PROVINCE OF QUÉBEC DISTRICT OF MONTRÉAL

RÉGIE DE L'ÉNERGIE

HYDRO-QUÉBEC, legal person constituted by the *Hydro-Québec Act*, RSQ c H-5, having its head office at 75 René-Lévesque Boulevard West, Montréal, Province of Québec, H2Z 1A4

Applicant

AFFIDAVIT OF CRAIG MARTIN, TRANSCANADA ENERGY LTD.

I. INTRODUCTION

 I am the Director, Portfolio Optimization of TransCanada Energy Ltd. ("TCE"), which has its head office at 450-1st Street, Calgary, Alberta, T2P 5H1.

The 2003 Electricity Supply Contract (ESC)

- 2. On June 10, 2003, TCE signed an *Electricity Supply Contract* (the "**ESC**") with Hydro-Québec Distribution ("**HQD**") for TCE's Bécancour power plant (the "**Power Plant**") pursuant to HQD's call for tenders number A/O 2002-01.
- 3. I have personal knowledge of TCE's administration of the ESC.

The 2007 Temporary Suspension Agreement

- 4. On October 30, 2007 and November 30, 2007 respectively, HQD and TCE executed the Memorandum of Agreement Respecting the Temporary Suspension of Electricity Production at the Bécancour Generating Station (the "Memorandum") and the Final Agreement (the "Final Agreement") in that regard.
- 5. The Memorandum and the Final Agreement are collectively referred to hereinafter as the "Temporary Suspension Agreement".
- 6. I have personal knowledge of TCE's administration of the Temporary Suspension Agreement.

The 2009 Agreement

- 7. On June 29, 2009, TCE and HQD signed an Agreement Respecting the Temporary Suspension of Electricity Production at the Bécancour Generating Station of TCE (the "2009 Agreement").
- 8. The 2009 Agreement is the renewal, with a few adjustments, of the Temporary Suspension Agreement, and the extension of the Power Plant suspension for the year 2010.
- 9. I have personal knowledge of TCE's administration of the 2009 Amendment.

The 2013 Amendment

- 10. On December 20, 2013, TCE and HQD signed an Amendment Agreement (the "2013 Amendment") pursuant to which certain amendments were made to the 2009 Agreement to extend the suspension of the Power Plant until December 31, 2017 and reduce the annual compensation HQD pays to TCE under the 2009 Agreement relating to the unutilized firm transportation that is held by TCE under a transmission contract with TransCanada PipeLines Limited (the "TCPL Contract") in regards to the Power Plant.
- 11. I have personal knowledge of TCE's administration of the 2013 Amendment.

The 2015 Memorandum of Understanding (MOU)

- 12. On April 30, 2015 TCE and Hydro-Québec ("HQ") signed a Memorandum of Understanding (the "MOU") pursuant to which TCE has agreed, subject to the terms and conditions set forth in the MOU and the execution and delivery of a Definitive Agreement, and their approval by the Régie de l'énergie (the "Régie"), to make available to HQ the capacity of the Power Plant (the "Tolling Capacity") and to produce and deliver to HQ Peak Tolling Energy and Additional Tolling Energy (as these terms are defined in the MOU) from the Tolling Capacity using natural gas supplied by HQ and only as requested by HQ.
- 13. I am one of a limited group at TCE who participated in the negotiation of the MOU with HQ.
- 14. TCE respectfully asks the Régie to maintain the confidential treatment of certain information and particulars contained in the MOU, in respect of which HQ is applying for approval from the Régie in this file, and to render an order prohibiting the disclosure, publication and release of these information and particulars, the whole in accordance with the Régie's decisions D-2003-146, D-2007-127, D-2008-106, D-2009-125, D-2010-151, D-2011-144, D-2012-119, D-2013-148, D-2014-029 and D-2014-160.

