

PAR COURRIEL
ORIGINAL PAR COURRIER

Avocats-conseils

Le très honorable Pierre Elliott Trudeau, C.P., C.C., C.H., c.r., MSRC (1984-2000)
Le très honorable Jean Chrétien, C.P., c.r.
L'honorable Donald J. Johnston, C.P., c.r.
Pierre Marc Johnson, MSRC
Peter M. Blaikie, c.r.
André Bureau, O.C.

Le 11 novembre 2009

M^c Véronique Dubois
Secrétaire
RÉGIE DE L'ÉNERGIE
800, Place Victoria, bureau 2.55
Montréal (Québec) H4Z 1A2

Notre référence : 003070-0306

**Objet : R-3690-2009 Demande de modifier les tarifs de Société
en commandite Gaz Métro 2009-2010**

Chère consoeur,

Lors de la présentation des plaidoiries sur le taux de rendement dans l'affaire mentionnée en rubrique, il a été fait référence à un processus de consultation publique qui a été lancé par l'Office national de l'Énergie (« ONE ») le 23 mars 2009 quant à l'opportunité ou non de réviser la décision RH-2-94 qui avait instauré le mécanisme automatique d'ajustement du taux de rendement pour plusieurs sociétés de pipeline sous la juridiction de l'ONE.

Guy Sarault

T 514 846.2317
F 514 921-1317
gsarault@heenan.ca

1250, boul. René-Lévesque Ouest
Bureau 2500
Montréal (Québec)
Canada H3B 4Y1

www.heenanblaikie.com

Dans sa décision (copie ci-jointe) rendue en date du 8 octobre 2009 au terme de ce processus de consultation, l'ONE a décidé de mettre fin à l'application de la décision RH-2-94.

Compte tenu de la pertinence potentielle de cette décision relativement aux enjeux qui ont été débattus devant la Régie dans le dossier mentionné en rubrique, l'ACIG croit nécessaire d'informer la Régie que lundi, le 9 novembre 2009, l'Association canadienne des producteurs de pétrole (« CAPP ») et l'ACIG ont produit à la Cour d'appel fédérale une requête demandant la permission d'en appeler de cette décision de l'ONE. Les procédures relatives à cet appel peuvent être retrouvés dans le dossier 09-A-36 de la Cour d'appel fédérale.

Me Véronique Dubois
Secrétaire

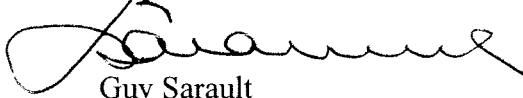
RÉGIE DE L'ÉNERGIE

22 septembre 2009

Page 2

Veillez agréer, chère consœur, l'expression de nos sentiments les plus distingués.

Heenan Blaikie S.E.N.C.R.L., SRL



Guy Sarault

P.j.

c. c. : Gaz Métro : a/s Vincent Regnault
Intervenants
ACIG : a/s Murray Newton
Jean-Benoit Trahan
Laurence Booth
Michael Gorman

HBdocs - 7410609v1

National Energy
Board



Office national
de l'énergie

File OF-Tolls-TollsGen-COC 01
8 October 2009

To: Parties Named in the Attached Distribution List

Review of the Multi-Pipeline Cost of Capital Decision (RH-2-94)

On 3 July 2009, the Board initiated a review of the RH-2-94 Decision. Enclosed is the Board's decision on this matter.

For ease of reference, the Board has decided to issue this decision, and the Board's related letters dated 23 March, 1 May and 3 July, all 2009, together in a single blue book document later this year.

The Board directs companies in Part A of the attached Distribution List to serve a copy of this letter and the enclosed decision on their shippers and interested parties, including parties to their latest tolls decision or settlement. They need not serve a copy on any person listed in Part B.

Parties are advised that copies of correspondence related to this process can be found on the Board's Regulatory Documents Repository (accessible by visiting the Board's Internet site at www.neb-one.gc.ca. Click on the "View" link under the Regulatory Documents heading). In the Repository, click on "Group 1 Gas" or "Group 1 Oil". Then click on "Multi-Client Cost of Capital (RH-2-94)"; then click on "1994-06-20 Cost of Capital (RH-2-94)"; and finally click on "2009-03-23 - Request for Comments on Review of RH-2-94 Decision".

