

RÉPONSE À L'ENGAGEMENT N° 2

- Référence :** E-2 (GM), Notes sténographiques du 8 septembre 2015, volume 2, page 48
- Demande :** Déposer l'entente de principe intervenue avec TCPL dans le cadre d'Énergie Est (demandé par SE-AQLPA)
- Réponse :** L'entente de principe « Settlement Term Sheet » entre TransCanada Pipelines Limited (TCPL) et Union Gas Limited, Enbridge Gas Distribution et Gaz Métro, conclue le 17 août 2015 dans le cadre d'Énergie Est et déposée à l'Office national de l'énergie le 24 août 2015 (OF-Fac-Oil-E266-2014-01 02), est déposée en annexe 1.

Régie de l'énergie
DOSSIER: R-3879-2014 PHASES 3 et 4
DEPOSÉE EN AUDIENCE
Date: 10 SEPT. 2015
Pièces n°: D-0656





450 – 1 Street SW  
Calgary, Alberta T2P 5H1  
Direct Phone: (403) 920-2161  
Email: kristine\_delkus@transcanada.com

August 24, 2015

National Energy Board  
517 Tenth Avenue SW  
Calgary, Alberta T2R 0A8

Filed Electronically

**Attention: Ms. Sheri Young, Secretary of the Board**

Dear Madam:

**Re: Energy East Pipeline Ltd. (Energy East)  
Energy East Project Application and Asset Transfer Application (together, the  
Application)  
National Energy Board (NEB or Board) File OF-Fac-Oil-E266-2014-01 02  
Settlement Term Sheet**

Energy East writes to advise the Board of developments that impact its consideration of the Application.

In summary, TransCanada has reached an agreement with Gaz Métro Limited Partnership (Gaz Metro), Enbridge Gas Distribution Inc. (EGDI) and Union Gas Limited (Union),<sup>1</sup> that resolves various issues in the Energy East Project and the Eastern Mainline Project (EMP). The agreement removes adversity of interest as between TransCanada and the LDCs in the Energy East Application, and will inform possible amendment to the Application (targeted for December 2015).

#### *Background*

By letter dated April 2, 2015, Energy East advised the Board that there would be a future amendment of the Application relating to Cacouna facilities. In a separate letter of the same date, TransCanada advised the Board that ongoing commercial processes could impact the scope of the EMP and could potentially require amendment of the Eastern Mainline Project Application (NEB File OF-Fac-Gas-T211-2014-01 02) and information about the EMP that is contained in the Asset Transfer Application, including any financial impact on gas shippers.

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<sup>1</sup> EGDI, Union and Gaz Metro are together referred to as the "LDCs".

*The Settlement Term Sheet*

By a Settlement Term Sheet (STS) executed on August 17, 2015, Gaz Metro, EGDI, Union and TransCanada reached agreement on various matters relating to the Energy East Project and the EMP as well as the Complaint. A copy of the executed STS is attached for filing with the Board.

Certain terms of the STS impact the Application and the future NEB process for hearing the Application, but not the timing for the filing of the amendment (which is still targeted for December 2015). Specific relevant terms of the STS include:

- The LDCs will not oppose or seek to delay the Energy East Project or the Eastern Mainline Project in any regulatory proceedings or otherwise, and will acknowledge that their issues have been addressed.<sup>2</sup>
- The LDCs will not oppose the transfer of Mainline facilities to Energy East or the price at which the transfer is to occur.<sup>3</sup>
- The scope of the EMP will be expanded to accommodate LDC concerns about gas transportation capacity in the Eastern Triangle after the transfer of Mainline gas facilities to Energy East.<sup>4</sup>

*Implementation of the STS*

Definitive Agreements implementing the STS are targeted to be executed by no later than October 30, 2015.<sup>5</sup>

The STS is not a Negotiated Settlement under the NEB *Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs*. TransCanada does not seek Board approval of the STS. Rather, the STS informs future amendment of the Transfer Application, future conduct of the proceeding to hear the Application, and future applications relating to Mainline tolls and tariffs.

A similar letter is being filed concurrently in the EMP Application (NEB File: OF-Fac-Gas-T211-2014-01 02).

