



# Regulatory Agenda

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

## Focus on Safety 2000-2002 A Comparative Analysis of Pipeline Safety Performance

On 29 January, the Board released a report entitled *Focus on Safety 2000-2002 – A Comparative Analysis of Pipeline Safety Performance*. The report provides details on the safety performance of NEB-regulated oil and gas pipelines for the calendar years 2000, 2001 and 2002. The data is limited to companies regulated under the *National Energy Board Act* and

does not include performance indicators on pipelines carrying anything other than hydrocarbon liquids or natural gas. The report is available on the Board's web site at [www.neb-one.gc.ca](http://www.neb-one.gc.ca) under *Safety and Environment, Safety Performance Indicators – Index*.

## Public Hearing Applications

### Hearing Completed

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

The Board held a public hearing on an application from SE2 to construct a 230 kilovolt IPL originating in the United States and crossing the international boundary near Abbotsford, British Columbia. The public hearing was held from 18 January 2001 to 23 September 2003 (39 days) in Abbotsford. Sequence of events from January 2001 to September 2003:

- 18 to 20 January 2001 – Public hearing on preliminary matters and motions
- 19 February 2001 – Public hearing commenced. At the request of SE2, the hearing was adjourned
- 4 June 2002 – SE2 requested that the Board reconvene the public hearing
- 18 to 23 October 2002 – Hearing on preliminary motions
- 26 May to 11 July 2003 – Hearing of

## 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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evidence, oral presentations and some arguments

- 11 July 2003 – Hearing adjourned until 15 September
- 15 to 23 September 2003 – Hearing of final arguments and reply argument
- 23 September 2003 – Hearing closed.

On 30 December, the Board issued, pursuant to the *Canadian Environmental Assessment Act*, its Environmental Screening Report for public examination and comments.

### Hearing Scheduled

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

The Board will hold a public hearing commencing on 17 May, at a location to be announced at a later day, 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.

WEI estimates the cost of service for 2004 to be approximately \$264.8 million, compared to the forecast of the 2003 cost of service of approximately \$245.7 million, reflecting an increase of approximately \$19.1 million. The increases in the typical tolls for each of Zones 3 and 4 would be approximately 1.6 and 11.4 per cent, respectively.

As part of its consideration of the application, the Board held a pre-hearing conference led by Board staff on 29 January to discuss:

- which issues need to be addressed to dispose of the application and why, and
- the appropriate process and timing to deal with these issues.

Among other things, the Board was interested in determining whether parties believe that all the issues are best addressed through a public hearing, or whether some issues may be addressed through an alternative process with the involvement of the Board staff.

### 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.

The Board will announce at a later date the procedures to deal with the application.

# Non Hearing Applications

## Electricity Matters

### Matters 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.

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

On 24 October, Teck applied for permits for export transfers of up to 3 500 gigawatt hours of firm and interruptible energy per year and up to 250 gigawatt hours of firm carrier transfer energy per year for a period of 10 years.

## Frontier Matters

1. *Paramount Resources Ltd.* was given approval on 13 January to drill wells Cameron B-38, F-19, K-19, and O-19 pursuant to section 83.(1) of the *Canada Oil and Gas Drilling Regulations (COGDR)*. Paramount was also given approval On 26 January of a *Well Termination Record* for the well Cameron A-05 pursuant to section 203.(1) of the COGPR.
2. *Apache Canada Ltd.* was given approval on 14 January to drill wells West Nogha K-14 and Tunago Lake E-44 pursuant to section 83.(1) of the COGDR.
3. *Anadarko Canada Corporation* was given approval on 21 January to alter the condition of well Arrowhead River F-56 pursuant to section 203.(1) of the COGPR.