Yours truly,

A handwritten signature in cursive script that reads "AnneMarie Erickson".

Anne-Marie Erickson
Acting Secretary of the Board

Attachments (2)

Review of the Multi-Pipeline Cost of Capital Decision (RH-2-94)

Reasons for Decision

Background

On 23 March 2009, the National Energy Board issued a letter advising that it had decided to consider whether it should initiate a review, pursuant to section 21 of the *National Energy Board Act*, of the RH-2-94 Decision¹. The Board solicited comments from interested persons on whether they believed that the RH-2-94 Decision should be reviewed, and set a deadline for comments of 25 May 2009.

On 3 July 2009, after considering the submissions received, the Board initiated a review of the RH-2-94 Decision by seeking comments on the continuing applicability of the RH-2-94 Decision, and possible outcomes of the review. The Board indicated that parties need not file any further submissions unless they had supplementary comments not covered by their earlier filings. The Board invited parties to comment on the following possible outcomes and to suggest alternative outcomes.

- The RH-2-94 Decision remains in effect, without prejudice to parties filing company specific applications to depart from the RH-2-94 Decision.
- The RH-2-94 Decision will not continue to be in effect and an appropriate method of and timing for transition for any pipeline still subject to the RH-2-94 Decision, and those pipelines utilizing the RH-2-94 Formula, will be implemented.
- The initiation of a generic process, which could be a formal generic hearing, or any other process developed by interested parties, to examine the manner in which, going forward, the Board should address the cost of capital.

The Board set a deadline for comments of 18 September 2009. The Board considered the submissions from all parties in reaching a decision.

Views of the Board

The initial decision that the Board must address is whether there is a doubt as to the correctness of the RH-2-94 Decision.

¹ National Energy Board, RH-2-94 Reasons for Decision, TransCanada PipeLines Limited, Westcoast Energy Inc., Foothills Pipe Lines Ltd., Alberta Natural Gas Company Ltd, Trans Québec & Maritimes Pipeline Inc., Interprovincial Pipe Line Inc., TransMountain PipeLine Company Ltd., Trans-Northern Pipeline Inc. Cost of Capital, March 1995.

In the RH-2-94 Reasons for Decision, the Board stated that it was "not setting a limit on the life of the [adjustment] mechanism and it does not expect to reassess the rate of return on common equity in a formal hearing for at least three years."² Further, the Board stated that it "also expects that the capital structure set in this hearing for each of the pipelines will endure for an extended period of years."³ Thus, it is clear that the Board expected the RH-2-94 Decision to remain in place for at least some time. However, in the Board's view, 15 years is a significant passage of time in the context of financial regulation. The Board notes that since 1994, there have been considerable changes in financial and economic circumstances.

Based on these considerations, the Board is of the view that there is a doubt as to the ongoing correctness of the RH-2-94 Decision.

Having reached this conclusion, the Board must turn to how it should proceed with respect to cost of capital determinations.

The Board is of the view that the circumstances surrounding cost of capital decisions today are different from those which faced the Board and industry prior to 1994. The Board notes that leading up to the RH-2-94 proceeding, litigated rate cases were the norm. Since that time, negotiated settlements have become common practice. The Board notes that parties have diverging views as to the role of the RH-2-94 Decision in facilitating settlements. In the Board's view, it cannot be determined whether the facilitation of settlements was due to the RH-2-94 Decision alone, or also as a result of the Board's decision in August 1994 that it would accept or reject settlements in their entirety⁴, or for other reasons such as the development in that era of pipeline/stakeholder task forces. Whatever the reason, given the vast experience the industry has gained in reaching negotiated settlements over the past 15 years, the Board is of the view that it is neither necessary nor appropriate to replace the RH-2-94 Decision with another multi-pipeline cost of capital decision at this time. Accordingly, the RH-2-94 Decision will not continue to be in effect.

The Board's decision not to pursue a multi-pipeline approach does not preclude the Board from doing so at a future date.

Given the reference to the RH-2-94 Formula in some current settlements, for the convenience of parties the Board will continue to publish the return on equity resulting from the Formula in late 2009 (2010 result) and 2010 (2011 result), and, if requested by parties, beyond 2010.

² *Ibid.*, at p. 32

³ *Ibid.*

⁴ National Energy Board letter dated 23 August 1994 "Negotiated Settlements of Traffic, Tolls and Tariffs", File No. 4600-1000-3.