If you have any questions or require further information, please contact TransCanada's representatives listed in the Application.

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<sup>2</sup> STS, Page 3 of 6.

<sup>3</sup> STS, Page 3 of 6.

<sup>4</sup> STS, Page 1 of 6.

<sup>5</sup> STS, Page 1 of 6 and Page 5 of 6.

August 24, 2015  
Ms. S. Young  
Page 3 of 3

Yours truly,  
**TransCanada PipeLines Limited**

*Original signed by*

Kristine Delkus  
Executive Vice-President and General Counsel

Enclosure

cc. Carolyn Pharand, Senior Operations Officer, Major Projects Management Office

Patrick Cabana  
Gaz Métro Limited Partnership

Malini Giridhar  
Vice President, Gas Supply & Business Development  
Enbridge Gas Distribution Inc.

Mark Isherwood  
Vice President, Business Development, Storage & Transmission  
Union Gas Limited

Dennis P. Langen  
Dentons LLP

Laurie Smith  
Bennett Jones LLP

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**Attachment**  
**Settlement Term Sheet**

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## Settlement Term Sheet

This Term Sheet sets out the material terms of the settlement among Gaz Metro Limited Partnership ("GMI"), Enbridge Gas Distribution Inc. ("EGD"), Union Gas Limited ("Union") (jointly "the LDCs") and TransCanada Pipelines Limited ("TransCanada" or "Mainline"), all four referred to jointly as "the Parties" and individually as a "Party", concerning, *inter alia*, the Energy East and Eastern Mainline Projects, and represents a fair and equitable outcome in the public interest. The "Definitive Agreements" contemplated by this Term Sheet may be comprised of one agreement or several agreements, as mutually determined and ultimately executed by the Parties.

Item	Terms and Conditions
Capacity	<ul style="list-style-type: none"> <li>• It is the intention of the Parties that the Eastern Mainline Project Application, now pending in NEB File OF-Fac-Gas-T211-2014-0102, will be changed to reflect a new project scope. Once amended, and pursuant to its obligations under the Definitive Agreements contemplated by this Term Sheet, the Eastern Mainline Project Facilities will accommodate the "Firm and Incremental Capacity" and the "Additional Capacity".</li>   <li>• "Firm and Incremental Capacity" shall consist of:               <ul style="list-style-type: none"> <li>○ the capacity required to provide 2,664 TJ/d in the Affected Area, as that term is defined in the Eastern Mainline Project Application. The 2,664 TJ/d includes current firm capacity requirements that preceded the 2016 NCOS and 2017 NCOS; the capacity required in the Affected Area to serve the 2016 NCOS and 2017 NCOS after the transfer of certain North Bay Short Cut facilities to Energy East; and that capacity extended under Term-Up Elections as of the Effective Date of this Term Sheet; and is net of all turn back notices received as of the Effective Date of this Term Sheet),</li> <li>○ less any future additional volumes that do not renew after the Effective Date of this Term Sheet to the latest date at which the Eastern Mainline Project scope reasonably can be reduced,</li> <li>○ less any existing firm contracts that are turned back after the Effective Date of this Term Sheet to the latest date at which the Eastern Mainline Project scope reasonably can be reduced,</li> <li>○ less any firm transportation service obligations that can be met using alternative commercial arrangements (<i>the commercial arrangements cannot result in less reliable service for firm shippers than physical capacity would provide</i>), after the Effective Date of this Term Sheet to the latest date at which the Eastern Mainline Project scope reasonably can be reduced.</li> </ul> </li>   <li>• "Additional Capacity" shall be uncontracted available capacity of 50 TJ/d in addition to the Firm and Incremental Capacity. TransCanada may utilize this uncontracted 50 TJ/d to meet requests for incremental firm capacity received after the in-service date of the Eastern Mainline Project.</li> </ul>

