



Regulatory Agenda

The period covered in this *Regulatory Agenda* is the month of February 2004

Public Hearing Applications

Hearing Decision Issued

1. Sumas Energy 2, Inc. (SE2) - International Power Line (IPL) - EH-1-2000 (File 2200-S040-1)

The Board has denied an application by SE2 to construct the Canadian portion of an 8.5 kilometre IPL originating at the Canada/United States international boundary near Sumas, Washington and running to a BC Hydro substation in Abbotsford, British Columbia. The IPL would have permitted SE2 to transport electricity from a proposed Power Plant to be constructed in Sumas to BC Hydro's substation.

The Board decided that it was unable to come to the conclusion that the IPL would be in the Canadian public interest and would be required for the present and future public convenience and necessity. After identifying and weighing the benefits and burdens in Canada of the proposed IPL and Power Plant, the Board concluded that, on balance, the burdens of the IPL outweigh the benefits.

The Board determined that the benefits of the IPL and Power Plant even if they were all realized would not be substantial benefits to Canadians, or to the local and regional communities.

The Board found that the burdens in Canada associated with the IPL and Power Plant would be numerous and real. Most would be borne almost entirely by the local and regional communities, whereas the benefits would be either external to these communities or negligible in value.

The Board considered the application during 39 days of public hearing held in Abbotsford.

Hearing Scheduled

1. Westcoast Energy Inc. (WEI) – 2004 Tolls (File 4200-W005-16)

The Board will hold a public hearing commencing on 17 May in Calgary, Alberta on an application by WEI for approval of 2004 tolls for mainline transmission service in Zones 3 and 4 for the period 1 January to 31 December 2004.

In This Issue

Preface

The purpose of this agenda is to provide information on the Board's activities. Except where otherwise noted, jurisdiction over the items listed in the agenda is exercised pursuant to the *National Energy Board Act*, R.S.C. 1985, c.N-7, as amended.

**"We promote Safety,
Environmental Protection and
Economic Efficiency"**

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WEI estimates the cost of service for 2004 to be approximately \$257.3 million, compared to the forecast of the 2003 cost of service of approximately \$247.3 million, reflecting an increase of approximately \$10.0 million. The typical 2004 toll for long haul service in Zone 3 would decrease by 2.2 per cent over that of 2003 whereas the typical toll for Zone 4 would increase by 8.2 per cent.

Hearing Application Filed

1. *TransCanada PipeLines Limited (TCPL) – 2004 Tolls (File 4200-T001-19)*

On 26 January, TCPL applied for approval of new tolls it may charge on its Mainline system for the period 1 January to 31 December 2004.

TCPL has forecasted a 2004 average rate base of \$8,214 million and a net revenue requirement of \$1,764 million, a decrease of approximately \$128 million over the 2003 net revenue requirement. TCPL has proposed changes to the Mainline's cost of capital and requested approval of a rate of return on common equity of 11.00 per cent on a deemed

common equity ratio of 40 per cent. The Eastern Zone Toll calculated in the application effective 1 January 2004 is \$1.212 per gigajoule, which compares with the 2003 toll of \$1.195 per gigajoule and the 2004 interim toll of \$1.222 per gigajoule

TCPL has also proposed a Fuel Gas Incentive Program, the establishment of a new Non-Renewable Firm Transportation Service and modifications to its existing Short-Term Firm Transportation Service.

On 11 February, the Board decided, prior to establishing a formal procedure, to seek initial input from interested persons on any procedural or timing concerns that they feel should be considered by the Board in preparing a Hearing Order, including any potential impacts from either TCPL's Appeal of the RH-R-1-2002 Decision (see item 1 under *Appeals and Reviews*) or its outstanding North Bay Junction Application (see item 3 under *Traffic, Tolls and Tariffs Matter*). Interested persons had to file comments by 24 February and TCPL had until 27 February to file reply comments.

Non Hearing Applications

Electricity Matters

Matter Completed

1. *Teck Cominco Metals Ltd. (Teck) – Electricity Export (File 6200-T096-2)*

On 19 February, the Board approved an application dated 24 October from Teck for permits to export up to 3 500 gigawatt hours of firm and interruptible energy per year and up to 600 megawatt of power per year for a period of 10 years.