Distribution List/Liste de distribution

Method of Service – Mode de service
Efile Notification/Signification par voie électronique
Facsimile/télécopieur
Mail/courier

Part A/Partie A

Alliance Pipeline Ltd.	rob.power@alliance-pipeline.com
Enbridge Pipelines Inc.	helene.long@enbridge.com
Enbridge Pipelines (NW) Inc.	ralph.fischer@enbridge.com
Express Pipeline Limited Partnership	brenda_mcclellan@kindermorgan.com
Foothills Pipelines Inc.	murray_sondergard@transcanada.ca
Gazoduc Trans Québec & Maritimes Inc.	botis@gazoductqm.com
Kinder Morgan Cochin ULC	brenda_mcclellan@kindermorgan.com
Maritimes & Northeast Pipeline Management Ltd.	ileadley@spectraenergy.com
NOVA Gas Transmission Ltd.	greg_szuch@transcanada.com patrick_keys@transcanada.com
TransCanada PipeLines Limited	murray_sondergard@transcanada.com
Trans Mountain Pipeline Inc.	brenda_mcclellan@kindermorgan.com
Trans-Northern Pipelines Inc.	jlang@tnpi.ca
Westcoast Energy Inc., carrying on business as Spectra Energy Transmission	melthorp@spectraenergy.com

Part B/Partie B

(List of Interested Parties – RH-2-94 – Liste des parties intéressées)

Alberta Department of Energy	regaffairs.energy@gov.ab.ca
B.P. Canada Energy Co.	cheryl.worthy@bp.com
BC Hydro and Power Authority	bhydroregulatorygroup@bhydro.com
City Of Calgary	Mark.Rowe@calgary.ca
Canadian Association of Petroleum Producers	jardine@capp.ca
Canadian Energy Pipeline Association	brendakenny@cepa.com
Canwest Gas Supply Inc.	mail / courier
Centra Transmission Holdings Inc.	jbrophy@efgroupllc.com
Centra Gas Manitoba Inc.	baczarniecki@hydro.mb.ca
Council of Forest Industries of British Columbia	mauch@cofi.org
Enbridge Gas Distribution	tania.persad@enbridge.com
EnCana Corporation	rinde.powell@encana.com
Export Users Group	weislawe@shaw.ca
Gaz Métro	kasselin@gazmetro.com
Huntingdon International Pipeline Corporation	604-592-7620
Imperial Oil Resources	ronald.moore@esso.ca
Industrial Gas Users Association	mnewton@igua.ca
New England Power Company	508-389-2605
Northern Border Pipeline Company	Loretta.McGowan@Nborder.com
Plains Marketing Canada, L.P.	403-233-0399

Province of Ontario	416-326-6996
Province de Québec	418-643-7524
Rochester Gas and Electric Corporation	marjorie_perlman@rge.com
Shell Canada Limited	paul.m.davies@shell.com
Terasen Gas Inc.	regulatory.affairs@terasengas.com
Teck Cominco Metals Ltd.	604-631-3232
TransAlta Corporation	403-267-2575
Union Gas Limited	pplanting@uniongas.com

(Other Pipeline Companies/ Autres sociétés pipelinières)

1057533 Alberta Ltd. / Harvest Operations Corp	403-265-3490
2193914 Canada Limited	tania.persad@enbridge.com
Abitibi-Consolidated Company of Canada	514-394-3624
Agent and General Partner of the Pembina North Ltd. Partnership Pouce Coupé Pipe Line Ltd.	dzacharias@pembina.com
AltaGas Pipeline Partnership	403-691-7576
Apache Canada Ltd.	anita.bianchie@apachecorp.com
ARC Resources Ltd.	lpelletier@arcresources.com
ATCO Utilities	780-420-7400
Bear Paw Processing Company (Canada) Ltd.	701-565-2229
Berens Energy Ltd	403-265-5587
Burlington Resources Canada (Hunter) Ltd.	403-260-6000
Canada Border Services Agency	306-780-7750

