gas Transmission Limited Partnership.

- (22) **GLGT Rate Mechanism** means the mechanism described in Section 5.6 that will adjust GLGT TBO Rates in the event that GLGT applies to the FERC for a rate increase during the term of this Settlement.
- (23) **Imputed Fixed Cost** means the fixed costs that are recovered in the demand component of tolls. For FST and tolls other than firm transportation tolls, the term means any fixed costs recovered in such toll irrespective of whether such recovery occurs in the demand or commodity component of such toll or in both such components.
- (24) **Incentive Based Deferral Account** means each of the deferral accounts where the shippers' share of cost variances between actual and Test Year Costs in the Incentive Cost Envelope and of shared revenues generated by other incentive programs, each determined in accordance with the terms of this Settlement, are recorded and, together with applicable Carrying Charges, applied to the Cost of Service in the year immediately following the Test Year.
- (25) **Incentive Cost Envelope** means those costs subject to a sharing mechanism discussed in Article 4, including Gas Related Expense; Municipal and Other Taxes; NEB Cost Recovery Expense; OM&A Expense; and TBO Costs.
- (26) **Incentive Revenue** means positive and negative revenues accruing to TCPL's shareholders as a result of the incentive sharing mechanisms described in, or to be established pursuant to Articles 4, 10, 11, 12, 13, 14 and 15.
- (27) **Income Taxes** means the federal and provincial income tax and large corporation tax accrued and payable for the Test Year and calculated on a flow-through basis together with any payments for reassessments related to prior years.
- (28) **Insurance Deductible Costs** means costs not recovered from insurers in an insurance claim and calculated as the aggregate of 1/3 of the insurance deductible costs experienced in the three years prior to the current Test Year (as per the NEB RH-3-86 Decision). These costs are separate and distinct from insurance premium costs which are included in OM&A Expense.
- (29) **Interest Expense** means the interest accrued on the Actual Debt Portfolio.
- (30) **Interest Rate Management Program** means that program referred to in Article 14.
- (31) **Miscellaneous Revenue** means the annual aggregate of Non-Discretionary Miscellaneous Revenue and Discretionary Miscellaneous Revenue.
- (32) **Municipal and Other Taxes** means all municipal and provincial capital and place of business taxes (excluding Income Taxes and other sales and use taxes) paid during the Test Year determined in accordance with the provisions of Article 6.
- (33) **NEB** means the National Energy Board of Canada.
- (34) **NEB Cost Recovery Expense** means TCPL's allocated share of the NEB's annual operating costs.

- (35) **Net Adjustment Factor** means for each applicable Test Year, the Program Adjustment Factor less the Productivity Adjustment Factor plus 100%. The resulting Net Adjustment Factor for each Test Year of this Settlement shall be as follows: 1997 = 102.75%; 1998 = 102.25%; and 1999 = 101.75%.
- (36) **Net Revenue Requirement** means TCPL's forecast annual Cost of Service less forecast Miscellaneous Revenue, adjusted for all Flow-Through Cost Deferral Accounts and Incentive Based Deferral Accounts, as determined in accordance with Section 3.6.
- (37) **Non-Discretionary Miscellaneous Revenue** means revenue calculated from the Imputed Fixed Cost component of the applicable toll derived from services that support the need for facilities construction, excluding FT and FST transportation services. These services include LT-WFS, STS, sales meter station and incremental delivery pressure.
- (38) **Non-Routine Adjustment** means non-routine cost or revenue adjustments described in Article 7 that are made to the applicable Test Year's Net Revenue Requirement.
- (39) **OM&A Expense** means the annual expense, excluding SCC Costs and Insurance Deductible Costs, associated with the operation, maintenance and administration of the TCPL pipeline system.
- (40) **Productivity Adjustment** means the reduction to be applied annually to the Program Adjustment Factor to account for assumed productivity gains to be realized by TCPL through the term of this Settlement. The Productivity Adjustment for each year of this Settlement shall be as follows: 1997 = 0.50%, 1998 = 0.75%, and 1999 = 1.00%.
- (41) **Program Adjustment Factor** means the gross rate at which the cost components of the Incentive Cost Envelope will be adjusted upward in each year of the Settlement. The Program Adjustment Factor shall be 3.25% for 1997; 3.00% for 1998; and 2.75% for 1999. (The Program Adjustment Factor reflects the fact that TCPL plant has increased significantly over the period immediately prior to the commencement of this Settlement, thereby requiring increased maintenance over the term of this Settlement.)
- (42) **Rate Base** means TCPL's annual average rate base.
- (43) **Rate of Return** means the sum of the weighted average cost of debt including funded and unfunded debt (approximately 60% of total capitalization), the weighted average cost of preferred stock (approximately 10% of total capitalization), and the Rate of Return on Common Equity (30% of total capitalization) as each applies to TCPL.
- (44) **Rate of Return on Common Equity** means TCPL's authorized rate of return on common equity that is determined for each Test Year in accordance with the methodology established in the NEB RH-2-94 Decision and is based on a deemed common equity component of 30% of total capitalization.

- (45) **SCC Costs** means all costs directly related to stress corrosion cracking pipeline maintenance investigations on all sections of the TCPL system, including but not limited to pigging costs, investigative digging costs and hydrostatic testing costs, and stress corrosion cracking research related costs.
- (46) **Settlement** means this Incentive Cost Recovery and Revenue Sharing Settlement and all Schedules attached to this Incentive Cost Recovery and Revenue Sharing Settlement, as each may be amended or supplemented from time to time.
- (47) **TBO Costs** means the annual costs, in Canadian dollars, for transportation services that TCPL contracts for from time to time on other pipelines, including but not limited to GLGT, TQM and Union, determined in accordance with the provisions of Articles 4 and 5.
- (48) **TBO Rates** means the rates or tolls (in the currency of the charging pipeline) paid by TCPL for transportation services contracted from time to time on other pipelines, including, but not limited to GLGT, TQM and Union, and which are used to calculate TBO Costs.
- (49) **TQM** means TQM Pipeline and Company, Limited Partnership.
- (50) **Test Year** means the calendar year January 1st to December 31st for which the Net Revenue Requirement and resulting tolls are applicable.
- (51) **Test Year Costs** means the sum of those costs included in the Incentive Cost Envelope, using the methodology set out in this Settlement, and those costs included in the Flow-Through Cost Envelope as forecast by TCPL in the usual fashion, both which costs are included in the Net Revenue Requirement which is used in determining tolls for the Test Year.
- (52) **Tolls Task Force** means that group of interested parties which qualify for and which have formally registered with TCPL in any year to address issues relating to TCPL's tolls, tariff and services in such year.
- (53) **Union** means Union Gas Limited.

2.2 In interpreting this Settlement, the Parties agree as follows:

- (1) **Currency:** Unless otherwise stated, all references in this Settlement to sums of money are expressed in lawful money of Canada.
- (2) **Date for Actions:** In the event that the date on which any action is required to be taken hereunder by any of the Parties is not a business day in the place where the action is required to be taken, such action shall be required to be taken on the next succeeding day which is a business day in such place.
- (3) **Plural:** In this Settlement, unless the contrary intention appears, words importing the singular include the plural and vice versa.

- (4) **Headings:** The division of this Settlement into articles, sections and paragraphs and the insertion of headings are for the convenience of reference only and shall not affect in any way the meaning or interpretation of this Settlement.
- (5) **Section References:** Unless the context otherwise requires, references in this Settlement to an article, section, paragraph, or schedule by number, letter or otherwise refer to the article, section, paragraph, or schedule, respectively, bearing that designation in this Settlement.
- (6) **Statutes:** References in this Settlement to any statute or sections thereof shall include such statute, as amended or substituted, and any regulation promulgated thereunder from time to time in effect.
- (7) **Variances:** References to cost or revenue variances can be negative or positive.
- (8) **Year:** Unless otherwise stated, all references to a year shall mean a calendar year.
- (9) **Tolls Task Force Approval:** Unless otherwise stated, all matters in this Settlement which are to be agreed to or approved by the Tolls Task Force must be agreed to or approved in accordance with the Tolls Task Force procedures as they relate to resolutions passed by that body.

Article 3 Determination of Net Revenue Requirement

- 3.1 The determination of TCPL's Net Revenue Requirement for the purpose of calculating transportation tolls for each Test Year of this Settlement shall be based on a formula which includes Incentive Cost Envelope programs, Flow-Through Cost Envelope programs, Miscellaneous Revenues and other incentive programs as detailed herein.
- 3.2 The costs included in the Incentive Cost Envelope are to be predetermined annually in accordance with the provisions of Articles 4, 5 and 6 and any variances realized over the Test Year between the actual amounts incurred and those Test Year Costs will be shared by TCPL and its shippers in the manner set out by this Settlement.
- 3.3 Miscellaneous Revenue will be forecast in each Test Year and variances determined and applied in accordance with the provisions of Article 9, for Non-Discretionary Miscellaneous Revenue, and Article 15 for Discretionary Miscellaneous Revenue.
- 3.4 Amounts included in the Flow-Through Cost Envelope shall be forecast in each Test Year by TCPL in the usual fashion. Subject to the review and complaint procedure set out in Section 8.5, all variances between the actual costs in the Flow-Through Cost Envelope and the corresponding items in the Test Year Costs will flow through directly to the Cost of Service in the year immediately following the Test Year in the manner set out by this Settlement.
- 3.5 Variances in revenues realized over the Test Year on items included in the incentive programs described in Article 10 will be shared by TCPL and its shippers in the manner set out in Articles 11, 12, 13, 14 and 15.

