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Filed Electronically
National Energy Board
444 Seventh Avenue S.W.
Calgary, Alberta
T2P 0X8

Attention: Ms. Anne-Marie Erickson
Secretary of the Board

Your Reference: 4600-A000-3
Our Reference: 003070-0326

Re: TransCanada Application for Approval of Mainline and Alberta System Interim Tolls for 2011

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Dear Ms. Erickson:

Our client, the Industrial Gas Users Association (IGUA), has retained our services with respect to the application filed by TransCanada Pipelines (TCPL) on December 9, 2010 requesting approval of Mainline and Alberta system interim tolls to be effective January 1, 2011.

IGUA represents large energy intensive industrial gas users who consume natural gas for both process and heating loads. IGUA's members operate industrial facilities in various markets served by the TCPL system. IGUA's members either contract directly with TCPL for gas transportation or they contract with gas marketers or gas distribution companies to provide required upstream TCPL transportation requirements. However, in all cases, industrial gas consumers ultimately pay the tolls that TCPL charges for its transportation services. Unlike some other TCPL shippers and gas market participants, industrial toll payers are not able to pass TCPL costs on to others.

IGUA has been an active participant in the Mainline Tolls Task Force (TTF) since its inception 20 years ago. Over the past 18 months or so, IGUA has worked with other stakeholders in a collaborative effort to find meaningful ways to improve the competitive position of TCPL's Mainline tolls. IGUA will continue with these collaborative efforts into the future.

1. Widespread Opposition to the TCPL/CAPP Tolling Agreement

At the time of writing this letter, we have had the opportunity to review several unsolicited letters sent to the NEB, including one from the attorneys for the Canadian Association of Petroleum Producers (CAPP) dated December 10, 2010.

As indicated in sections 4.0 and 5.0 of TCPL's application as well as in the opening paragraph of CAPP's attorneys' letter, the interim tolls proposed by TCPL for the Mainline and NGTL for 2011 find their source in a settlement agreement supported by CAPP and a number of other stakeholders.

While it is true that some aspects of the proposed CAPP/TCPL package were first introduced by TCPL to the full TTF in March 2010, the key terms and conditions of the settlement agreement were in fact negotiated separately by TCPL and CAPP in September and October. The TCPL/CAPP negotiations were conducted outside of the TTF process. The CAPP/TCPL agreement was first presented to the full TTF only on November 3, 2010. It is therefore inaccurate to suggest that the CAPP/TCPL agreement is the result of comprehensive TTF discussions held throughout 2010.

TCPL suggests the proposed Mainline Interim 2011 Tolls are based on an agreement supported by a number of parties, including CAPP, that represents a broad cross-section of stakeholders.

In fact, the CAPP/TCPL agreement is opposed by a broad array of stakeholders, including producers, gas marketers, gas distribution companies, power producers and end users including large industrial gas consumers. On December 7th, a majority of TTF members either opposed or abstained from supporting or opposing the TTF resolution proposed by TCPL.

2. IGUA Opposes Both TCPL Interim Tolls Proposals

For the first time in recent memory, TCPL chose not to discuss or consult with the full TTF in regards to the content of its interim tolls application to be filed with the NEB.

IGUA opposes TCPL's proposed Mainline Interim 2011 Tolls as well as the associated amendments to the Canadian Mainline Gas Transportation Tariff (Mainline Tariff). IGUA also opposes the "Alternative Mainline Interim Tolls" proposed by TCPL.

2.1 Rejection of TCPL's Proposed Mainline Interim 2011 Tolls

IGUA opposes TCPL's proposed Mainline Interim 2011 Tolls. While toll payers could be expected to be attracted to the lower tolls proposed in TCPL's Application, it is important to understand how these lower tolls were achieved.

These short-term lower tolls for 2011 are achieved, in large part, by deferring hundreds of millions of dollars of known costs to future generations of TCPL toll payers. In addition, lower depreciation expense is achieved by shifting accumulated depreciation away from under-utilized segments of the Mainline to other segments that are expected to be more heavily used. If allowed, even on an interim basis, this shift in depreciation expense is very difficult to unwind. The resulting toll uncertainty for shippers further aggravates the problem. In addition, TCPL is also proposing the wholesale discarding of the traditional Mainline rate design and cost allocation as well as many of the underlying principles that have underpinned Mainline tolls throughout most of TCPL's history. Collectively, these measures manipulate the short-term 2011 tolls in the absence of any bona fide business plan to address the fundamental competitive problems caused by a severely under-utilized Mainline.

Various industry studies[1] (copy attached) that have recently been made public, conclude that the Mainline is likely to be very significantly under-utilized for the foreseeable future. Right-sizing TCPL's Mainline facilities and associated Transportation By Others obligations on other pipelines, consistent with foreseeable Mainline throughput projections, cannot continue to be deferred to burden future generations of TCPL shippers to deal with.

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1. See: 1) ICF International: 2010 Natural Gas Market Review Report, August 20, 2010, at pages 60 to 64 and 2) Ziff Energy Group: Natural Gas Demand and Supply Forecast prepared for KM LNG Operating General Partnership, October 2010, at pages 2, 20 and 24.