Canadian Natural Resources Limited	bryan.bradley@cnrl.com
Canadian – Montana Pipeline Corporation	mail / courrier
Champion Pipe Line Corporation Limited	514-598-3144
Chief Mountain Gas Co-Op Ltd.	mail / courrier
Crescent Point Resources Ltd	403-693-0070
County of Vermillion River No. 24 Gas Utility	780-846-2716
Delphi Energy Partnership Delphi Energy Corporation	403-265-6207
Denali Canada	mail / courrier
Devon Canada Corporation	keith.fardy@devoncanada.com
DR Four Beat Energy Corporation	406-862-0715
Dome NGL Pipeline Ltd.	Suzanne.Boucher-chen@bp.com
EB Eddy Forest Products Ltd. c/o Domtar Inc.	mail / courrier
Echoex Energy Inc.	403-265-4354
Enbridge Pipelines (Westspur) Inc.	Peter.Taylor@enbridge.com
EnCana Ekwan Pipeline Inc	403-645-3054
EnCana Oil & Gas Company Ltd.	rinde.powell@encana.com
EnerMarck Inc.	403-298-2211
ExxonMobil Canada Properties	902-496-4931
Forty Mile Gas Co-Op Ltd.	mail / courrier
Fraser Papers Inc. (Canada)	506-737-2100
Glencoe Resources Ltd.	dave.brown@glenres.ca

Holland & Knight	202-955-5564
Husky Oil Operation Limited	susan.anderson@huskyenergy.ca
ISH Energy Ltd.	403-265-1792
Kaiser Exploration Ltd.	403-265-3161
Keyera Energy Ltd.	403-205-8318
Many Islands Pipe Lines (Canada) Limited	306-565-3332
Mid-Continent Pipelines Limited	306-352-8892
Minell Pipeline Limited	204-475-2452
Montreal Pipe Line Limited	514-645-7663
Murphy Canada Exploration Company	403-233-2565
Nexen Inc.	shannon_young@nexeninc.com
Niagara Gas Transmission Limited	tania.persad@enbridge.com
Nova Chemicals (Canada) Ltd.	mcdougcd@novachem.com
NuVista Energy Ltd	403-538-8575
Omimex Canada Ltd.	817-735-8033
Paramount Transmission Ltd	403-262-7994
Peace River Transmission Company Limited	604-697-6210
Pengrowth Corporation	pengrowth@pengrowth.com
Penn West Petroleum Ltd.	403-777-2670
Pioneer Natural Resources Canada	tracey.bell@pxd.com
PMC (Nova Scotia) Company	403-233-0399
Portal Municipal Gas Company Canada Inc.	306-721-9220
Provident Energy Ltd.	rlock@providentenergy.com

SCL Pipeline Inc.	mail / courrier
Shiha Energy Transmission Lt.	tom.hong@paramountres.com
Souris Valley Pipeline Limited	306-848-0293
Spectra Energy Empress LP	mkelly@spectraenergy.com
Spectra Energy Midstream Canada LP	BLMoore1@spectraenergy.com
St. Clair Pipelines Management Inc.	902-425-4592
Suncor Energy Inc.	416-733-8048
Sun-Canadian Pipe Line Company	215-977-3409
Sword Energy Ltd.	403-770-4850
Talisman Energy Inc.	403-237-1902
Taurus Exploration Canada Ltd	mail / courrier
TransCanada Keystone Pipeline GP Ltd.	kristine_delkus@transcanada.com
True Energy Inc.	403-264-8163
Vault Energy Inc.	403-262-5524
Vector Pipeline Limited Partnership	734-462-0231
Wolstitmor Joint Venture	403-513-3750
Yukon Pipelines Ltd.	bhedges@russelmetals.com

(Interested Parties / parties intéressées)

The Honourable Robert Douglas Nicholson, P.C., Q.C., M.P. Minister of Justice & Attorney General of Canada	613-990-7255
The Honourable Wally Oppal Attorney General & Minister Responsible for Multiculturalism Province of British Columbia	250-387-6411
The Honourable Alison Redford, Q.C. Minister of Justice & Attorney General and Government House Leader Province of Alberta	780-422-6621
The Honourable Don Morgan Minister of Justice & Attorney General Province of Saskatchewan	306-787-1232
The Honourable Dave Chomiak Minister of Justice and Attorney General Government House Leader Province of Manitoba	204-945-2517
The Honourable Chris Bentley Attorney General of the Province of Ontario	416-326-4007
L'Honourable Kathleen Weil Ministre de la Justice du Québec Procureure générale Notaire générale du Québec Ministre responsable des lois professionnelles	418-646-0027
The Honourable Thomas J. Burke, Q.C. Attorney General Minister of Justice and Consumer Affairs Province of New Brunswick	506 453 7154
The Honourable Cecil P. Clarke Attorney General and Minister of Justice Minister Responsible for Human Rights Act Minister Responsible for Regulations Act Province of Nova Scotia	902 424 0510