<p><b>Obligation to Construct Incremental Capacity</b></p>	<ul style="list-style-type: none"> <li>• If Energy East does not proceed, TransCanada will not construct the Eastern Mainline Project Facilities but will continue to construct those incremental facilities required to honor the Transportation Service Agreements executed by shippers and TransCanada pursuant to the 2016 NCOS and 2017 NCOS, provided regulatory approvals for such facilities are obtained, which are acceptable to TransCanada.</li> </ul>
<p><b>Financial Benefits to Eastern Triangle</b></p>	<ul style="list-style-type: none"> <li>• TransCanada commits that its gas shippers will not have to bear the Eastern Mainline Project capital cost risk. To underpin its commitment, Eastern Mainline Project Facilities capital that will be added to the Eastern Triangle rate base will not exceed \$2.1 billion dollars.</li> <li>• TransCanada will ensure that, based on the final costs of the Eastern Mainline Project Facilities, there will be a Financial Benefit of at least \$100 million, to be determined on a NPV basis in the cost of service in the Eastern Triangle (i.e., lower costs) to the end of 2050, when compared to the case in which Energy East did not proceed, all other things being equal (“Financial Benefit”). This Financial Benefit is estimated to produce a more than \$400 million reduction in costs during the period to the end of 2030, when compared to the case in which Energy East did not proceed, all other things being equal.</li> <li>• The calculation of any required actual adjustments in Mainline costs will be determined upon the confirmation of the final costs of the Eastern Mainline Project Facilities.</li> </ul> <p>For clarity, TransCanada will:</p> <ul style="list-style-type: none"> <li>○ Determine the final cost of the Eastern Mainline Project Facilities (which will include all costs related to the Eastern Mainline Project);</li> <li>○ Forecast the annual cost for Eastern Triangle shippers to 2050 under two scenarios: one with and one without the impacts of Energy East and the Eastern Mainline Project. All costs will be incorporated in these analyses such as the Bridging Contribution, fuel, property taxes, pipeline abandonment costs etc., under a consistent set of assumptions, and will utilize similar methodologies as those used in TransCanada’s Compliance Filing in RH-001-2014, which filing was approved by the National Energy Board (“NEB”) in Order TG-010-2014;</li> <li>○ The cost of service for the Eastern Triangle in the scenario with the impacts of Energy East and the Eastern Mainline Project will be credited (i.e. reduced) such that the NPV has a minimum benefit of \$100 million, when compared to the scenario without the impacts of Energy East and the Eastern Mainline Project;</li> <li>○ The discount rate used in the NPV calculations will be the pre-tax weighted average cost of capital used for the cost of service calculations over the analysis period; and</li> </ul>



<p><b>Financial Benefits to Eastern Triangle (continued)</b></p>	<ul style="list-style-type: none"> <li>○ This calculation will be a one-time analysis that will be completed within 6 months of the determination of the definitive actual cost of the Eastern Mainline Project Facilities.</li> <li>● The Parties agree that Mainline tolls are to be established consistent with the RH-001-2014 Decision and in such a way as to mitigate volatility over the period 2018-2030.</li> </ul>
<p><b>Waiver of 2016 NCOS and 2017 NCOS Shippers' Cancellation Costs</b></p>	<ul style="list-style-type: none"> <li>● As of the Effective Date of this Term Sheet, if TransCanada does not proceed with Energy East or/and the Eastern Mainline Project: <ul style="list-style-type: none"> <li>○ no Eastern Mainline Project development costs will be borne by any 2016 NCOS or 2017 NCOS shipper or sought by TransCanada pursuant to the 2016 NCOS Precedent Agreements ("PAs") or 2017 NCOS PAs; and</li> <li>○ Eastern Mainline Project development costs will not be recovered by TransCanada through Mainline Eastern Triangle tolls.</li> </ul> </li> <li>● For clarity, if a shipper terminates a 2016 NCOS PA or a 2017 NCOS PA, Eastern Mainline Project development costs shall not be waived for such shipper.</li> </ul>
<p><b>LDC Support</b></p>	<ul style="list-style-type: none"> <li>● As noted in the Nature of Term Sheet section below, this Term Sheet is binding on all Parties, and so long as all Parties are abiding by its terms, notwithstanding the Conditions Precedent of this Term Sheet, each of the LDCs will, from the Effective Date of this Term Sheet: <ul style="list-style-type: none"> <li>○ immediately withdraw its complaint and/or comments, and confirms that the complaint and/or comments of its affiliates, if any, will be withdrawn in National Energy Board File OF-Tolls-Group1-T211-2015-01;</li> <li>○ not oppose or seek to delay the Energy East Project or the Eastern Mainline Project in any regulatory proceedings or otherwise, and will acknowledge that their issues have been addressed,</li> <li>○ not challenge TransCanada's ability to recover the costs of the 50 TJ/d of Additional Capacity,</li> <li>○ not oppose the transfer of Mainline facilities to Energy East or the transfer price (provided that the transfer price is consistent with the Financial Benefits to the Eastern Triangle set out in this Term Sheet or any Definitive Agreements as contemplated by this Term Sheet), as proposed by TransCanada in its Section 74 application currently pending before the NEB in relation to the Energy East and Eastern Mainline Project applications, as those applications may be revised or amended, and</li> <li>○ promptly contact stakeholders that have been notified by any of the LDCs of their opposition to Energy East and advise those parties that a settlement term sheet has been agreed to by the Parties.</li> </ul> </li> </ul>