- 3.6 The Net Revenue Requirement to be applied in the calculation of transportation tolls for the 1997 through 1999 Test Years shall be calculated in accordance with the following formula, subject to the resolution of any complaints filed:

$$\text{Net Revenue Requirement} = [\mathbf{a} \times \mathbf{b}] + \mathbf{c} + \mathbf{d} + \mathbf{e} - \mathbf{f}$$

Where:

- a = actual costs in the Incentive Cost Envelope for the year prior to the Test Year;
 - b = the Net Adjustment Factor;
 - c = forecast of Test Year Flow-Through Cost Envelope;
 - d = aggregate of Incentive Based Deferral Accounts for the year immediately prior to the Test Year, positive or negative;
 - e = aggregate of Flow-Through Deferral Accounts for the year immediately prior to the Test Year, positive or negative; and
 - f = Miscellaneous Revenue.
- 3.7 The elements of this formula and how the applicable costs, revenues, variances and adjustments are to be calculated and applied are set out in detail in the Articles which follow.

Article 4 Incentive Cost Envelope

- 4.1 The Incentive Cost Envelope is made up of the following components:
- TBO Costs
 - OM&A Expense
 - Gas Related Expense
 - Municipal and Other Taxes
 - NEB Cost Recovery Expense
- 4.2 The Incentive Cost Envelope for the 1996 Test Year shall total \$678,762,000 (includes \$62,577,000 in foreign exchange cost related to TBO cost based on a U.S. exchange rate of \$1.36). Subject to the specific adjustments and qualifications relating to TBO Costs and Municipal and Other Taxes set out in Articles 5 and 6 respectively, the Incentive Cost Envelope for each Test Year subsequent to 1996 shall be determined by multiplying the actual costs in the Incentive Cost Envelope experienced in the year immediately preceding the Test Year, excluding any Non Routine Adjustments, by the applicable Net Adjustment Factor.
- 4.3 Subject to the specific adjustments and qualifications relating to TBO Costs and Municipal and Other Taxes set out in Articles 5 and 6 respectively, variances between the actual costs contained in the Incentive Cost Envelope and the corresponding items in the Test Year Costs shall be shared equally by TCPL and its shippers. One half of such cost variance shall be recorded in an Incentive Based Deferral Account and applied to the Cost

of Service in the year immediately following the Test Year. The balance of the variance shall accrue to TCPL as Incentive Revenue.

Article 5 TBO Costs

- 5.1 Transportation service or capacity contracted for by TCPL and in effect on other pipelines as at 31 December, 1995 is set out in Schedule 5.1. The daily contracted transportation service or capacity set out in Schedule 5.1 includes 50 MMcf/d of winter only service on the GLGT system and an additional 50 MMcf/d of annual M12 service from Dawn to Kirkwall on the Union system over the 31 October, 1995 M12 service level. During the term of this Settlement TCPL will not contract for any transportation service or capacity in addition to the contracted service or capacity set out in Schedule 5.1 without the prior approval of the Tolls Task Force or the NEB unless such contract includes a condition precedent which makes TransCanada's obligations under the contract conditional on TransCanada obtaining approval of the additional transportation service or capacity by the Tolls Task Force or the NEB.
- 5.2 Subject to the application of Section 5.6, GLGT and Union TBO Costs will be forecast for each Test Year after 1996 as the product obtained by multiplying each of the following: the actual GLGT and Union TBO Rates in effect at the end of the year immediately preceding the Test Year; the Net Adjustment Factor; the contracted transportation service for the Test Year; and the forecast Canadian-U.S. exchange rate, where applicable. In the event that Section 5.6 applies in a Test Year after 1996, GLGT TBO Costs for such Test Year shall be calculated as the product obtained by multiplying the GLGT Rate (after giving effect to the GLGT Rate Mechanism), the contracted transportation service for the Test Year and the forecast Canadian-U.S. exchange rate. The TQM TBO Cost component for each Test Year after 1996 will be forecast as the product obtained by multiplying the prior year's actual TQM TBO Cost component by the Net Adjustment Factor. GLGT TBO Rates, excluding the effect of any rate adjustment resulting from the FERC's Order on Remand, GLGT72 FERC ¶ 61, 081 (1995), Union TBO Rates or TQM TBO Costs payable by TransCanada will be adjusted in each Test Year to reflect any refunds or surcharges associated with TCPL's contracted transportation service in order to reflect the rates effectively paid or cost incurred by TCPL in the year immediately preceding the Test Year.
- 5.3 Variances between TBO Costs included in the Test Year Costs and the actual TBO Costs for that Test Year, excluding any overrun costs on the GLGT and Union systems, any Foreign Exchange Costs and any variances resulting from the adjustments set out in Sections 5.4 and 5.5, shall be shared equally by TCPL and its shippers and allocated in the manner described in Section 4.3. Any overrun costs on the GLGT and Union systems shall be recorded in a Flow-Through Deferral Account and, subject to the review and complaint procedure set out in Section 8.5, applied to the Cost of Service in the year immediately following the Test Year.
- 5.4 Variances in GLGT and Union TBO Costs that occur in each Test Year resulting from changes in TCPL's contracted transportation services, either as to volumetric level or changes in receipt or delivery points, shall be recorded in a Flow-Through Deferral Account and, subject to the review and complaint procedure set out in Section 8.5, applied to the Cost of Service in the year immediately following the Test Year. Such variances shall be determined as follows:

- i) in the case of changes from year to year in the level of TCPL's contracted transportation, the variance shall be the applicable TBO Rate multiplied by the incremental change in contracted transportation service levels;
 - ii) in the case of changes from year to year in receipt or delivery points, the variance shall be the resulting change in the applicable TBO Rate, multiplied by the applicable contracted transportation service level; and
 - iii) in the case of changes from year to year to both, the variance shall be the sum of the variances calculated using the methods set out in paragraphs i) and ii) above.
- 5.5 Variances in TQM TBO Costs that occur in each Test Year which result from changes in the level of TCPL's contracted transportation service, an NEB approved expansion of the TQM system or an NEB approved change in the cost allocation procedure or methodology, shall be calculated by subtracting the Test Year TQM TBO Costs from the actual TQM TBO Costs, including such increased service levels, system expansions or revised cost allocation. This variance shall be recorded in a Flow-Through Deferral Account and, subject to the review and complaint procedure set out in Section 8.5, applied directly to the Cost of Service in the year immediately following the Test Year. Nothing in this Section 5.5 shall be interpreted as implying that any facilities associated with an NEB approved expansion of the TQM system would or would not be included in TCPL's Eastern Zone. The toll impact of such expansion shall be determined by the NEB.
- 5.6 In the event that GLGT files for a rate increase with the FERC during the term of this Settlement, the "GLGT Rate Mechanism" shall be triggered and will apply as follows. The GLGT TBO Rate component of the Incentive Cost Envelope shall be adjusted upward from the GLGT TBO Rate in effect at the end of the year immediately preceding the Test Year to reflect the greater of the applicable Net Adjustment Factor and the filed GLGT rate increase. The Net Adjustment Factor shall be applied to the GLGT TBO Cost component in all subsequent years of the Settlement. The Net Adjustment Factor shall continue to be applied to all non-GLGT TBO Cost components in the manner described in Section 5.2.
- 5.7 If the GLGT TBO Rate eventually approved is less than the rate increase applied for by GLGT, but greater than the GLGT TBO Rate which would have resulted from applying the applicable Net Adjustment Factor to the GLGT TBO Rates in effect at the end of the year immediately preceding the Test Year, then any related refund actually received by TCPL from GLGT, plus any incremental revenues received by TCPL as a result of applying the applicable Net Adjustment Factor to the higher GLGT TBO Rate, shall be recorded in a Flow-Through Deferral Account and, subject to the review and complaint procedure set out in Section 8.5, applied to the Cost of Service in the year immediately following the Test Year. If the approved GLGT TBO Rate increase is less than or equal to the Net Adjustment Factor applicable to the Test Year in which the approved GLGT TBO Rate became effective, TCPL shall rebate to its shippers the portion of any refund or any subsequent incremental revenue received which corresponds to the difference between the rate increase filed by GLGT and the Net Adjustment Factor. In the event that the GLGT TBO Rate increase is not resolved during the term of this Settlement, or any extension or renewal thereof, any refund actually received by TCPL from GLGT which under the terms of this Settlement is to be credited to Cost of Service in the year immediately following the Test Year, shall be recorded in a deferral account and TCPL

will apply to the NEB to have these funds applied to the Cost of Service in the applicable Test Year.

- 5.8 Any refund or rebate paid to TCPL by GLGT, together with any applicable carrying costs, as a result of the FERC's Order on Remand, GLGT72 FERC ¶ 61, 081 (1995), shall be passed on to TCPL's shippers in the manner directed by the NEB. In the event that such Order on Remand is overturned on review or appeal after any such refund or rebate has been disbursed by TCPL, all amounts required to be reimbursed by TCPL to GLGT, together with any applicable carrying costs, shall be recovered by TCPL in a manner to be determined by the NEB.