Matter Pending

1. *New York Power Authority (NYPA) – Electricity Export (File 6200-N100-1)*

On 24 September and 3 December, NYPA applied for permits to export up to 500 megawatts and 2 000 gigawatt-hours of combined firm and interruptible energy per year for a period of 10 years.

Frontier Matters

1. *Canadian Forest Oil Limited (CFOL) – Applications for Significant Discovery.* On 26 February, the Board decided not to issue to CFOL declarations of "Significant Discovery" pursuant to Part II.1, section 28.2 of the *National Energy Board Act* and Part IV, section 28 of the *Canada Petroleum Resources Act* with respect to the Cdn Forest et al Flett Rapids I-61 and Cdn Forest et al North Liard C-31, C31A and N-61 wells as applied for by CFOL in applications dated 21 January 2002 and 20 February 2002.
2. *Anadarko Canada Corporation* was given "Approval to alter the condition of a well" on 3 February for the well Arrowhead River K-35 pursuant to section 80(1)(b) of the *Canada Oil and Gas Drilling Regulations (COGDR)*.
3. *Apache Canada Ltd.* was given "Approval to alter the condition of a well" on 23 February for the well Para et al Nogha M-17 pursuant to section 80(1)(b) of the COGDR. This well is now operated by Apache and is thus re-named Apache M-17.

4. *Anadarko Canada Corporation's* "Well Termination Record" for the well Arrowhead River F-56 was approved on 24 February pursuant to section 203(1) of the GOGDR.
5. *Petro-Canada Oil and Gas* was given "Approval to drill a well" on 25 February pursuant to section 83(1) of the COGDR for the well Tweed Lake M-47.
6. *Paramount Resources Ltd.* was given "Approval to alter the condition of a well" on 25 February for the well Cameron O-19 pursuant to section 80(1)(b) of the COGDR.
7. *Anadarko Canada Corporation* was given "Approval to drill a well" on 26 February for the well Emile Lake A-77 pursuant to 83(1) of the COGDR
8. *Paramount Resources Ltd.* was given "Approval to drill a well" on 26 February for the well Cameron C-16 pursuant to 83.(1) of the COGDR. Additionally, "Approval to alter the condition of a well" was granted on 27 February for the well Cameron F-19 pursuant to section 80(1)(b) of the COGDR.
9. *Geological, geophysical or geotechnical operations* - two applications were approved pursuant to section 5(1)(b) of the *Canada Oil and Gas Operations Act*.

Company	Area	Operation ID	Date
ENCANA Corporation	Mackenzie Delta NWT	9329-E043-004E	05 February 2004
Paramount Resources Ltd.	Cameron Hills NWT	9229-P033-009E	20 February 2004

Gas Matter

Matter Completed

1. *ProGas Limited (ProGas) – Amend Gas Sales Contract – Natural Gas Export Licence GL-178 (File 7200-P038-7-1)*

On 12 February, the Board approved an application dated 7 January from ProGas for amendments to the gas sales contract with Lockport Energy Associates, L.P.'s (Lockport) underpinning natural gas exports under Licence GL-178. The amendment consists of a change to the Adjusted Base Price component of the commodity charge. Eliminate the ability to initiate an arbitration of the Adjusted

Base Price, and a revision that increases the minimum annual quantity from 75 to 85 per cent.

Under Licence GL-178, ProGas was authorized to export up to 340 000 cubic metres (12 million cubic feet) of natural gas per day to Lockport's cogeneration plant located in Lockport, New York.

Pipeline Matters

Matter Completed

1. *Section 58 Applications*

The Board has approved applications under section 58 of the *National Energy Board Act* involving routine pipeline facilities or the construction of pipelines not exceeding 40 kilometres in length. See Appendix I.

Matter Under Consideration

2. *Express Pipeline Ltd. (Express) – Capacity Expansion (File 3400-T092-7)*

On 23 December, Express applied for approval to construct three intermediate pump stations and two barrel tanks. Express also proposes the change-out of impellers at existing pump stations.