<p><b>Positive Support Option</b></p>	<ul style="list-style-type: none"> <li>• The Parties will discuss principles that would eventually move the LDCs' position regarding Energy East from non-opposition to positive support.</li> </ul>
<p><b>Conditions Precedent</b></p>	<ul style="list-style-type: none"> <li>• Except for the Waiver of 2016 NCOS and 2017 NCOS Shippers' Cancellation Costs and the Obligation to Construct Incremental Capacity, the obligations of TransCanada or its affiliates (together or individually, TransCanada) contained in this Term Sheet and any Definitive Agreements related to this Term Sheet are expressly conditioned on: <ul style="list-style-type: none"> <li>○ TransCanada's decisions, in its sole discretion, to apply for and to construct the Energy East Project and/or the Eastern Mainline Project;</li> <li>○ the receipt of all regulatory approvals required to construct and operate the Energy East Project and the Eastern Mainline Project; and</li> <li>○ the receipt of Acceptable Regulatory Approvals, including all toll or tariff changes deemed necessary by TransCanada, required to implement the terms of this Term Sheet or the Definitive Agreements. "Acceptable Regulatory Approvals" means approvals that are materially in conformance with the terms of this Term Sheet or the Definitive Agreements and are mutually acceptable to the Parties.</li> </ul> </li> </ul>
<p><b>Nature of Term Sheet</b></p>	<ul style="list-style-type: none"> <li>• The Executed Term Sheet is binding on the Parties and binds the Parties to negotiate in good faith the final Definitive Agreements consistent with the terms described in this Term Sheet.</li> <li>• Nothing in this Term Sheet is intended by any Party to interfere with the terms of the Mainline Settlement Agreement executed October 31, 2013 by the Parties, as amended.</li> <li>• By their execution of this Term Sheet, each Party certifies that, to the extent it requires the approval of its Board of Directors, such Board Approval has been received.</li> <li>• The Effective Date of this Term Sheet will be the date upon which all Parties have executed this Term Sheet.</li> <li>• The Parties agree that upon its Effective Date, this Term Sheet will not be confidential and can be shared with stakeholders.</li> <li>• Except for the Waiver of 2016 NCOS and 2017 NCOS Shippers' Cancellation Costs and the Obligation to Construct Incremental Capacity, this Term Sheet will terminate upon the earlier of the execution of the Definitive Agreements, failure to receive Acceptable Regulatory Approvals, or the termination of the Eastern Mainline Project by TransCanada, in its sole discretion.</li> </ul>