II. BACKGROUND

- 15. On June 10, 2003, HQD and TCE entered into the ESC¹, which was subsequently approved by the Régie in file R-3515-2003 (D-2003-159).
- 16. In connection with the said file R-3515-2003, TCE asked that certain information contained in the ESC be treated confidentially. After a three-day hearing, the Régie ordered the confidential treatment of certain provisions of the ESC (D-2003-146):
 - Section 16.1 (Amount for capacity);
 - Section 16.1.1 (Nominal price for capacity);
 - Section 16.1.2 (Capacity price formula);
 - Section 16.2 (Price for eligible energy);
 - Section 16.3 (Amount for energy made available);
 - Section 16.7(a) (Heat rate);
 - Section 16.8 (Deliveries associated with additional capacity); and
 - Appendix VI (Components of Electricity Price Formula).
- 17. On November 2, 2007, HQD applied to the Régie in file R-3649-2007 for approval of the Temporary Suspension Agreement².
- 18. In connection with said file R-3649-2007, TCE asked that certain information contained in the Temporary Suspension Agreement be treated confidentially³.
- 19. On November 12, 2007, the Régie granted in its decision D-2007-127 the request for confidential treatment in connection with the following documents:

As regards the ESC:

- The content of Sections 16.1, 16.2, 16.3 and 16.8 and the heat rate value mentioned in paragraph 16.7(a);
- The content of Appendix VI (Components of Electricity Price Formula).

As regards the Temporary Suspension Agreement (re: Memorandum)⁴:

Section 15 (Capacity payment);

R-3515-2003: HQD-1, Document 3.

R-3649-2007; HQD-1, Document 1 (B-2); HQD-1, Document 3 (B-14).

³ R-3649-2007: C-6.2 and C-6.3.

R-3649-2007: HQD-1, Document 1 (B-2).

- Sections 16 and 17 (Energy payment);
- Sections 18 to 21 (Replacement steam production);
- Section 23 (Credit granted to HQD by TCE for unutilized firm transportation on the TCPL system in regards to the Power Plant);
- Paragraphs 26(b), (c) and (e) (Reimbursement of increase in Gaz Métro distribution tariff);
- Section 28 (Substitution rights);
- Section 30 (Lay-up and re-commissioning costs for the Power Plant).
- 20. On December 7, 2007, the Régie approved the Temporary Suspension Agreement (D-2007-134).
- 21. On May 30, 2008, the Régie maintained that confidentiality order in connection with an application for revocation relating to the decisions D-2007-127 and D-2007-134⁵.
- 22. On July 4, 2008, HQD applied to the Régie in file R-3673-2008 for approval of the extension of the temporary suspension of electricity production at the Power Plant for 2009, in accordance with the pertinent option stipulated in the Temporary Suspension Agreement⁶.
- 23. In connection with said file R-3673-2008, TCE requested that confidentiality of the information covered by the decision D-2007-127 be maintained⁷.
- 24. On August 15, 2008, after soliciting and receiving representations from interested parties, the Régie granted the request for confidential treatment of the information covered by its decision D-2007-127 (D-2008-106).
- 25. On September 10, 2008, the Régie approved the suspension of the Power Plant for the year 2009 (D-2008-114).
- 26. On July 2, 2009, HQD applied to the Régie in file R-3704-2009 for approval of the 2009 Agreement and the suspension of the Power Plant for the year 2010.
- 27. In connection with said file R-3704-2009, TCE asked that certain information contained in the 2009 Agreement be treated confidentially⁸.
- 28. On October 8, 2009, the Régie approved in its decision D-2009-125 the suspension of the Power Plant for the year 2010 and granted the request for confidential treatment in connection with the following information contained in the 2009 Agreement:

⁵ R-3658-2008: D-2008-062, Reasons, pages 5 to 14.

⁶ R-3649-2007: HQD-1, Document 1 (B-2); HQD-1, Document 3 (B-14).

⁷ R-3673-2008: C-3.1, C-3.3 and C-3.5.

⁸ R-3704-2009 : HQD-2, Document 1 and C-1.1.