Article 6 Municipal and Other Taxes

- 6.1 Increases in Municipal and Other Taxes resulting from additions to Rate Base shall be recorded in a Flow-Through Deferral Account and, subject to the review and complaint procedure set out in Section 8.5, applied to the Cost of Service in the year immediately following the Test Year.
- 6.2 Increases in Municipal and Other Taxes in excess of 5% per annum, net of Rate Base related increases, shall be recorded in a Flow-Through Deferral Account and, subject to the review and complaint procedure set out in Section 8.5, applied to the Cost of Service in the year immediately following the Test Year.
- 6.3 Municipal and Other Taxes for Test Years subsequent to 1996 shall be calculated by multiplying actual Municipal and Other Taxes for the year immediately preceding the Test Year, including increases relating to Rate Base additions, by the applicable Net Adjustment Factor. Variances between Municipal and Other Taxes included in the Test Year Costs and actual Municipal and Other Taxes, net of the adjustments described in Sections 6.1 and 6.2 for that Test Year, shall be shared equally by TCPL and its shippers and allocated in the manner described in Section 4.3.

Article 7 Non-Routine Adjustments

- 7.1 The following items are examples of unanticipated changes in costs included in the Incentive Cost Envelope or in Discretionary Miscellaneous Revenue in any Test Year which shall be treated as Non-Routine Adjustments:
- (i) changes in revenues or expenses resulting from changes in applicable accounting standards (Canadian generally accepted accounting principles and Gas Pipeline Uniform Accounting Regulations);
 - (ii) changes in costs, other than TBO Costs, or revenues due to orders or directives issued by a regulatory agency having jurisdiction;
 - (iii) changes in legislation, regulations or ordinances or the issuance of orders or directives which result in changes to safety, health, or environmental requirements or practices;
 - (iv) changes in Gas Related Expense due to the addition of new facilities or changes in fuel tax rates, tax policy or legislation relating to compressor fuel or electrical power consumption; and

- (v) conversion of FST service to FT service.
- 7.2 All Non-Routine Adjustments resulting in changed costs included in the Incentive Cost Envelope or changes in Miscellaneous Revenue, other than Discretionary Miscellaneous Revenue, that occur in the Test Year shall be recorded in a Flow Through Deferral Account and, subject to the review and complaint procedure set out in Section 8.5, be applied to the Cost of Service in the year immediately following the Test Year. All Non-Routine Adjustments resulting in an adjustment to Discretionary Miscellaneous Revenue will be applied to adjust Base Discretionary Miscellaneous Revenue of each Test Year that the applicable Non-Routine Adjustment affects Discretionary Miscellaneous Revenue. All Non-Routine Adjustments shall be excluded from the calculation of variances between the Test Year Costs and actual costs in the Incentive Cost Envelope in the year in which such Non-Routine Adjustments occur.
- 7.3 All Non-Routine Adjustments resulting in changed costs or revenues that are determined by TCPL, acting reasonably, to be re-occurring in any year or years subsequent to the Test Year shall be recorded in a Flow-Through Deferral Account in the Test Year of such re-occurrence and, subject to the review and complaint procedure set out in Section 8.5, applied to the Cost of Service in the year immediately following the Test Year.

Article 8 Flow-Through Cost Envelope

- 8.1 The Flow-Through Cost Envelope is made up of the following components:
- Return on Rate Base
 - Income Taxes
 - Depreciation
 - Foreign Exchange on Debt Retirements
 - Foreign Exchange Costs
 - Insurance Deductible Costs
 - SCC Costs
- 8.2 The Flow-Through Cost Envelope will be forecast by TCPL in the usual fashion for each Test Year of this Settlement and included in Test Year Costs used in the calculation of the Net Revenue Requirement for toll making purposes in the applicable Test Year. To the extent that the actual costs in the Flow-Through Cost Envelope vary from the corresponding items in the Test Year Costs, the variances shall be captured in a Flow-Through Deferral Account and, subject to the review and complaint procedure set out in Section 8.5, applied to the Cost of Service in the year immediately following the Test Year.
- 8.3 Rate Base will be redetermined in each Test Year to reflect additions to and retirements from gross plant, Depreciation Expense and changes in other Rate Base components.
- 8.4 The estimated Foreign Exchange on Debt Retirements and associated Income Tax related to the retirement of U.S. dollar denominated debt and all applicable Carrying Charges will be recovered in the year of retirement as part of the Flow-Through Cost Envelope. The difference between the estimated and actual Foreign Exchange on Debt Retirements for any Test Year, including Carry Charges, will be deferred and recovered in the year immediately following the Test Year through a Flow Through Deferral Account.

8.5 Information with respect to all variances and Non-Routine Adjustments to be recorded in Flow-Through Deferral Accounts in accordance with the terms of this Settlement will be provided to the Tolls Task Force by TCPL on or before 1 March of each year. In the event that the Tolls Task Force cannot, for any reason, agree on the disposition of these Flow-Through Deferral Account balances by 31 March of such year, such balances shall be applied to the Cost of Service in the current Test Year. Notwithstanding the foregoing, on or before 15 April of such Test Year, any shipper may file a complaint with the NEB regarding the disposition of all or any such Flow-Through Deferral Account balances. Any complaint must also contain a request by the shipper to make TCPL's tolls interim effective 1 April pending the resolution by the NEB of the complaint.

Article 9 Miscellaneous Revenue

- 9.1 Non-Discretionary Miscellaneous Revenue shall be forecast by TCPL and approved by the NEB for each Test Year during the term of this Settlement and applied in the determination of the Net Revenue Requirement for toll making purposes in the applicable Test Year.
- 9.2 Variances between forecast and actual Non-Discretionary Miscellaneous Revenue earned in a Test Year shall be recorded in a Flow-Through Deferral Account and, subject to the review and complaint procedure set out in Section 8.5, applied to the Cost of Service in the year immediately following the Test Year.
- 9.3 The determination of and adjustments to Discretionary Miscellaneous Revenue, and the effect to be given to any variances, shall be determined in accordance with Article 15.
- 9.4 Miscellaneous Revenue shall be applied in the determination of the Test Year Net Revenue Requirement in accordance with the formula set out in Section 3.6.

Article 10 Other Incentive Programs

- 10.1 In addition to the cost sharing mechanisms contained within the Incentive Cost Envelope described above, but subject to the qualifications set out in Articles 11 and 12, the following additional cost and revenue sharing mechanisms will be implemented during the term of this Settlement:
- Capital Efficiency Mechanism
 - Fuel Incentive Mechanism
 - Foreign Exchange Management Program
 - Interest Rate Management Program
 - Discretionary Miscellaneous Revenue Sharing
- 10.2 The operation of each of these incentive mechanisms and their effect on the determination of the Net Revenue Requirement for each Test Year are set out in Articles 11, 12, 13, 14 and 15.

Article 11 Capital Efficiency Mechanism

- 11.1 A Capital Efficiency Mechanism will not be employed for the 1996 Test Year. The Tolls Task Force shall establish a study group whose objective will be to examine various

alternatives for a Capital Efficiency Mechanism. The study group may, with the prior approval of the Tolls Task Force, retain a professional consultant to advise them however, the full cost of such professional consultant shall be recorded in a Flow Through Deferral Account and, subject to the review and complaint procedure set out in Section 8.5, be applied to the Cost of Service in the year immediately following the Test Year. This study group will report its recommendation to the Tolls Task Force by 1 September, 1996, or such later date as may be agreed to by the Tolls Task Force.

- 11.2 If such recommendation is approved by the Tolls Task Force, the Capital Efficiency Mechanism will be implemented in accordance with the resolution of the Tolls Task Force. If the recommendation is not approved by the Tolls Task Force, no Capital Efficiency Mechanism will be implemented during the term of this Settlement.

Article 12 Fuel Incentive Mechanism

- 12.1 A Fuel Incentive Mechanism will not be employed for the 1996 Test Year. The Parties agree to continue discussions through the Tolls Task Force in an effort to develop a Fuel Incentive Mechanism for the balance of the term of this Settlement.

Article 13 Foreign Exchange Management Program

- 13.1 Upon approval of this Settlement by the NEB, and as soon thereafter as is practicable, TCPL shall implement the Foreign Exchange Management Program described below to attempt to reduce foreign exchange expenses. Subject to Sections 13.5 and 13.6, gains and losses incurred through this program will be shared equally by TCPL and its shippers. One-half of any such gain or loss in respect of a Test Year will be recorded in an Incentive Based Deferral Account and applied to the Cost of Service in the year immediately following the Test Year. The balance of the gain or loss will accrue to TCPL as Incentive Revenue.
- 13.2 The Foreign Exchange Management Program will apply to Interest Expense and TBO Costs denominated in foreign currencies. The total annual foreign currency requirement subject to this program will be the U.S. dollar and other foreign currency amounts of actual Interest Expense and TBO Costs.
- 13.3 The Foreign Exchange Management Program shall be applied to those foreign currency denominated Interest Expense and TBO Cost payments due between 1 January and 31 December of each Test Year. The measurement period for Interest Expense shall commence six (6) months in advance of and include the applicable Interest Expense payment due dates and three (3) months in advance of and include the applicable TBO Cost payment due dates for TBO Costs.
- 13.4 The first payments to be managed under the Foreign Exchange Management Program shall be those to be made in July 1996 for Interest Expense payments and to be made in April 1996 for TBO Cost payments.
- 13.5 Gains or losses from the Foreign Exchange Management Program shall be defined as the difference between actual foreign exchange rate purchases, including actual hedging costs, and the cost calculated using the Foreign Exchange Benchmark.