## Pipeline Matters

### Matters 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.

2. *Williams Energy Canada Pipeline Inc. (Williams) – Sale of a Pipeline (File 3200-W070-2)*

On 16 January, the Board approved an application dated 30 September in which Williams advised the Board that Provident Energy Ltd. had purchased all of the shares in Williams and that the name of the company would be subsequently changed from Williams Energy (Canada) Pipeline, Inc. to Provident Energy Pipeline Inc. The pipeline in question is the Taylor to Boundary Lake natural gas liquid pipeline consisting of approximately 58 kilometres of pipeline originating at a straddle plant near Taylor, British Columbia and connecting to a metering facility at Boundary Lake, Alberta. (Orders AO-5-OC-43 and MO-01-2004)

### Matter Under Consideration

3. *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 Tariffs Matters

## Matters Completed

1. *TransCanada PipeLines Limited (TCPL) – Seventh Report of the 2003 Tolls Task Force (4775-T001-1/03-6)*

On 13 January, the Board approved Resolution 07.2003 of the 2003 Tolls Task Force proposing the termination of the Multiple Handshakes and Pooling Service and the incorporation of “no cost” title transfers as a feature of transportation services.

2. *Westcoast Energy Inc. (WEI) – 2004 Interim Tolls (File 4200-W005-11)*

On 1 December, WEI applied for approval of interim tolls for mainline transmission service in Zones 3 and 4 for the period 1 January to 31 December 2004.

On 11 December, the Board decided that the tolls for 2003 will apply on an interim basis effective 1 January 2004 until such time as the Board has obtained and considered the comments of interested parties regarding the interim tolls application. (Order TGI-6-2003)

The Board has considered the submissions of interested parties and WEI. Parties commented that a significant portion of the proposed adjustments to the 2003 revenue requirement represent changes in accounting methodology, which need to be tested. The Board agreed that these amounts, which involve discretionary changes in methodology, should not be included in interim tolls without a process for testing the underlying assumptions.

On 22 January, the Board decided not to amend Toll Order TGI-6-2003.

## Matters Pending

3. *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.

4. *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.

5. *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.

# 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 will hear the appeal commencing on 16 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 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.

The NGSC requested that the Board grant the following relief:

- (a) amend Board Order TG-7-2003 to require WEI to include the full benefit of the 2003 ODC Adjustments in the 2003 tolls; and
- (b) establish a review process to review the treatment of indirect ODC deductions in the 1997-2001 toll orders.

On 15 January, the Board decided to solicit comments from interested parties on whether a review should be conducted. The Board also requested that interested parties comment on the process that should be followed in the event the Board decides to proceed with a review, in whole or in part. Comments from interested parties were due on 23 January and comments from WEI were due on 30 January. NGSC has until 5 February to file its reply.

# Amendments to Regulations 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). Comments must be received at the Board by 23 January 2004. The final Filing Manual will be released by the end of March 2004.

In September 2003, the Board invited comments on six draft sections of the document. The Board is currently using this input to prepare a complete draft document. Originally, the Board planned to release the final Filing Manual in December 2003. However, the Board has been very pleased with the progress of the review project and believes that public review of the draft document would strengthen the final product.

### 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*). The Board has been held meetings with stakeholders and plans to continue consultation with interested persons by holding focus meetings and open houses at various locations across Canada.

## 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 Initiatives 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

## 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

### *General Information:*

(403) 292-4800  
1-800-899-1265

### *Publications Office:*

Telephone: (403) 299-3562  
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### *Web Site:*

[www.neb-one.gc.ca](http://www.neb-one.gc.ca)

### *Telephone Numbers:*

For a current list of the telephone numbers of Board Members and key staff, see our Internet site under the heading: *About Us, Our People*.

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# Appendix I

## Section 58 Applications

### Gas Pipelines

Applicant	File/Order	Application	Est. Cost
Alliance Pipeline Limited	File : 3400-A159-16 Order : XG-A159-02-2004	Application dated 17 December; approved on 20 January. Install the Smoky Meter Station and interconnecting piping 90 kilometres southeast of Grande Prairie, Alberta.	1 280 000
TransCanada PipeLines Limited	File: 3400-T001-227 Order: XG-T001-01-2004	Application dated 24 October; approved on 20 January. Decommission 12 Compressor Plants.	27 611 000
Westcoast Energy Inc.	File : 3400-W005-314 Order : XG-Woo5-03-2004	Application dated 24 November; approved on 23 January. Install an inlet flowmeter on the Sulphur Pipeline within the Pine River Gas Plant.	30 000
	File: 3400-W005-316 Order: XG-W005-04-2004	Application dated 19 December; approved on 28 January. Construct an armoured channel on the Buckinghorse River at km 67 of N2L1.	200 000



## 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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