The expansion would increase capacity of the Express pipeline by approximately 17 600 cubic metres (108 000 barrels) per day to a capacity of approximately 44 900 cubic metres (280 000 barrels) per day, depending on the characteristics of the petroleum transported

Each of the two tanks, to be constructed at the Hardisty Terminal, would be sized at 24 000 cubic metres (150 000 barrels). The pump stations would be located at Station 2 (Ribstone Creek), Station 4 (Jenner) and Station 6 (Peace Butte). Express proposes to start construction in June 2004 and the proposed in-service date is March of 2005. The estimated cost of the Expansion is \$45.6 million.

Traffic, Tolls and Tariff Matters

Matters Pending

1. *Foothills Pipe Lines Ltd. (Foothills) on behalf of Foothills Pipe Lines (Alta.) Ltd., Zones 6 and 7 Foothills Pipe Lines (South B.C.) , Zone 8 and Foothills Pipe Lines (Sask.) Ltd., Zone 9 - Year 2004 Operating and Maintenance Expense Budgets (File 4750-F006-1)*

On 1 December, Foothills applied, on behalf of the above noted subsidiaries, for approval of Operating and Maintenance Expense Budgets for the 12-month period ending on 31 December 2004.

On 18 December, the Board advised Foothills that before making a final decision on the applied-for budgets, it wished to consider Foothills' actual 2003 costs and any variances from the amounts approved for 2003, both due to be filed with the Board by the end of February 2004. Therefore, the Board decided to issue an interim order approving interim budgets for the year ending 31 December 2004 equal to 50 per cent of the budgets submitted.

2. *TransCanada Pipelines Limited, BC System (TCPL) – Statement of Interim Rates and Charges Effective 1 January 2004 and Amendments to the Gas Transportation Services Documents Tariff (GTSD) (File 4775-T054-2004-1)*

On 15 December, TCPL applied for Interim Rates and Charges effective 1 January 2004 and amendments to the GTSD. TCPL proposed Firm Service Rates for 2004 to be 6.484 cents per gigajoule compared to 7.251 cents per gigajoule in 2003. The amendments to the GTSD are for a new Short-Term Firm Service when capacity is available.

On 30 December, the Board decided that the BC System Interim Rates and Charges should reflect a reduction in the revenue requirement of \$558 000 from the applied for level pending the Board's approval of the final Effective Rates and Charges for 2004.

3. *TransCanada Pipelines Limited (TCPL) – Mainline Open Season, Complaints – North Bay Junction (File 4775-T001-1-12)*

Several complaints were received by TCPL and the Board concerning TCPL's approach to its Mainline Open Season announced on 17 July. In its Open Season, TCPL offers service from receipt points that are not listed in its Tariff.

On 15 September, TCPL applied for approval to establish the North Bay Junction as a new receipt and delivery point and for approval of the associated tolls for services to and from this point. On 26 September, the Board decided to hold a facilitated workshop to discuss the issues raised in the aforementioned letters of complaint. The Board held the workshop on 23 October and the Facilitator's Report was issued on 13 November.

On 14 November, the Board decided to stay the processing of the application until such time as TCPL files sufficient information to address the broader toll design issues. The Board will then determine whether to consider the application and the related information in a stand-alone proceeding or in conjunction with a future application.

On 17 February, TCPL informed the Board that it was continuing its work on the additional evidence necessary to address the hearing issues the Board has established and to update commercial and tolling information submitted with the original application on September 15, 2003. TCPL still expects it will file its additional evidence before the end of March 2004.

Appeals and Reviews

Appeals

Appeals Pending

1. *TransCanada PipeLines Limited (TCPL) – NEB Decision RH-R-1-2002*

On 21 March, TCPL applied to the Federal Court of Appeal for leave to appeal the Board's RH-R-1-2002 Decision issued on 20 February 2003. In this Decision, the NEB dismissed TCPL's September 2002 request for a Review and Variance of the Board's June 2002 RH-4-2001 Decision on the company's Fair Return application. In May, the Federal Court of Appeal granted TCPL leave to appeal.

The Court heard the Appeal from 16 to 18 February in Toronto, Ontario.

2. *Natural Gas Steering Committee (NGSC) – Application for Leave to Appeal the 2003 NEB Decision Relating to Westcoast Energy Inc. (WEI) Final 2003 Toll*

The NGSC has applied to the Federal Court of Appeal for leave to appeal the Board's Decision dated 27 November 2003 regarding an application from WEI for approval of final tolls for 2003. The NGSC asked the Federal Court for a stay of the application pending the determination of the review application discussed below in item 4.