- 13.6 The Foreign Exchange Management Program will limit recognized losses to a maximum of \$20,000,000 dollars, in aggregate, on the total portfolio on an annual basis. Annual recognized gains or losses generated by the Foreign Exchange Management Program in excess of \$20,000,000 shall be exclusively for the account of TCPL as Incentive Revenue.
- 13.7 All transactions in the Foreign Exchange Management Program will be executed with highly rated financial counterparties to reduce the risk of counterparty default.
- 13.8 The Parties will consider, and may during the term of this Settlement if the Tolls Task Force agrees, extend the Foreign Exchange Management Program to include foreign currency principal payments on Actual Debt Portfolio instruments.
- 13.9 Notwithstanding the expiration or termination of this Settlement, the Foreign Exchange Management Program shall not be discontinued and existing positions shall not be liquidated. Outstanding positions as at expiration or termination of this Settlement shall continue to be managed until maturity or closure of the existing positions. Gains and losses as at the expiration or termination of this Settlement shall be settled in the manner set out in Section 13.1. Thereafter, gains and losses emanating from positions taken prior to the expiry or termination of this Settlement in the Foreign Exchange Management Program shall be settled annually in the same manner as described in Section 13.1.

Article 14 Interest Rate Management Program

- 14.1 Upon approval of this Settlement by the NEB, and as soon thereafter as is practicable, TCPL shall implement the Interest Rate Management Program described below to attempt to reduce the long-term cost of funds of the Actual Debt Portfolio and the issuance of new debt. Subject to paragraph 14.3 (iii), recognized gains and losses in respect of each Test Year of the Settlement shall be shared equally by TCPL and its shippers. One-half of any such recognized gain or loss in a Test Year will be recorded in an Incentive Based Deferral Account and applied to the Cost of Service in the year immediately following the Test Year. The balance of such gain or loss will accrue to TCPL as Incentive Revenue.
- 14.2 Gains or losses emanating from the Interest Rate Management Program shall be measured annually on a Cash Flow basis.
- 14.3 The Interest Rate Management Program shall be managed in accordance with the following criteria:
- i) the maximum amount of debt for which the interest rates may be managed or swapped to floating rates will be capped at 25% of the Actual Debt Portfolio;
 - ii) TCPL may take such actions as it deems appropriate to hedge the interest rate on fixed rate debt to be issued to protect against cost increases. Any such hedging transactions shall be exclusive of the 25% maximum referred to in paragraph i) above, but gains and losses recognized from such transactions shall form part of the annual limit described in paragraph iii) below. Any debt issued in connection with hedge transactions shall form part of the Actual Debt Portfolio utilizing the yield to maturity, independent of hedged gains and losses from hedging activities as at the date of issuance of such debt; and

- iii) TCPL will limit annual recognized losses under the Interest Rate Management Program to a maximum of \$40,000,000 dollars, in aggregate, exclusive of amortized gains or losses from any years prior to the Test Year. Annual recognized gains or losses generated by the Interest Rate Management Program in excess of this \$40,000,000 shall be exclusively for the account of TCPL as Incentive Revenue.
- 14.4 Notwithstanding the expiration or termination of this Settlement, the Interest Rate Management Program shall not be discontinued and existing positions shall not be liquidated. Outstanding positions as at expiration or termination of this Settlement shall continue to be managed until maturity or closure of the existing positions. Gains and losses on a Cash Flow basis, as at the expiration or termination of this Settlement, shall be settled in the manner set out in Section 14.1. Thereafter, gains and losses emanating from positions taken under the Interest Rate Management Program prior to the expiry or termination of this Settlement shall be settled annually in the same manner as described in Section 14.1.
- 14.5 All transactions in the Interest Rate Management Program will be executed with highly rated financial counterparties to reduce the risk of counterparty default.
- 14.6 The Parties will consider the implications of including a component of floating rate debt in TCPL's term debt structure as part of a full review of its capital structure and all related issues leading up to the next cost of capital hearing.

Article 15 Discretionary Miscellaneous Revenue Sharing

- 15.1 Base Discretionary Miscellaneous Revenue shall be established at \$12,300,000 for the term of this Settlement. This benchmark shall not be rebased annually, however, it will be adjusted under the following circumstances:
- i) if TCPL contracts for the provision of additional FT service to shippers without having to add to Rate Base, or if TCPL commences FT service in advance of the projected in-service date of new facilities, then Base Discretionary Miscellaneous Revenue will be reduced by the revenue earned from such FT service. This reduction in the Base Discretionary Miscellaneous Revenue will remain in effect throughout the period that the new or early FT contract demand levels remain in effect as new or early FT service;
 - ii) upon the conversion of FST service to FT service, the level of Base Discretionary Miscellaneous Revenue will be reviewed by the Tolls Task Force pursuant to Section 15.7 to determine if it should be adjusted to reflect potential material changes in discretionary transportation service capacity resulting from such conversion; and
 - iii) if FT contracts are not renewed Fixed Cost Allocation Units shall be adjusted in the year immediately following the Test Year and Base Discretionary Miscellaneous Revenue shall be adjusted upward in that year by an amount not to exceed \$5,000,000, in accordance with Section 15.5.
- 15.2 Subject to Section 15.4 in the event of any FT contract non renewals, Discretionary Miscellaneous Revenue earned by TCPL in any Test Year in excess of or below Base Discretionary Miscellaneous Revenue will be shared 1/3 by TCPL and 2/3 by its shippers.

Two-thirds of such revenue variance in a Test Year will be recorded in an Incentive Based Deferral Account and applied to the Cost of Service in the year immediately following the Test Year. The remaining 1/3 of such variance shall be retained by TCPL as Incentive Revenue.

- 15.3 In any Test Year where there have been no FT contract non renewals and the actual Discretionary Miscellaneous Revenue is less than the Base Discretionary Miscellaneous Revenue, the variance will be shared in the following manner: i) if Discretionary Miscellaneous Revenue is between \$0 and \$5,000,000, TCPL will bear the full burden of the revenue shortfall attributed to the difference between \$5,000,000 and the Discretionary Miscellaneous Revenue earned in the Test Year; thereafter any revenue shortfall will be shared 1/3 by TCPL and 2/3 by its shippers; and ii) if Discretionary Miscellaneous Revenue is greater than \$5,000,000 but less than \$12,300,000, the burden of the revenue shortfall will be shared 1/3 by TCPL and 2/3 by its shippers. In any Test Year, the two-thirds of the revenue shortfall to be borne by shippers as discussed in paragraphs i) and ii) above, will be recorded in an Incentive Based Deferral Account and applied to the Cost of Service in the year immediately following the Test Year. The remaining 1/3 of such variance shall be retained by TCPL as Incentive Revenue.
- 15.4 In the event that any FT contract is not renewed in any Test Year during the term of this Settlement, then Discretionary Miscellaneous Revenue earned during the Test Year will first be applied to offset the reduced FT revenue. If, after applying such Discretionary Miscellaneous Revenue to offset such reduced FT revenue, the balance of the Discretionary Miscellaneous Revenue earned in that Test Year is below the Base Discretionary Miscellaneous Revenue, any shortfall up to a maximum of \$5,000,000 will be shared 2/3 by TCPL's shippers and 1/3 by TCPL. Any shortfall in excess of \$5,000,000 will be recorded in a deferral account. The disposition of any balance in this deferral account will be agreed upon by the Tolls Task Force within ninety (90) days from the end of the applicable Test Year and submitted to the NEB for approval. In the event that the Tolls Task Force is unable to agree on the disposition of these balances within this ninety (90) day period, TCPL will apply to the NEB for determination of the issue.
- 15.5 In any Test Year following a Test Year in which FT contracts are not renewed, the Fixed Cost Allocation Units used for the purpose of calculating current Test Year tolls shall be adjusted to reflect the non-renewed contract demand. Base Discretionary Miscellaneous Revenue in such Test Year will be increased by an amount corresponding to the FT contract non-renewal to a maximum of \$5,000,000.
- 15.6 The Parties agree that in 1996 the Tolls Task Force will undertake a study of the feasibility of replacing the 2/3:1/3 sharing mechanism, where Miscellaneous Discretionary Revenue is based on gross Imputed Fixed Costs, with a 1/2:1/2 sharing mechanism, where Miscellaneous Discretionary Revenue is based on net revenues (where net revenue in this context means Imputed Fixed Costs less marginal costs, including the difference between marginal fuel and average fuel, as it would have been absent the movement of any discretionary volumes). The 2/3:1/3 sharing mechanism, based on gross Imputed Fixed Costs, will continue beyond 1996 and for the balance of the term of this Settlement unless, prior to 1 January, 1997, it can be demonstrated to TCPL's satisfaction that a viable marginal cost mechanism recognizing practicality, time, effort and cost can be developed and implemented.

- 15.7 In anticipation of the conversion of FST service to FT service, the Tolls Task Force will review the level of Base Discretionary Miscellaneous Revenue to determine if there will be any material change in discretionary transportation service capacity. Base Discretionary Miscellaneous Revenue shall be adjusted in accordance with any agreement reached by the Tolls Task Force.

Article 16 Calculation of Allocation Units and Tolls

- 16.1 TCPL's forecast of aggregate contract demand and Rate Base used to calculate tolls and as a benchmark for FT contract non-renewals shall be submitted by TCPL in support of its annual tolls application to the NEB for approval.
- 16.2 Test Year tolls will be calculated using the Test Year Fixed Cost Allocation Units and Test Year Net Revenue Requirement determined in accordance with the terms of this Settlement.
- 16.3 Any revenue variances within the Test Year in respect of forecasted versus actual Test Year Fixed Cost Allocation Units will be captured in a Flow-Through Deferral Account and applied to the Cost of Service in the year immediately following the Test Year.
- 16.4 Fixed Cost Allocation Units in a subsequent Test Year will be adjusted and annualized to account for FT contract non renewals, additional incremental FT service not requiring the addition of new facilities and re-contracted FT service from the year immediately preceding the Test Year.