2.2 Rejection of TCPL's Proposed Amendments to the Mainline Tariff

IGUA opposes TCPL's proposed amendments to the Mainline Tariff in the absence of a full and transparent public review. Making such wholesale changes to its rate design and cost allocation would be difficult, if not impossible, to reverse once it is in place. TCPL's unorthodox proposal to transfer costs from one rate zone to another would require some shippers to pay costs for which they are not responsible and relieve others from paying costs they caused. If ultimately found to be unjust, sorting out refunds would be a formidable and time-consuming task. Moreover, retroactively collecting costs from shippers who are responsible for them (especially short-term shippers who no longer are customers) may neither be possible nor legal under the NEB's ratemaking powers. The Board's ultimate decision on final Mainline tolls may require significant adjustments to individual shippers' tolls. This further adds to the current tolling uncertainty and may further offload the TCPL system.

The abandonment of the traditional rate design and cost allocation methodology may also shift business risks away from TCPL onto its shippers, a condition that surely will aggravate an already tenuous market. Such significant changes should be the subject of a proper and transparent public review. The NEB and TCPL's shippers are entitled to fully understand how such a profound revision of the long-standing rate design and cost allocation will impact TCPL's customers and markets. The public interest cannot be served without that critical knowledge.

2.3 Rejection of TCPL's Alternative Mainline Interim Tolls

IGUA also opposes TCPL's proposed alternative Mainline interim tolls and rates described in section 7.0 of TCPL's Application. The proposed alternative Mainline interim tolls would be the highest tolls ever in TCPL's entire history and would further aggravate the negative impact that increasing Mainline tolls have on the competitiveness of the Mainline, as described in paragraph 15 to 17 of TCPL's own Application as well as in CAPP's attorneys December 10, 2010 letter.

3. Procedural Concerns

As clearly suggested in the second last paragraph at page 7 of CAPP's attorneys' letter, the application filed by TCPL is essentially a contested settlement application within the meaning of the guidelines for negotiated settlements of traffic tolls and tariffs issued by the Board on June 12, 2002. Under normal circumstances, the filing of such an application should be followed by the issuance, by the Board, of a procedural order indicating how it intends to proceed with the application and inviting any interested party that wishes to oppose the application to serve notice of its opposition within reasonable timelines established by the Board.

Unfortunately, the filing of TCPL's application on December 9, 2010 requesting an order of this importance and complexity taking effect as early as on January 1st, 2011 leaves very little time, if any when taking into account the Christmas Holidays, for stakeholders to file comprehensive comments opposing the application.

The immediate consequence of this procedural shortcut is that significant changes to the components and structure of TCPL's Mainline tariff and tolls are requested to be approved by the Board on an urgent basis, without public scrutiny, with important adverse consequences for years to come in the future. Among the proposals contained in TCPL's application that are likely to place the Board and all stakeholders before a "*fait accompli*" for years to come, there are the following:

a) The proposed interim tolls defer hundreds of millions of dollars of expenses (such as depreciation) to future generations of TCPL toll payers, without having a business plan to deal with fundamental issues facing the Mainline, starting with but not limited to system under-utilization[2].

b) The proposed interim tolls incorporate extraordinary rate design and cost allocation changes that are opposed by a significant portion of TCPL's stakeholders and which remove altogether traditional rate design and cost allocation principles that have withstood the test of time for decades.

c) While CAPP recognizes, at page 6 of its attorneys' letter, that the settlement agreement is not a long term solution, nowhere in TCPL's application nor in the terms and conditions of the CAPP/TCPL agreement can we find any firm commitment to immediately develop and implement a long term solution in consultation with all stakeholders under the Board's scrutiny.

In fact, the changes introduced by this contested settlement application are so comprehensive and far reaching that, should they be approved on an interim basis as of January 1st, 2011, it will become virtually impossible for the Board to reverse their consequences even if a public hearing held after interim approval leads the Board to conclude that the TCPL/CAPP agreement is not in the public interest.

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2. In paragraph 16 of its application, TCPL provides a list of the factors that have had and continue to have a negative impact on Mainline tolls and the competitiveness of the Mainline. TCPL however fails to mention that, in addition to those factors, it made a number of unfortunate business decisions that contributed to a shift from Long Haul to Short Haul. In addition, the uncertainty, volatility and unprecedented high levels of recent Mainline toll increases imposed by TCPL have very significantly contributed to the competitive problems the Mainline faces. It is therefore inaccurate for TCPL to suggest that the current issues facing the Mainline are the result of factors outside its control.

On the whole, IGUA is not only concerned with the detrimental terms and conditions of the TCPL/CAPP agreement but also, and more importantly, with the procedural shortcut proposed for its approval by the Board which, for all intents and purposes, will prevent meaningful public participation before the issuance of the Board's order.

For all these reasons, IGUA respectfully submits that the Board should decline to proceed with TCPL's contested settlement application until such time as all interested stakeholders will have been awarded a sufficient period of time for a meaningful participation in this very important process.

4. IGUA's Recommended Interim Tolls for 2011

IGUA recommends that the interim tolls for services on the TCPL Mainline, effective January 1, 2011, be set at the existing toll levels already authorized for 2010 pursuant to Board Order TG-06-2009.

Maintaining the 2011 Mainline interim tolls at current Board-approved levels is the least prejudicial to all parties respective positions while these complex matters are under review and subject to continued negotiation. This solution also provides an appropriate balance between lowering tolls based on the widely opposed manipulation of un-tested and poorly understood rate design and cost allocation changes, on the one hand, and raising tolls to unprecedented and even more uncompetitive levels that will continue to offload the Mainline, on the other.

Yours very truly,

Heenan Blaikie LLP

Guy Sarault
Partner

GS/ks

c. c. TCPL c/o Caroline Shaw, Regulatory Services
TCPL c/o Bernard Pelletier, Regulatory Services
TCPL c/o Jennifer Scott, Senior Legal Counsel
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