The Honourable Gerard Greenan Attorney General Province of Prince Edward Island	902 368 4910
The Honourable Thomas W. Marshall Minister of Justice & Attorney General Province of Newfoundland and Labrador	709 729 0469
The Honourable Marian Horne Minister of Justice Government of the Yukon Yukon Legislative Assembly	867 393 7400
The Honourable Jackson Lafferty Minister of Justice Minister of Industry, Tourism and Investment Government of the Northwest Territories	jackson_lafferty@gov.nt.ca
The Honourable Eva Aariak Premier Minister of Executive and Intergovernmental Affairs Minister Responsible for the Status of Women Minister Responsible for Immigration Government of the Nunavut Territory	867 975 5051
Hydro One Networks Inc.	Susan.E.Frank@HydroOne.com
Sun Life Financial	416-595-1770

(Provincial Government Departments / Ministères provinciaux)

The Honourable Barry Barnet Minister of Energy and Minister Responsible for Conserve Nova Scotia Nova Scotia Department of Energy	902 424 3265
The Honourable Blair Lekstrom Ministry of Energy, Mines and Petroleum Resources OGD – Oil & Gas Division Province of British Columbia	250 356 2965

Mr. Stirling Bates Director of Regulatory Policy Oil and Gas Policy Branch Ministry of Energy, Mines and Petroleum Resources Province of British Columbia	250 952 0251
Ms. C. J. C. Page, Counsel Director Regulatory Affairs Alberta Department of Energy	403 297 5499
Mr. Douglas Larder, Q.C. General Counsel and Executive Director-Law Alberta Utilities Commission	403 592 4406
Mr. Kent Campbell Deputy Minister Energy & Resources Government of Saskatchewan	306 787 2159
Mr. Keith Lowdon Director, Petroleum Branch Science, Technology, Energy & Mines	204 945 0586
The Honourable John Gerretsen Minister of the Environment Ministry of the Environment Province of Ontario	416 314 7337
Minister George Smitherman Ministry of Energy and Infrastructure Province of Ontario	416-327-6754
Mr. Edward Sweet Ministry of Energy & Infrastructure Energy Markets Section Energy Supply and Competition Branch Office of Energy Supply, Transmission, and Distribution Policy Province of Ontario	edward.sweet@ontario.ca

M. Claude Béchard
 Ministère des Ressources naturelles
 et de la Faune
 Province de Québec 418 643 4318

Mr. Paul Molloy, P.Eng.
 Manager, Petroleum Engineering
 Energy Branch
 Government of Newfoundland and Labrador
 Department of Natural Resources 709 729 2508

Office of the Utilities Consumer Advocate (Alberta) rmccreary@rmrf.com

(Associations)

Mr. David Butters
 President & CEO
 Association of Power Producers of Ontario appro@appro.org

Mr. Nick Schultz
 Vice President, Pipeline Regulation and General Counsel
 Canadian Association of Petroleum Producers 403 266 3123

Mr. David Podruzny
 Vice President, Business and Economics
 Secretary to the Board
 The Canadian Chemical Producers' Association 613 237 4061

Mr. Michael Cleland
 President and CEO
 Canadian Gas Association 613 748 9078

Mr. Murray Newton
 President
 Industrial Gas Users Association 613 230 9531

Mr. Shane Pospisil
 President and CEO
 Ontario Energy Association 416 961 1173

Attachment to NEB Letter / Pièce jointe à la lettre de l'ONÉ
Dated 8 October 2009 / datée du 8 octobre 2009
Page 11 of / de 11

Ms. Karmen Groza Office Administrator/Office Manager Small Explorers and Producers' Association of Canada	403-269-3636
Ms. Brenda Kenny President Canadian Energy Pipeline Association	403-221-8760
Mr. Pierre Guimond President Canadian Electricity Association	613-230-9326
Mr. Paul Vogel Cohen Highley LLP	519-672-5960
Mr. David Core President Canadian Association of Energy & Pipeline Landowners Associations	DaveCore@caepla.org