Reviews

Reviews Pending

3. *City of Hamilton – Judicial Review - Trans-Northern Pipeline Inc. (TNPI) – Pipeline Replacement and Lowering in Hamilton, Ontario – OHW-1-2003*

On 18 August, the City of Hamilton filed a Notice of Application for Judicial Review with the Federal Court of Appeal. The Notice seeks, among other things, a declaration that the *Canadian Environmental Assessment Act* (CEA Act) does not apply to the TNPI application and that no environmental screening is or was required to be carried out by the Board under the CEA Act in respect of the application.

The Board filed with the Court a Notice of Appearance. The Application has been put into abeyance until 30 days after the Board's decision on the TNPI application as a result of a consent motion to the court.

4. *Natural Gas Steering Committee (NGSC) – Application to Review the Board's Decision Relating to Westcoast Energy Inc. (WEI) Final 2003 Toll*

On 26 February, the Board granted a request from NGSC to review, grounds (b) and (c) below, a previous WEI tolls decision. On 15 January, the Board had solicited the comments from interested parties on whether a review should be conducted. The Board will conduct the review through a written process.

On 24 December, the NGSC asked the Board to review its WEI 2003 Final Tolls Decision of 27 November 2003 and to amend Order TG-7-2003 to require WEI to include the full benefit of the 2003 Overhead During Construction (ODC) tax adjustment in the 2003 tolls. The NGSC also requested that the Board establish a review process to review the treatment of indirect ODC deductions in the 1997 to 2001 toll orders.

The NGSC submits that the Board made errors in reaching its decision in that it:

- (a) erred in law when it applied the terms of the 1997-2001 Settlement to the 2003 ODC adjustments;
- (b) erred in not finding that the 2003 ODC adjustments, although not resulting in a reassessment, arose from reassessments of the taxes payable for years prior to 2003 such that either the 1997-2001 Settlement or the 2002-2003 Settlement oblige WEI to credit the full benefit to the account of shippers; and
- (c) erred in not responding to the NGSC request that the Board review the 1997 to 2001 tolling decisions to ensure the correct and current information on the 1997-2001 ODC Adjustments was taken into account by the Board or, if taken into account, in not indicating so in its decision.

Amendments to Regulations, Rules and Guidelines

Regulatory Initiatives Pursuant to the National Energy Board Act

1. *Guidelines for Filing Requirements, 1995 (GFR)*

On 2 December, the Board provided an opportunity for the public to review the final draft of the *NEB Filing Manual* (formerly called the *Guidelines for Filing Requirement, 1995*). The final Filing Manual will be released by the end of March 2004.

2. *National Energy Board Pipeline Crossing Regulations, Part I and Part II - Damage Prevention Regulations*

On 14 November, the Board sought comments from the public on the *Draft Guidance Notes for the National Energy Board Damage Prevention Regulations*. The document contains the draft legal text of the Board's proposed *Damage Prevention Regulations* and the proposed guidance. The deadline for written comments is 31 March 2004.

The Board intends to replace the existing *Pipeline Crossing Regulations, Part II* with regulations targeted at damage prevention (to be known as *Damage Prevention Regulations*).

Regulatory Initiatives Pursuant to the Canada Oil and Gas Operations Act

3. *Canada Oil and Gas Diving Regulations and Guidance Notes*

For more information on this matter, refer to item 4 under *Amendments to Regulations and Rules* in the May 2001 issue of the *Regulatory Agenda*.

4. *The Canada Oil and Gas Drilling Regulations and the Canada Oil and Gas Production and Conservation Regulations*

For more information on this matter, refer to item 5 under *Amendments to Regulations and Rules* in the May 2001 issue of the *Regulatory Agenda*.

5. *The Canada Oil and Gas Geophysical Operations Regulation (Regulations)*

The Regulations are being amended in order to satisfy concerns raised by the Standing Joint Committee for the Scrutiny of Regulations and to reflect advances in electronic data storage and communications. Some of the changes are designed to render provisions of the Regulations consistent in both official languages and to reflect changes made since the adoption of the *Department of Canadian Heritage Act*.