Article 17 Reporting and Filing Requirements

- 17.1 On or before 31 March each year beginning in 1997, TCPL shall file tolls with the NEB, and with the members of the Tolls Task Force, along with any necessary supporting schedules and explanatories for the Test Year based upon the automatic year to year mechanism outlined in Section 3.6.
- 17.2 TCPL proposes to have the annual tolls from the year immediately preceding the Test Year made interim for the current Test Year, effective 1 January pending the filing of final tolls discussed in Section 17.1.
- 17.3 Final tolls for each Test Year of this Settlement shall take effect 1 April of each year and the associated Net Revenue Requirement shall include a forecast of the impact of the variance resulting from the use of interim tolls rather than final tolls for the period 1 January to 31 March. Any further adjustments arising from the use of interim tolls in this three month period shall be recorded in a Flow-Through Deferral Account and applied to the Cost of Service in the year immediately following the Test Year.
- 17.4 The current form of the NEB Quarterly Surveillance reports shall be amended to reflect this Settlement and shall be filed with the NEB and the members of the Tolls Task Force. The report will include the status of the following:
- (i) Discretionary Miscellaneous Revenue;
 - (ii) Foreign Exchange Management Program;

- (iii) Interest Rate Management Program;
 - (iv) Variance analysis for the Flow-Through Cost Envelope; and
 - (v) Incentive Cost Envelope.
- 17.5 On or before 1 March, TCPL shall file annually with the NEB and the members of the Tolls Task Force a report, generally in the format of Part V, Section 6 of TCPL's tolls applications prior to 1995, which will set out a comparison of the actual costs of Rate Base additions to costs forecast annually by TCPL as additions to Rate Base. The comparison will include explanations of variances which would include, but not be limited to, work scope variances. The variance report shall only include variances representing the greater of \$50,000 or 5% of the value of the Rate Base addition on a project by project basis. It is intended that this Settlement will not change the role of the NEB in reviewing this information and adjudicating on any issues which may arise.
- 17.6 TCPL will provide an annual report to the NEB documenting inter-company transactions.

Article 18 Audit

- 18.1 The NEB will retain and perform its current audit functions.
- 18.2 A compulsory compliance audit will be conducted at the end of the third year of this Settlement by the independent external auditors of TCPL unless the Tolls Task Force determines, on a simple majority basis after reviewing all relevant issues, including all costs involved and the scope of the work to be undertaken, that such audit shall be performed by another major firm of independent chartered accountants. The cost of this compulsory compliance audit will be recovered in TCPL's Cost of Service, as part of the Flow-Through Cost Envelope, in the Test Year following the completion of the audit. These costs will not be subject to the review and complaint procedure set out in Section 8.5.
- 18.3 The Parties will have the right to participate in one independent audit per year, other than the year in which the compulsory audit takes place as discussed in Section 18.2. Any such audit will be conducted by TCPL's independent external auditor unless the Party or Parties requesting the audit determine, after reviewing all relevant issues, including all costs involved and the scope of the work to be undertaken, that such audit shall be performed by another major firm of independent chartered accountants. The full cost of the audit, inclusive of TCPL employee person-hours, will be borne by those Parties requesting the audit, unless the Tolls Task Force agrees that these audit costs should be recovered through TCPL's Cost of Service.

Article 19 Term of Settlement and Continuation of Settlement

- 19.1 The Parties agree that the incentive cost recovery and revenue sharing mechanisms and the specific parameters set out in this Settlement encompass the period 1 January, 1996 to 31 December, 1999 inclusive.
- 19.2 For the period beyond the term envisioned by this Settlement, the Parties will enter into discussions in an effort to reset parameters, as necessary, to extend incentive cost recovery and revenue sharing mechanisms beyond 31 December, 1999.
- 19.3 In the event that an incentive cost recovery and revenue sharing mechanism is not approved for a term beyond 31 December, 1999, in the absence of another agreed upon methodology, TCPL's Net Revenue Requirement will be determined in accordance with the Cost of Service methodology in place prior to the commencement of this Settlement, unless determined otherwise by the NEB.

Article 20 Miscellaneous Provisions

20.1 Toll Design

- (1) Toll design and tariff issues are not addressed by this Settlement.

20.2 Items Pertaining to Net Revenue Requirement

- (1) The Parties agree that the 1996 Net Revenue Requirement specifically reflects depreciation rates in effect on 31 December 1995. TCPL will not make application to the NEB to change the depreciation rates in effect as of 31 December 1995 for the term of this Settlement, unless otherwise directed by the NEB.

20.3 Compliance with NEB Orders

- (1) Nothing in this Settlement is intended to preclude TCPL from reflecting in its tolls or Cost of Service the cost consequences of NEB orders or directives applicable to it by virtue of a proceeding which is initiated by a person other than TCPL, or by the NEB of its own motion, nor to preclude TCPL from participating in any multi-pipeline proceeding if requested to do so by the NEB or determined by TCPL to be in its best interest.

20.4 Disposition of Existing Deferral Accounts, Flow-Through Based Deferral Accounts and Incentive Based Deferral Accounts

- (1) All deferral accounts existing as at 31 December, 1995, other than the North Bay Environmental Litigation Deferral Accounts, shall be disposed of and replaced with the Incentive Based Deferral Accounts and the Flow Through Deferral Accounts listed in Schedule 20.4.
- (2) A forecast of deferral account balances existing as at 31 December, 1995, other than the North Bay Environmental Litigation Deferral Account and the 1995 SCC Deferral Account, will be applied to the 1996 Net Revenue Requirement.

- (3) All variances between the forecast deferral account balances that are included in the 1996 Net Revenue Requirement and the actual balances shall be applied to the 1997 Net Revenue Requirement.
- (4) The recovery of costs presently recorded in the North Bay Environmental Litigation deferral account and the 1995 SCC deferral account, and all subsequent costs to be recorded in such accounts will be dealt with in future discussions at the Tolls Task Force. In the event that an agreement cannot be reached within a reasonable period of time, TCPL may apply to the NEB for a determination of the handling of these costs.
- (5) All deferral accounts which existed as at 31 December 1995 will be re-instated effective the earlier of 1 January 2000, and the termination of this Settlement, to be disposed of in accordance with a renewed or new incentive settlement or pursuant to a decision from the NEB in a hearing on the Cost of Service for the Test Year immediately following the termination or expiry of this Settlement.
- (6) In the event that this Settlement is terminated at any time before 31 December 1999, TCPL will apply to the NEB to amortize all outstanding deferral and variance amounts in tolls to be charged in the Test Year following the termination of this Settlement. TCPL will prospectively amortize all Flow-Through Deferral Account and Incentive Based Deferral Account balances unless otherwise ordered by the NEB.
- (7) All deferral and variance amounts which accrue in 1999 will be recovered in tolls in the year 2000 regardless of whether the methodology contemplated by this Settlement is extended, with the exception of the Foreign Exchange Management Program and the Interest Rate Management Program as outlined in Articles 13 and 14 respectively.
- (8) Carrying Charges will be calculated monthly.

Article 21 Service Terms and Conditions

- 21.1 During the term of this Settlement, TCPL will continue to provide service in accordance with the terms and conditions in TCPL's current Transportation Tariff, as the same may be amended from time to time subject to NEB approval.

Schedule 2.1 - TCPL Services

FT	Firm Transportation Service
FST	Firm Service Tendered
LT-WFS	Long-Term Winter Firm Service
STS	Storage Transportation Service
STFT	Short Term Firm Transportation Service
TWS	Temporary Winter Service
PS	Peaking Service
IT	Interruptible Service
IT Backhaul	Interruptible Backhaul
FBT	Firm Backhaul Transportation Service
ECR	Enhanced Capacity Release Service

Table 4-1
Transmission by Others
for the Test Year ending December 31, 1996

PARTICULARS	VOLUME
Great Lakes Gas Transmission L.P.	Mcf/d
From Emerson Firm	
FT Eastern Demand (January to March)	1 341 000
FT Eastern Demand (April to October)	1 291 000
FT Eastern Demand (November to December)	1 341 000
FT Eastern Demand (Average)	1 311 833
From Emerson Firm	
FT Central Demand	10 000
Union Gas Limited	10 ³ m ³ /d
M12 from Dawn Demand - Parkway	7 523
Compression - Parkway	1 700
Demand - Parkway	23 892
C1 from Parkway Demand - Kirkwall (January - March)	1 133
Demand - Kirkwall (April - December)	3 400
TQM	10 ³ m ³ /d
Service Agreement Jan. 25, 1982 (last amended July 12, 1993)	10 887

* Note: The Schedule 5.1 which was originally filed as part of TransCanada's Incentive Cost Recovery and Revenue Sharing Settlement was not the schedule reviewed and approved by the 1996 Tolls Task Force pursuant to Resolution No. 96-22 and was therefore subsequently revised by the above schedule as per TransCanada's letter to the Board dated 28 December 1995.