<p><b>Definitive Agreements</b></p>	<ul style="list-style-type: none"> <li>• Definitive Agreements among the Parties that are materially consistent with this Term Sheet will be targeted to be executed by no later than October 30, 2015.</li> <li>• Following the execution of the Definitive Agreements TransCanada shall amend either or both the Energy East and the Eastern Mainline Project applications, and shall file in due course for approval of any toll or tariff changes, and shall make any other filing it determines in its sole discretion is necessary to reflect the terms of the Definitive Agreements.</li> <li>• The Parties acknowledge that the Definitive Agreements shall be subject to approval by each Party's Boards of Directors. The signatories of this Term Sheet agree that they will support approval by their respective Boards of Directors and other parties of the Definitive Agreements produced in accordance with this Executed Term Sheet.</li> <li>• TransCanada will diligently seek to convince its stakeholders and the National Energy Board that the terms of this Term Sheet and the Definitive Agreements represent a fair and equitable outcome in the public interest, and that all changes to the Mainline tariff or tolls required to implement these terms should be approved.</li> <li>• The Definitive Agreements will provide for termination of the Parties' settlement obligations under the following circumstances: <ul style="list-style-type: none"> <li>○ TransCanada's failure to receive all Acceptable Regulatory Approvals;</li> <li>○ the termination of the Eastern Mainline Project by TransCanada, in its sole discretion.</li> </ul> </li> <li>• If the transfer of the North Bay Short Cut to the Energy East Project has not occurred before December 31, 2020, each of the LDCs shall have a right to terminate the Definitive Agreements on a date of its choosing, not less than 90 days following TransCanada's receipt of its written notice of termination, during which period all Parties agree to negotiate in good faith the terms for extending the Definitive Agreements.</li> </ul>
<p><b>NEB Notice Concerning Settlement</b></p>	<ul style="list-style-type: none"> <li>• Promptly after the Effective Date of this Term Sheet, TransCanada will file a copy of the Executed Term Sheet with the NEB and will advise that the Parties are working toward Definitive Agreements and will seek further support of the settlement Term Sheet from other shippers.</li> </ul>

By their signatures provided below, each Party agrees to be bound by this Settlement Term Sheet.

Executed this 17 th day of August, 2015, by:



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Mr. Karl Johannson  
President  
TransCanada PipeLines Limited

Executed this \_\_\_\_\_ th day of August, 2015, by:

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Mrs. Sophie Brochu  
President & CEO  
Gaz Metro Limited Partnership

Executed this \_\_\_\_\_ th day of August, 2015, by:

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Enbridge Gas Distribution Inc.

Executed this \_\_\_\_\_ th day of August, 2015, by:

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Mr. Stephen Baker  
President  
Union Gas Limited

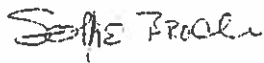
By their signatures provided below, each Party agrees to be bound by this Settlement Term Sheet.

Executed this \_\_\_\_th day of August, 2015, by:

---

Mr. Karl Johannson  
President  
TransCanada Pipelines Limited

Executed this 17th day of August, 2015, by:



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Mrs. Sophie Brochu  
President & CEO  
Gaz Metro Limited Partnership

Executed this \_\_\_\_th day of August, 2015, by:

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Enbridge Gas Distribution Inc.

Executed this \_\_\_\_th day of August, 2015, by:

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Mr. Stephen Baker  
President  
Union Gas Limited

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Mr. Karl Johansson  
President  
TransCanada PipeLines Limited

Executed this \_\_\_\_th day of August, 2015, by:

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Mrs. Sophie Brochu  
President & CEO  
Gaz Metro Limited Partnership

Executed this 18<sup>th</sup> day of August, 2015, by:

  
\_\_\_\_\_  
**Glenn Beaumont**  
President

Enbridge Gas Distribution Inc.

  
\_\_\_\_\_  
**Malini Girdhar**  
Vice President, Gas Supply  
& Business Development

Executed this \_\_\_\_th day of August, 2015, by:

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Mr. Stephen Baker  
President  
Union Gas Limited

By their signatures provided below, each Party agrees to be bound by this Settlement Term Sheet.

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Mr. Karl Johannson  
President  
TransCanada Pipelines Limited

Executed this \_\_\_\_th day of August, 2015, by:

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Mrs. Sophie Brochu  
President & CEO  
Gaz Metro Limited Partnership

Executed this \_\_\_\_th day of August, 2015, by:

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Enbridge Gas Distribution Inc.

Executed this 18th day of August, 2015, by:



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Mr. Stephen Baker  
President  
Union Gas Limited