Regulatory Initiative Pursuant to the Canada Labour Code

6. *Regulations and Guidance Notes Pertaining to Canada Labour Code, Part II*

For more information on this matter, refer to item 6 under *Amendments to Regulations and Rules* in the February 2003 issue of the *Regulatory Agenda*.

Administrative Matters

Pre-Application Meetings Guidance Notes (File 230-A000-2-6)

On 26 February, the Board issued its revised Pre-Application Guidance Notes. Pre-application meetings can contribute to more complete applications, thus facilitating the review process and improving cycle times. The Board invites applicants to consult the Guidance Notes if they plan to meet with Board staff prior to filing an application.

The Board decided in the fall of 2003 to review its existing guidelines for pre-application meetings. A draft document was sent to NEB regulated companies, interested parties and the Canadian Energy Pipeline Association requesting comments and suggestions. The Guidance Notes have been edited for clarity and to reflect the comments received by the Board during the consultation process on the draft. The Pre-Application Guidance Notes are available on the Board's Web site at www.neb-one.gc.ca.

Instructions for Filing

All correspondence with the Board should be addressed to the Secretary, National Energy Board, 444 Seventh Avenue SW, Calgary, AB T2P 0X8 - Fax: (403) 292-5503.

Applications - Copies Required to be Filed

For a list of the number of copies required for the different types of applications, see our Internet site under the heading *Submit a Document*.

Communication Numbers

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Appendix I

Section 58 Applications

Gas Pipelines

Applicant	File/Order	Application	Est. Cost
Many Islands Pipe Lines (Canada) Limited	File: 3400-M029-37 Order: XG-M029-05-2004	Application dated 9 January; approved on 2 February. Construct a tie-in riser.	18 500
Maritimes and Northeast Pipeline Management Ltd.	File: 3400-M124-15 Order: XG-M124-07-2004	Application dated 12 January; approved on 19 February. Construct a Custody Transfer Station Facilities for Heritage Gas Limited.	1 000 000
TransCanadaPipeLines Limited	File: 3400-T001-228 Order: XG-T001-06-2004	Application dated 22 December; approved on 10 February. 2004 Cathodic Protection Program No. 1 in Ontario.	52 000
Westcoast Energy Inc.	File: 3400-W005-319 Order: XG-W005-09-2003	Application dated 28 January; approved on 24 February. Upgrade two pipe casing on the Fort Nelson Mainline.	80 000
	File: 3400-W005-318 Order: XG-W005-08-2004	Application dated 22 January; approved on 24 February. Replace a pure amine storage tank at the McMahon Gas Plant and upgrade pipe casings on the West Buick and Gundy Pipelines.	310 000

Oil Pipelines

Applicant	File/Order	Application	Est. Cost
Terasen Pipelines (Trans Mountain) Inc.	File: 3400-T099-8 Order: XO-T099-01-2004	Application dated 5 January; approved on 6 February. Mainline cut-outs; valve vault construction; permanent sleeve repairs; Hope Creek dyke upgrade.	4 018 000

Profile

The National Energy Board is a federal regulatory tribunal that was created on 2 November 1959 by an Act of Parliament.

The Board's regulatory powers under the *National Energy Board Act* include the granting of authorizations for the exportation of oil, natural gas and electricity, the certification of interprovincial and international pipelines and designated interprovincial and international power lines, and the setting of tolls and tariffs for oil and gas pipelines under federal jurisdiction.

In addition to its regulatory functions, the Board is responsible for advising the government on the development and use of energy resources.

The Act also requires that the Board keep under review the Canadian supply of all major energy commodities, with emphasis on electricity, oil, natural gas, and the by-products derived from oil and natural gas, as well as the demand for Canadian energy in Canada and in export markets.

The Board's responsibilities under the *Canada Oil and Gas Operations Act* and certain provisions of the *Canada Petroleum Resources Act* encompass the regulation of exploration for and the development and production of oil and gas on Frontier Lands in a manner that promotes safety of the worker, protection of the environment, and conservation of hydrocarbon resources.

The Board also has specific responsibilities under the *Northern Pipeline Act* and the *Energy Administration Act*. In addition, Board inspectors have been appointed safety officers by Human Resources Development Canada to administer Part II of the *Canada Labour Code*.

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