**Table 4-2
Schedule 20.4**

	Incentive Based Deferral	Flow Through Based Deferral	Article
Incentive Cost Envelope			
Transmission by Others			
GLGT Rates	X	X	5
Union Rates	X		5
GLGT/Union Contract Volume		X	5.4
GLGT/Union Delivery Point Change		X	5.4
GLGT/Union Overrun		X	5.3
TQM Cost of Service	X		5
TQM System Expansion		X	5.5
OM&A			
Routine Costs	X		4.1
Non-Routine Costs		X	7
Gas Related Expense			
Routine Costs	X		4.1
Non-Routine Costs		X	7
Municipal and Other Tax			
Other Tax	X		4.1
Rate Base Related Increase in Municipal Tax		X	6.1
0-5% Increase in Municipal Tax	X		6.3
Greater Than 5% Increase in Municipal Tax		X	6.2
NEB Cost Recovery	X		4.1

**Table 4-2
Schedule 20.4 (cont'd)**

	Incentive Based Deferral	Flow Through Based Deferral	Article
Flow Through Cost Envelope			
Return on Rate Base		X	8.1
Income Tax		X	8.1
Depreciation		X	8.1
Foreign Exchange on Debt Retirement		X	8.1 & 8.4
Foreign Exchange Costs		X	8.1 & 2.1 (17)
Insurance Deductible Costs		X	8.1
SCC Costs		X	8.1
Interim Toll Adjustment		X	17.3
Foreign Exchange Management Program			
GLGT TBO	X		13
Debt Interest	X		13
Interest Rate Management Program	X		14
Revenue			
Variance in Firm Service Allocation Units		X	16.3
Variance in Non-Discretionary Revenue		X	9.2
Discretionary Revenue ¹	X		15

¹ Non-renewal related Discretionary Revenue shortfalls greater than \$5 million will be recorded in a deferral account with the disposition of any balance in the account agreed on by the Tolls Task Force or submitted to the NEB for determination of the issue as per Article 15.4.

Chapter 5

NEB Decision - Phase 2 TransCanada 1996 Tolls

TransCanada PipeLines Limited ("TransCanada") Application Dated 5 July 1995 for 1996 Tolls ("RH-2-95") Reasons for Decision Regarding Phase 2

Background

On 5 July 1995, TransCanada PipeLines Limited ("TransCanada") filed an application pursuant to Part IV of the *National Energy Board Act* ("the Act") for new tolls to be effective 1 January 1996.

On 1 September 1995, the National Energy Board ("Board") issued Hearing Order RH-2-95 setting down the application for a public hearing to commence on 11 December 1995. Hearing Order RH-2-95 was amended by letters dated 12 October and 7 and 16 November 1995.

On 20 October 1995, the Board approved a request by TransCanada to divide the proceeding into two phases. Phase 1 would deal with issues related to cost allocation, toll design and tariff matters. Phase 2, which would begin no earlier than 29 January 1996, would deal with cost of service and other matters. TransCanada submitted that phasing would allow it sufficient time to complete settlement negotiations respecting cost of service matters.

Phase 1 of the hearing took place in Ottawa, Ontario on 11, 12, 13 and 14 December 1995. The Board issued its decision with respect to Phase 1 in a Letter Decision dated 28 December 1995.

Phase 2 commenced with the filing on 20 December 1995 by TransCanada of a Tolls Task Force Resolution containing an application for Orders approving an Incentive Cost Recovery and Revenue Sharing Settlement ("Settlement").

On 2 January 1996, TransCanada filed revised cost of service and net revenue requirement schedules as well as revised tolls which would result from the implementation of all Phase 1 decisions, a revised rate of return of 11.25 percent and the proposed Settlement.

On 9 January 1996, TransCanada filed a request that interim tolls for 1996 be established based on its 2 January 1996 filing. The Board approved this request on 10 January 1996.

On 9 January 1996, TransCanada also filed another Tolls Task Force Resolution seeking approval of a proposal for the disposition of the 1995 Stress Corrosion Cracking ("SCC") Deferral Account.

In a letter dated 17 January 1996, the Board cancelled the oral hearing initially scheduled for Phase 2. In its place, the Board requested TransCanada to hold an open forum to present the Settlement and to provide parties an opportunity to question TransCanada on the Settlement. Parties were also given an opportunity to provide comments, in writing, to the Board by 2 February 1996. TransCanada was afforded an opportunity to provide any reply comments by 6 February 1996.

The open forum was held on 29 January 1996.

No parties have expressed opposition to either Resolution during the comment period provided by the Board.

The Board's Negotiated Settlement Guidelines

In examining agreements among parties to a proceeding, the Board is guided by its *Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs*, dated 23 August 1994, and the cover letter from the Board of the same date (the "Guidelines"). Of particular relevance in these proceedings are the following extracts from those documents:

- All parties having an interest in a pipeline's traffic, tolls and tariffs should have a fair opportunity to participate and have their interests recognized and appropriately weighed in a negotiated settlement. The settlement process should be open and all interested parties should be invited to participate in the actual settlement negotiations.
- Upon filing of information related to the resolution of individual toll design, tariff or other matters, interested parties would be provided with an opportunity to comment on each resolution. Resolutions that were not opposed by any party would normally be accepted by the Board.
- The Board confirms that, when presented with a settlement package, it will either accept or reject the package in its entirety.

1996 Tolls Task Force Resolutions

With respect to Phase 2, TransCanada filed two unopposed Tolls Task Force Resolutions with the Board for approval.

Resolution 96-22 proposed the implementation of an Incentive Cost Recovery and Revenue Sharing Settlement. The terms of the Settlement would be applied to determine the Net Revenue Requirement utilized by TransCanada in the calculation of tolls for the transportation of natural gas on the TransCanada system, in accordance with the toll methodology and pursuant to the TransCanada Transportation Tariff approved from time to time by the National Energy Board.

The following is a brief summary of the Settlement:

- The Settlement covers a period of four years from 1 January 1996 to 31 December 1999.
- The stated objectives of the Settlement, which pertains only to TransCanada's mainline transmission business, are to: minimize costs; maximize throughput; encourage efficiency gains; maintain or improve service quality and financial integrity and preserve firm shippers' flexibility and ability to effectively use their transportation contracts.
- The Net Revenue Requirement for the purposes of calculating transportation tolls shall be based on a formula which includes: Incentive Cost Envelope programs; Flow-Through Cost Envelope programs; Miscellaneous Revenues and other incentive programs as detailed in the Settlement.
- The Incentive Cost Envelope includes five components: Transportation by Others ("TBO"); Operations, Maintenance and Administration; Gas Related Expense; Municipal and Other

Taxes and NEB Cost Recovery Expense. These costs are to be predetermined annually. For the 1996 Test Year these costs were established at \$678,762,000. For each Test Year after 1996, the Incentive Cost Envelope will be based on actually experienced costs in the preceding year, multiplied by a "net adjustment factor". Any variances between actuals and Test-Year costs are to be generally shared equally by TransCanada and the shippers with some minor exceptions (for Municipal and Other Taxes and Transmission By Other costs), as set out in the Settlement.

- The Flow-Through Cost Envelope includes: Return on Rate Base; Income Taxes; Depreciation; Foreign Exchange on Debt Retirement; Foreign Exchange Costs; Insurance Deductible Costs and SCC Costs. These costs are to be forecast each Test Year in the usual fashion. Subject to a review and complaint procedure allowed for in the Settlement, all variances between the actual costs in the Flow-Through Envelope and the corresponding test-year costs will flow directly to the cost of service in the year following the Test Year.
- Non-Discretionary Miscellaneous Revenue ("NDMR") will be forecast in each Test Year and approved by the Board. Variances shall be calculated and included in a Flow-Through Deferral Account and, subject to the review and complaint procedures provided for in the Settlement, shall be applied to the Cost of Service in the year immediately following the Test Year. For Discretionary Miscellaneous Revenue ("DMR") a benchmark level is established in the Settlement at \$12,300,000. The Settlement provides for numerous adjustments to DMR in the event of non-renewal of FT contracts or other contingencies.
- TransCanada will be implementing a Foreign Exchange Management Program (covering interest expense and TBO costs denominated in foreign currencies) and an Interest Rate Management Program (to provide incentive for reducing long-term debt) upon approval of this Settlement and as soon thereafter as practicable.
- Two other cost and revenue sharing mechanisms included in the Settlement, the Capital efficiency Mechanism and the Fuel Incentive Mechanism remain to be developed and will not be implemented in 1996. Both mechanisms must be discussed further by the Tolls Task Force to see if any agreement can be reached on them.
- Other provisions in the Settlement cover: complaints by shippers; Tolls Task Force review of cost adjustments and amounts of shared revenue; calculation of allocation units and tolls; reporting and filing requirements; audits; terms of settlement and continuation of settlement; disposition of existing deferral accounts and flow-through and incentive-based deferral accounts.
- Toll design and tariff matters are not a part of this Settlement.

The foregoing list is representative of the Settlement only. For a complete understanding or more details of the terms of the Settlement, parties should refer to the original document.

Resolution 96-23 proposed that all SCC-related costs incurred as at 31 December 1995, together with carrying costs shall be borne equally by TransCanada and its toll payers. The carrying charges would be computed monthly from the average of the opening and closing balances in the account for each month multiplied by 1/12th of TransCanada's authorized rate of return on rate base and recorded in the 1995 SCC Deferral Account. One-half of the 1995 SCC Deferral Account balance will be applied to TransCanada's Cost of Service for the 1996 Test Year.

Views of the Board

The Board considers that the process followed by TransCanada in negotiating the Settlement, together with the open forum, provided parties and the Board the opportunity to obtain clarification with respect to the terms of the Settlement. Subsequent to the open forum, parties were afforded an opportunity to file any final comments with the Board. No comments opposing either Resolution 96-22 or 96-23 were received. In the view of the Board, the procedure allowed ample opportunity for all parties, including the Board, to examine the Settlement and ensure that it was in accordance with the Board's Guidelines.

Decision

The Board approves Resolutions 96-22 and 96-23 in full and directs that the provisions of the resolutions be implemented in determining TransCanada's Net Revenue Requirement and resulting tolls for 1996.