- Section 13 (Continued Capacity Payment);
- Sections 14 to 16 (Energy Payment);
- Sections 18, 19 and 21 (Replacement Steam Production);
- Section 24 (Credit granted to HQD by TCE for unutilized firm transportation on the TCPL system in regards to the Power Plant);
- Section 26 (Reimbursement of increase in Gaz Métro distribution tariff);
- Section 29 (Substitution Rights);
- Sections 32 and 34 to 36 (Lay-Up and Re-commissioning Costs);
- Schedule 3, Section 1 (ESC provisions to be adjusted after the re-commissioning period);
- Schedule 3, Sections 2 to 4 (ESC provisions to be adjusted after the re-commissioning period).
- 29. On June 15, 2010 (R-3734-2010), June 10, 2011 (R-3765-2011), June 14, 2012 (R-3803-2012) and June 14, 2013 (R-3850-2013), HQD applied to the Régie for approval of the extension of the temporary suspension of electricity production at the Power Plant for the years 2011, 2012, 2013 and 2014, respectively, in accordance with the pertinent option stipulated in the 2009 Agreement.
- 30. The Régie approved the suspension of the Power Plant for the years 2011, 2012, 2013 and 2014 in its decisions D-2010-109, D-2011-110, D-2012-118 and D-2013-129, respectively.
- 31. Furthermore, in connection with the tariff application filed by HQD in file R-3740-2010, the Régie requested from HQD ⁹ that it provides the projected cost of each of the post-heritage supply contracts for the years 2009, 2010 and 2011 (which includes the cost of the ESC) as well as the details of the indemnity paid to TCE under sections 25 and 26 of the Temporary Suspension Agreement (re: Final Agreement)¹⁰ as a result of the modifications to the Gaz Métro distribution tariff.
- 32. On December 3, 2010, after receiving representations from interested parties, the Régie granted the request for confidential treatment of this information (D-2010-151).
- 33. In connection with the tariff applications filed by HQD in files R-3776-2011, R-3814-2012, R-3854-2013 and R-3905-2014, HQD provided the projected cost of each of the post-heritage supply contracts for the years 2010 to 2015, inclusively (which includes the cost of the ESC). The Régie granted the request for confidential treatment of this information in its decisions D-2011-144, D-2012-119, D-2013-148 and D-2014-160.

⁹ R-3740-2010: (A-4) Demande de renseignements no. 1 de la Régie, Question 22, pages 22-23.

¹⁰ R-3649-2007: HQD-1, Document 3 (B-14).

- 34. On February 5, 2014, HQD applied to the Régie in file R-3875-2014 for approval of the 2013 Amendment¹¹.
- 35. On February 26, 2014, the Régie granted in its decision D-2014-029 the request for confidential treatment in connection with the following information contained in the 2013 Agreement:
 - Preamble, Paragraph E (Volume of unutilized firm transportation on the TCPL system in regards to the power plant (the "Unutilized Transportation"));
 - Part B, Section 24 of the Agreement as amended (Volumes of firm transportation and Unutilized Transportation; credit granted to HQD by TCE for Unutilized Transportation and details of the formula; use by TCE of all or part of the Unutilized Transportation and credit granted to HQD by TCE in connection thereof);
 - Part C, Article I, Section 1 (Potential use by TCE of all or part of the Unutilized Transportation and date related to the exercise of the Supplier's Option);
 - Part C, Article I, Section 2 (Date related to the exercise of the Supplier's Option);
 - Part C, Article II, Paragraph 1(b) (Date related to the Payment Relief Date);
 - Part C, Article II, Paragraph 2(b) (Volume of Unutilized Transportation);
 - Part C, Article III, Section 2 (Provision regarding the extension or renewal of the TCPL Contract for the Steam Transport);
 - Part C, Article III, Section 4 (Provision regarding New Transmission Arrangements).
- 36. On May 27, 2014, the Régie approved in its decision D-2014-086 the 2013 Amendment, including the suspension of the Power Plant until December 31, 2017, as well as the suspension of the Power Plant for the year 2018 requested by HQD during the course of this application in accordance with the option provided under the 2013 Amendment.