In addition, the Board also approves all forecasts, underlying assumptions, methodologies and schedules used in the Application, as amended during the course of RH-2-95.

TransCanada is directed to file, by 27 February 1996, revised schedules and tolls implementing all decisions of the Board from Phase 1, Phase 2 and the revised rate of return on common equity of 11.25%. TransCanada is directed to inform the Board and all interested parties if, by implementing these decisions, no changes are required to the current interim tolls and supporting schedules filed under cover of TransCanada's letter of 2 January 1996.

The current interim tolls will remain in effect until the Board has issued its final order with respect to 1996 tolls.

General

The Board will, at a later date, be issuing a consolidated version of the decisions which will include under one cover key documentation for both Phase 1 and Phase 2 of RH-2-95, including the complete text of the Incentive Cost Recovery and Revenue Sharing Settlement.

Disposition

The foregoing constitute our Decision and Reasons for Decision on this matter.

(signed by)

J.A. Snider
Presiding Member

K.W. Vollman
Member

R. Illing
Member

Calgary, Alberta
February 1996

Chapter 6

Interim Toll Order AO-1-TGI-3-95

Order AO-1-TGI-3-95 which is reproduced below amended Order TGI-3-95 which can be found as Attachment 2 to the Board's Phase 1 Decision in Chapter 3.

ORDER AO-1-TGI-3-95

IN THE MATTER OF the *National Energy Board Act* ("the Act") and the Regulations made thereunder; and

IN THE MATTER OF a request dated 2 January 1996 by TransCanada PipeLines Limited ("TransCanada") requesting the Board to issue an Order amending the interim tolls made effective 1 January 1996 by Order TGI-3-95

BEFORE the Board on 10 January 1996.

WHEREAS the Board received a request from TransCanada, dated 6 December 1995, pursuant to Sections 19(2), 59 and 64 of the *National Energy Board Act*, for an Order establishing interim tolls effective 1 January 1996; and

WHEREAS the Board established interim tolls to be effective 1 January 1996 pursuant to Order TGI-3-95; and

WHEREAS the Board received a subsequent letter dated 2 January 1996 from TransCanada requesting that the Board amend Order TGI-3-95 to make the 1996 Tolls interim at the tolls set out in Schedule 6.1 of the update to TransCanada's 1996 Tolls Application which was attached to that letter (and to relieve TransCanada from the requirement to file revised schedules and tolls as set out in Order TGI-3-95); and

WHEREAS the Board received a further letter on the issue of the 1996 interim tolls, dated 9 January 1996:

IT IS ORDERED, PURSUANT TO SECTIONS 19(2), 59 and 64 OF THE ACT, THAT:

1. Order TGI-3-95 is hereby replaced by Order AO-1-TGI-3-95;
2. TransCanada will charge interim tolls effective 1 January 1996 based upon the tolls set out in Schedule 6.1 of the update to TransCanada's 1996 Tolls Application which was attached to TransCanada's letter dated 2 January 1996;
3. TransCanada is relieved from the requirement to file revised schedules and tolls as previously set out in Order TGI-3-95; and

4. AO-1-TGI-3-95 shall remain in effect pending the final determination of all Phase 2, 1996 Toll application matters and final disposition of Interim Order TGI-1-95 and Declaratory Order MO-23-95, in respect of 1995 Tolls.

NATIONAL ENERGY BOARD

(signed by)

J.S. Richardson
Secretary

Chapter 7

Final Tolls Order TG-2-96

ORDER TG-2-96

IN THE MATTER OF the *National Energy Board Act* ("the Act") and the Regulations made thereunder; and

IN THE MATTER OF an application dated 5 July 1995 by TransCanada PipeLines Limited ("TransCanada") pursuant to Part IV of the Act for certain orders respecting its tolls; filed with the National Energy Board ("the Board") under File No. 4200-T001-10.

BEFORE the Board on 14 March 1996.

WHEREAS TransCanada filed an application dated 5 July 1995, as amended, for an order fixing just and reasonable tolls that it may charge for or in respect of transportation services rendered effective 1 January 1996; and

WHEREAS the Board received a request from TransCanada, dated 6 December 1995, pursuant to Sections 19(2), 59 and 64 of the Act, for an Order establishing interim tolls effective 1 January 1996; and

WHEREAS on 28 December 1995, the Board established interim tolls to be effective 1 January 1996 pursuant to Order TGI-3-95; and

WHEREAS the Board received a subsequent letter dated 2 January 1996 from TransCanada requesting that the Board amend Order TGI-3-95 to make the 1996 tolls interim at the tolls set out in Schedule 6.1 of the update to TransCanada's 1996 tolls application which was attached to that letter (and to relieve TransCanada from the requirement to file revised schedules and tolls as set out in Order TGI-3-95); and

WHEREAS the Board received a further letter dated 9 January 1996 from TransCanada on the impact of all Phase 1 decisions on 1996 interim tolls; and

WHEREAS the Board issued an amending order AO-1-TGI-3-95 which established interim tolls effective 1 January 1996 to be based upon the tolls as set out in Schedule 6.1 of the update to TransCanada's 1996 tolls application which was attached to TransCanada's letter dated 2 January 1996; and

WHEREAS a public hearing pursuant to Hearing Order RH-2-95 (Phase 1) was held in Ottawa, Ontario from 11 to 14 December 1995 during which time the Board heard the evidence and argument presented by TransCanada and interested parties concerning issues related to Firm Service Tendered ("FST") and 1996 Tolls Task Force Resolutions; and

WHEREAS TransCanada filed a negotiated settlement on 20 December 1995 called the Incentive Cost Recovery and Revenue Sharing Agreement ("the Settlement"); and

WHEREAS, in light of the Settlement and comments from interested parties, the Board cancelled the oral hearing (Phase 2) which was scheduled to commence in Calgary, Alberta on 29 January 1996 to address issues relating to cost of service; and

WHEREAS an open forum was conducted by TransCanada in Calgary, Alberta on 29 January 1996 concerning the Settlement and where interested parties were invited to comment; and

WHEREAS the Board's decisions on the Application are set out as attachments to the Board's letters dated 28 December 1995 (Phase 1) and 22 February 1996 (Phase 2) respectively and in this Order;

IT IS ORDERED THAT:

1. TransCanada shall, for accounting, tollmaking and tariff purposes, implement the decisions outlined in the Reasons for Decision dated 28 December 1995, 22 February 1996 and in this Order.
2. Order AO-1-TGI-3-95, which authorized the tolls to be charged on an interim basis pending a final decision on the said Application, is revoked.
3. The tolls which were in effect, on an interim basis, commencing 1 January 1996 and which were confirmed in the Compliance Tolls Package filed by TransCanada on 27 February 1996 are hereby made final. For ease of reference, excerpts are set out in Attachments 1 to 3 to this Order.
4. Those provisions of TransCanada's tariffs and tolls, or any portion thereof, that are contrary to any provision of the Act, to the Board's Reasons for Decision dated 28 December 1995 and 22 February 1996, or to any Order of the Board including this Order, are hereby disallowed.

NATIONAL ENERGY BOARD

(signed by)

J.S. Richardson
Secretary

Table 7-1
TransCanada PipeLines Limited
Transportation Tolls
Effective 1 January 1996

Particulars	Demand Toll (\$/10 ³ m ³ /mo)	Commodity Toll (\$/10 ³ m ³)
Canadian Firm Service:		
Saskatchewan Zone	93.11	0.055
Manitoba Zone	339.25	0.297
Welwyn to Manitoba Zone	131.88	0.097
Western Zone	538.67	0.492
Northern Zone	832.69	0.773
Eastern Zone	1,013.54	0.959
Eastern Zone FST	-	24.589
Export Firm Service:		
Empress to Spruce	369.96	0.328
Empress to Emerson	377.11	0.335
Empress to Niagara Falls	1,057.62	0.991
Empress to Iroquois	1,062.78	0.996
Empress to Cornwall	1,077.19	1.010
Empress to Sabrevois	1,124.51	1.056
Empress to Philipsburg	1,135.21	1.066
Empress to Napierville	1,129.28	1.060
Empress to Chippawa	1,058.44	0.992
Miscellaneous Point-to-Point Firm Service:		
Herbert to Emerson	311.76	0.272
St. Clair to Chippawa	140.94	0.107
Kirkwall to Chippawa	68.89	0.037

Source: TransCanada's RH-2-95 Compliance Tolls Package dated 27 February 1996, Schedule 6.1.

Table 7-1
TransCanada PipeLines Limited
Transportation Tolls
Effective 1 January 1996 (cont'd)

Particulars	Demand Toll (\$/10 ³ m ³ /mo)	Commodity Toll (\$/10 ³ m ³)
Short Term Firm Service:		
Empress to Niagara Falls	1,057.62	0.991
Empress to Iroquois	1,062.78	0.996
Storage Transportation Service:		
Centra Gas (Manitoba)-MDA	73.39	0.043
Centra Gas (Ontario)-NDA	208.49	0.177
Centra Gas (Ontario)-EDA	137.72	0.107
Kingston	130.21	0.099
Gaz Métropolitain-EDA	234.72	0.203
Consumers' Gas-CDA	30.38	0.000
Consumers' Gas-EDA	85.36	0.055
Cornwall	184.68	0.153
Philipsburg	241.05	0.209
Temporary Winter Service:		
	Commodity Toll	
	Minimum (\$/10 ³ m ³)	Maximum (\$/10 ³ m ³)
Empress to Saskatchewan Zone	3.116	6.232
Empress to Manitoba Zone	11.450	22.900
Empress to Western Zone	18.202	36.404
Empress to Northern Zone	28.149	56.298
Empress to Eastern Zone	34.281	68.562

Source: TransCanada's RH-2-95 Compliance Tolls Package dated 27 February 1996, Schedule 6.1.