III. PURPOSE OF THIS REQUEST FOR CONFIDENTIALITY

- 37. In accordance with the prior decisions on this matter, TCE hereby respectfully requests that the Régie order the confidential treatment, protection and non-disclosure to anyone, other than the Régie, of certain information and particulars contained in the following provisions of the MOU, as indicated in the redacted version of the MOU filed by HQ in connection with this application:
 - Subsection 2(d)(vi) of the MOU (Pricing formula in the event the Maximum Peak Tolling Capacity is revised to a value higher than 570 MW);

¹¹ R-3875-2014 : B-0002; HQD-1, Document 1 (B-0008).

- Subsection 2(e) of the MOU (Full Load Heat Rate Target);
- Subsection 4(a)(i and ii) of the MOU (Formula for calculating the liquidated damages in the event of a Failure to Deliver);
- Subsection 4(b)(ii) of the MOU (Compliance margin of the Maximum Peak Tolling Capacity during any Peak Period after the first Peak Period);
- Subsection 4(d) of the MOU (Aggregate liquidated damages payable in the event of a Failure to Deliver);
- Section 23 of the MOU (Threshold constituting a Material Adverse Event);
- Schedule B, Section 1, of the MOU (Annual Tolling Fee payable during the Term);
- Schedule B, Subsection 3(a), of the MOU (Pass-Through Charges);
- <u>Schedule C</u>, Section (a), of the MOU (Fee payable for Peak Tolling Energy during the Remaining 200 Peak Run Time Hours);
- Schedule D of the MOU (Preliminary reliability level of the Power Plant);
- Schedule E, Subsection 1(a), of the MOU (Fee payable for Additional Tolling Energy);
- Schedule H of the MOU (Start-Up Fuel Requirements).

IV. REASONS FOR TCE'S CONFIDENTIALITY REQUEST

- 38. The information referred to in paragraph 37 of this affidavit for which TCE requests non-disclosure is confidential financial, business and technical information which TCE usually treats confidentially. TCE continues to treat all this information as confidential.
- 39. The disclosure of this information would conflict with the Régie's decisions D-2003-146, D-2007-127, D-2008-106, D-2009-125, D-2010-151, D-2011-144, D-2012-119, D-2013-148, D-2014-029 and D-2014-160 (the "**Decisions**") and would cause the prejudice already evidenced in the files related to these Decisions.
- 40. This information shows TCE's project development strategy, its business and operating strategies and its price and cost structures. Its disclosure would cause TCE prejudice, would provide its competitors, marketers and other clients with an advantage and could undermine its competitiveness.
- 41. More specifically, the information contained in Subsection 2(d)(vi) of the MOU, for which TCE is requesting non-disclosure, provides the pricing formula in the event the Maximum Peak Tolling Capacity is revised to a value higher than 570 MW. Such disclosure would therefore give TCE's competitors, marketers and other clients an advantage namely for pricing electrical energy and the economic model used by TCE for this project and would undermine its competitiveness in respect of the Power Plant and other projects. The