**Table 7-1
TransCanada PipeLines Limited
Transportation Tolls
Effective 1 January 1996 (cont'd)**

Particulars	Demand Toll	Commodity Toll
	(\$/10 ³ m ³ /mo)	(\$/10 ³ m ³)
Canadian Peaking Service:		
Empress to Saskatchewan Zone		6.232
Empress to Manitoba Zone		22.900
Empress to Western Zone		36.404
Empress to Northern Zone		56.298
Empress to Eastern Zone		68.562
Winter Firm Service:		
	Commodity Toll	
	Minimum (\$/10 ³ m ³)	Maximum (\$/10 ³ m ³)
Empress to Saskatchewan Zone	3.116	6.232
Empress to Manitoba Zone	11.450	22.900
Empress to Western Zone	18.202	36.404
Empress to Northern Zone	28.149	56.298
Empress to Eastern Zone	34.281	68.562
Empress to Spruce	12.491	24.982
Empress to Emerson	12.733	25.466
Empress to Niagara Falls	35.762	71.524
Empress to Iroquois	35.937	71.874
Empress to Cornwall	36.424	72.848
Empress to Sabrevois	38.026	76.052
Empress to Philipsburg	38.388	76.776
Empress to Napierville	38.187	76.374
Empress to Chippawa	35.790	71.580
St. Clair to Niagara Falls	4.713	9.426
St. Clair to Chippawa	4.741	9.482
Kirkwall to Niagara Falls	2.275	4.550
Kirkwall to Chippawa	2.302	4.604
Parkway to Iroquois	5.887	11.772
St. Clair to Iroquois	8.763	17.526

Source: TransCanada's RH-2-95 Compliance Tolls Package dated 27 February 1996, Schedule 6.1.

Table 7-1
TransCanada PipeLines Limited
Transportation Tolls
Effective 1 January 1996 (cont'd)

Particulars	Demand Toll (\$/10 ³ m ³ /mo)	Commodity Toll (\$/10 ³ m ³)
Backhaul Service:		
Dawn to Sault Ste. Marie		
Winter IT		7.653
Summer IT		3.826
Emerson to Centra Gas Manitoba Load Centre		
Winter IT		2.454
Summer IT		1.227
Dawn to St. Clair		
Winter IT		1.256
Summer IT		0.628
St. Clair to St. Clair		
Winter IT		0.990
Summer IT		0.495
Niagara Falls to Union CDA		
Winter IT		2.454
Summer IT		1.227
	Demand Toll	
	Monthly	Daily Equivalent*
	(\$/10 ³ m ³ /mo)	(\$/10 ³ m ³)
Delivery Pressure:		
Emerson - 1 & 2	5.6107	0.18446
Emerson - 2	1.2440	0.04090
Dawn	6.0048	0.19742
Niagara Falls	5.3301	0.17524
Sudbury	0.0000	0.00000
Iroquois	27.8767	0.91649
Chippawa	31.3647	1.03117

* The Demand Daily Equivalent toll is applicable to STS injections, IT, Diversions, PS, TWS, and WFS.

Source: TransCanada's RH-2-95 Compliance Tolls Package dated 27 February 1996, Schedule 6.1.

Table 7-2
Functional Distribution and Classification of Net Revenue Requirement
For the Test Year ended 31 December 1996
(\$ 000)

	<u>Total</u>	<u>Miscellaneous Transmission</u>	<u>Metering</u>	<u>Fixed</u>	<u>Transmission</u>	
					<u>Fuel, Uses And Other</u>	<u>Variable Unaccounted For Gas</u>
Incentive Cost Envelope						
Incentive Cost Envelope	678,762,000	0	54,115,000	574,155,000	50,492,000	0
Flow Through Envelope						
Delivery Pressure on TBO	5,456,037	0	0	5,456,037	0	0
Insurance Deductible Costs	2,114,000	0	554,000	1,560,000	0	0
Stress Corrosion Cracking Costs	21,570,000	0	5,653,000	15,917,000	0	0
Depreciation	236,009,000	0	2,659,000	233,350,000	0	0
Income Taxes	170,209,000	0	1,497,000	168,712,000	0	0
Regulatory Deferrals	(23,549,000)	0	0	(23,549,000)	0	0
Foreign Exchange Loss	22,447,000	0	0	22,447,000	0	0
Other Operating Income	0	0	0	0	0	0
Return	728,056,000	0	6,401,000	721,655,000	0	0
Gross Revenue Requirement	1,841,074,037	0	70,879,000	1,719,703,037	50,492,000	0
Non-Discretionary Miscellaneous Revenue						
Sales Meter Station Charges	(48,627)	0	(48,627)	0	0	0
Storage Transportation Service	(24,666,205)	0	(4,753,093)	(19,688,217)	(224,895)	0
Sale of Delivery Pressure	(22,424,333)	0	0	(22,424,333)	0	0
Long Term Winter Firm Service	(10,716,456)	0	(295,212)	(10,209,096)	(212,148)	0
Sub-Total Non-Discretionary	(57,855,621)	0	(5,096,932)	(52,321,646)	(437,043)	0
Discretionary Miscellaneous Revenue						
Miscellaneous Revenue	(12,300,000)	0	(108,140)	(12,191,860)	0	0
Sub-Total Discretionary	(12,300,000)	0	(108,140)	(12,191,860)	0	0
Total Miscellaneous Revenue	(70,155,621)	0	(5,205,072)	(64,513,506)	(437,043)	0
Net Revenue Requirement	1,770,918,416	0	65,673,928	1,655,189,531	50,054,957	0

Source: TransCanada's RH-2-95 Compliance Tolls Package dated 27 February 1996, Schedule 2.1.

Table 7-3
System Average Unit Cost of Transportation
For Tolls Effective 1 January 1996

Allocation Method	Functionalized (\$)	Applicable Allocation Units (10 ³ m ³)	Unit Costs	
Fixed Volume	65,673,928	181,750	361.3421072902	\$/10 ³ m ³
Fixed Volume-Distance	1,655,189,531	418,662,938	3.9535133893	\$/10 ³ m ³ -km
Variable Volume	0	65,023,000	0.0000000000	\$/10 ³ m ³
Variable Volume-Distance	50,054,957	153,016,514,800	0.0003271213	\$/10 ³ m ³ -km
Fixed FST Differential	48,352,553	418,662,938	0.1154927953	\$/10 ³ m ³ -km
Variable FST Differential	0	153,016,514,800	0.0000000000	\$/10 ³ m ³ -km

Source: TransCanada's RH-2-95 Compliance Tolls Package dated 27 February 1996, Schedule 6.1, Sheet 7 of 8.

Chapter 8

List of Other Relevant Key Documents

1. Letter from the NEB dated 1 September 1995 with attached Hearing Order RH-2-95 setting out the directions on procedure.
2. Letter from the NEB dated 12 October 1995 amending Hearing Order RH-2-95 and which included the identification of Issues 1 (a), 3 (a), 3 (b), 3 (c) and 3 (d).
3. Letter from the NEB dated 7 November 1995 regarding Issues 3 (a), (b) and (d) in the RH-2-95 List of Issues.
4. Letter from the NEB dated 16 November 1995 approving the removal of Issue 3 (c) from the RH-2-95 List of Issues.
5. Direct Evidence of "The Northeast Group" dated 16 November 1995 on the FST issue.
6. Letter from TCPL dated 17 November 1995 containing additional Prefiled Evidence of Mr. D. M. Harvie on the FST issue.
7. Letter from TCPL dated 20 November 1995 with attached FST Settlement Agreement.
8. Letter from the TCPL dated 6 December 1995 for an order establishing interim tolls effective 1 January 1996.
9. Letter from TCPL dated 20 December 1995 advising the NEB that it had negotiated with its stakeholders, an Incentive Cost Recovery and Revenue Sharing Settlement.
10. Letter from the NEB dated 22 December 1995 relieving TCPL from having to respond to certain information requests and seeking comments on whether to substitute a written proceeding for the oral proceeding initially contemplated for Phase 2 matters.
11. RH-2-95 Phase 1 Decision issued 28 December 1995 with attached Interim Toll Order TGI-3-95.
12. Letter from TransCanada dated 2 January 1996 enclosing supporting information, direct evidence, explanatory, schedules relating to cost of service items and, in particular, a request for final approval of 1996 Tolls, effective 1 January 1996, on or before 6 February 1996.
13. Letter from TCPL dated 9 January 1996 with respect to interim tolls.
14. Letter from TCPL dated 10 January 1996 revising Schedule 6.2.
15. Letter from the NEB dated 10 January 1996 amending Order TGI-3-95 pursuant to Order AO-1-TGI-3-95.
16. Letter from the NEB dated 17 January 1996 cancelling the oral hearing initially scheduled for Phase 2 matters and in its place scheduling a one-day forum open to all parties.

17. Letter from the NEB dated 22 February 1996 with attached RH-2-95 Phase 2 Decision.
18. Letter from TCPL dated 27 February 1996 with revised schedules and tolls implementing all decisions of the Board from Phase 1 and Phase 2 of RH-2-95 and the revised rate of return on common equity of 11.25%.
19. Letter from the NEB dated 15 March 1996 approving final 1996 tolls pursuant to Order TG-2-96.