- Régie, by its Decisions, has already prohibited the disclosure, publication and release of similar information.
- 42. The information contained in Subsection 2(e) of the MOU, for which TCE is requesting non-disclosure, provides the Full Load Heat Rate Target. Disclosure of this information would give TCE's competitors, marketers and other clients an advantage namely for pricing electrical energy and the economic model used by TCE for this project, and the potential costs of producing electrical energy and the efficiency of the Power Plant. Disclosure of this information would undermine TCE's competitiveness in respect of the Power Plant and other projects. The Régie, by its Decisions, has already prohibited the disclosure, publication and release of similar information.
- 43. The information contained in Subsections 4(a)(i and ii) and 4(d) and Section 23 of the MOU, for which TCE is requesting non-disclosure, provides the formula for calculating the liquidated damages in the event of a Failure to Deliver, the aggregate liquidated damages payable in the event of a Failure to Deliver and the threshold constituting a Material Adverse Event. Disclosure of this information would give TCE's competitors, marketers and other potential clients an idea of the commercial risks and potential costs and the cost structure associated with TCE's obligations under the MOU, and the economic model used by TCE for this project, and would undermine its competitiveness in respect of the Power Plant and other projects.
- 44. The information contained in Subsection 4(b)(ii) of the MOU, for which TCE is requesting non-disclosure, provides the compliance margin of the Maximum Peak Tolling Capacity during any Peak Period after the first Peak Period. Disclosure of this information would give TCE's competitors, marketers and other potential clients an idea of the commercial risks associated with TCE's obligations under the MOU and the required reliability and compliance margin of the Power Plant. Disclosure of the economic and operational model used by TCE would undermine its competitiveness in respect of the Power Plant and other projects. The Régie, by its Decisions, has already prohibited the disclosure, publication and release of similar information.
- 45. The information contained in (i) Schedule B, Section 1, (ii) Schedule C, Section (a) and (iii) Schedule E, Subsection 1(a) of the MOU, for which TCE is requesting non-disclosure, provides the Annual Tolling Fee payable by HQ during the Term of the MOU, the fee payable for Peak Tolling Energy during the Remaining 200 Peak Run Time Hours and the fee payable for Additional Tolling Energy. Disclosure of this information would give TCE's competitors, marketers and other potential clients an idea of its project development strategy, and an advantage namely for pricing electrical energy and the economic model used by TCE in this project for its costs and revenue structure. Such disclosure would undermine TCE's competitiveness in respect of the Power Plant and other projects. The Régie, by its Decisions referred to above, has already prohibited the disclosure, publication and release of similar information.

- 46. The information contained in <u>Schedule B</u>, Subsection 3(a), of the MOU, for which TCE is requesting non-disclosure, provides information regarding Pass-Through Charges. Disclosure of this information would give TCE's competitors, marketers and other potential clients an idea of the costs and risks not assumed by TCE under the MOU and the cost structure of the project and would undermine its competitiveness in respect of the Power Plant and other projects. The Régie, by its Decisions, has already prohibited the disclosure, publication and release of various costs associated with the Power Plant.
- 47. The information contained in <u>Schedule D</u> of the MOU, for which TCE is requesting non-disclosure, provides the preliminary reliability level of the Power Plant. Disclosure of this information would give TCE's competitors, marketers and other potential clients an idea of the commercial risks associated with TCE's obligations under the MOU and the required reliability of the Power Plant. Disclosure of the economic and operational model used by TCE would undermine its competitiveness in respect of the Power Plant and other projects. The Régie, by its Decisions, has already prohibited the disclosure, publication and release of similar information.
- 48. The information contained in <u>Schedule H</u> of the MOU, for which TCE is requesting non-disclosure, provides Start-Up Fuel Requirements. Disclosure of this information would give TCE's competitors, marketers and other potential clients an advantage, namely for pricing electrical energy and the cost structure of the project, including the potential costs of producing electrical energy, the efficiency of the Power Plant and the economic model used by TCE in this project, and would undermine its competitiveness in respect of the Power Plant and other projects. The Régie, by its Decisions, has already prohibited the disclosure, publication and release of similar information.
- 49. For all these reasons, TCE asks the Régie to (i) GRANT the present request for confidentiality of the redacted information and particulars in the MOU, (ii) ORDER the confidential treatment of the redacted information and particulars in the MOU mentioned in paragraph 37 of this affidavit, and (iii) RENDER an order prohibiting the disclosure, publication and release of the said redacted information and particulars in the MOU.
- 50. I sign this affidavit in support of the application by HQD to obtain a confidentiality order prohibiting the disclosure, publication and dissemination of the said redacted information and particulars in the MOU mentioned in paragraph 37 of this affidavit.
- 51. At the time of executing this affidavit, TCE had not been provided yet with the exhibit number of the MOU.
- 52. TCE remains at the Régie's disposal to answer, *in camera*, as the case may be, any questions the Régie might have in this regard.

53. All of the facts alleged in the said confidentiality request are accurate.

AND I HAVE SIGNED

CRAIG MARTIN

Solemnly affirmed before me in Westborough, Massachusetts, U.S.A., this 1st day of May 2015

en 5/1/2015

Notary Public

RICHARD P SCHULER Notary Public COMMONWEALTH OF MASSACHUSETTS My Commission Expires May 29, 2020