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DECISIONS

REGULATORY
LAW CHAMBERS

ENERGY REGULATORY REPORT

Regulatory Law Chambers *is a Calgary-based energy boutique law firm dedicated to excellence in regulatory and environmental law. We have expertise in oil and gas, electricity, renewable energies, climate change and tolls and tariff related matters. We frequently represent clients in proceedings before the Alberta Energy Regulator, the Alberta Utilities Commission, the National Energy Board and the Courts, and in arbitrations/mediations.* ***Our advice is practical and strategic. Our advocacy is effective.***

*This monthly report summarizes energy decisions or resulting proceedings from applications before the Alberta Energy Regulator ("**AER**"), the Alberta Utilities Commission ("**AUC**") and the National Energy Board ("**NEB**"). For further information, please contact Lynn McRae at Lynn.McRae@RLChambers.ca and 403-930-7995.*

IN THIS ISSUE:

ALBERTA ENERGY REGULATOR

Licence Review - Baytex Energy Ltd. (Decision 2013 ABAER 021)

Request withdrawn by Applicant Donald Labrecque.

Licence Review - Compton Petroleum Corporation Licence No. 21027 Okotoks Field (Decision 2013 ABAER 020)
Urban Development

Licence included a mandated review that was stipulated in the Default Addendum that arose from a failure of the Land-Use and Resource Development Agreement. The Licence remains valid and subsisting because the informal review found that urban development would not be adversely affected in the next five years. The licence is to be reviewed again in five years.

Licences Issued and Regulatory Appeal Denied - Grizzly Resources Ltd. and Sinopec Daylight Energy Ltd. Applications for Well, Pipeline and Facility Licences, and Appeal of Pipeline Licence Pembina Field (Decision 2013 ABAER 019)
Recovery rate - Effect of Performance history on Consultation - Sour well - Individuals with heightened sensitivities - Recreational Use within EPZ

- Need for the well based upon 5% increase to total recovery, reduced water handling, dilution of H_2S in pipelines, and resulting royalty revenues ($121 M).
- Poor compliance history is not an excuse for interveners to not participate in the consultation process if there is an established trend to improved performance, and found that the preference of interveners for hearings was reasonable provided other avenues such as consultation and ADR had been exhausted.
- There is no basis to expect health or environmental effects from shorter term and lower level (10-100 ppm) H_2S exposure that could occur, and evidence was inconclusive of any effects on individuals with heightened sensitivities.
- Imposed requirement to drill well as a critical sour well even though it is not classified as one.
- Regulatory Appeal of AER decision to approve addition of Line No. 5 to Pipeline Licence No. P52607 was denied. Applicant's basis for appeal was that the adjacent portion of their land was used for recreational uses such as walking and snowshoeing.

Proceeding into Odours and Emissions in the Peace River Area - (Organizational Meeting Report 2013 ABAER 018)
Odours and Emissions

- Peace River–area residents had raised issues and concerns related to odours and emissions associated with heavy oil operations. An organizational meeting was held in October 2013. The resulting report establishes the process to address the issues.
- A panel has been established to develop recommendations for solutions, which may include regulatory change that would address the issues and concerns of area residents and take into account potential economic, social, and environmental impacts of any recommendations resulting from the inquiry.
- Oral Hearing to commence January 21, 2014. Only those who submitted written comments in the information gathering and recommendation proposal phase can participate in the Oral Hearing.
- Final Report is expected by March 31, 2014.

Appeal to Alberta Court of Appeal - Brion Energy Approval to Construct and Operate a Bitumen Recovery Scheme in Decision 2013 ABAER 014
Buffer zone - AER jurisdiction re: Constitutional Questions

- The AER approval was issued conditional upon Cabinet approval. The related application to Alberta Environment and Sustainable Resource Development ("**ESRD**") has not yet been approved. The AER decision did not approve the "buffer zone" requested by the interveners, Fort McKay First Nation ("**FMFN**").
- FMFN also raised questions of constitutional law, which the AER considered it did not have authority to determine, on the basis that they did not meet the requirements of Section 12 of the *Administrative Procedures and Jurisdiction Act* ("***APJA***").
- FMFN has been granted leave to appeal to the Alberta Court of Appeal (2013 ABCA 355) on the following two issues:

  (a) Whether the AER erred in law or jurisdiction by finding that the question of whether approval of the Project would constitute a meaningful diminution of the Treaty rights of the FMFN and therefore be beyond provincial competence, was not a question of constitutional law as defined in the *APJA*; and

  (b) Whether the AER erred in law or jurisdiction by finding that it had no jurisdiction to consider constitutional issues other than those defined as "questions of constitutional law" in the *APJA*.

ALBERTA UTILITIES COMMISSION

Approved - ATCO Electric Ltd.'s 2014 Interim TFO Tariff approved on an interim and refundable basis effective January 1, 2014 (Decision 2014-006)

AUC approved an interim rate increase for 2014 that reflects 90% of the proposed 2014 revenue requirement. This exceeds the historical range of 50-75% for interim rate applications, but is consistent with the AUC's approach of awarding an interim rate between the respective levels put forward by the parties. In this case ATCO requested 100% and interveners (CCA and IPCAA) proposed 75%. The approval of the high rate was also based upon the materiality of the increase (20% annual increase to revenue requirement).

ENMAX Energy Corporation amendments to regulated rate option tariff terms and conditions and fees. Regulated Rate Option – Payment Default – Requirement to provide service (Decision 2014-019)

ENMAX requested approval to amend Section 4.2 of its Regulated Rate Terms and Conditions such that ENMAX would have the right to refuse to provide Regulated Rate Service to a customer if a previous occupant at that site had a history of non-payment.

While the proposed amendment was a cost effective solution to reduce bad debt losses arising from particular situations, the AUC was concerned with the broader impact of the amendment. The AUC found that the proposed amendment may result in denying electrical service to a new tenant who has not incurred any arrears. The AUC found that such a refusal of electrical service is contrary to Section 2 of the *Regulated Rate Option Regulation.* Section 2 requires owners of an electric distribution system to offer to eligible customers a regulated rate option instead of a contract with a retailer.

Alberta Electric System Operator needs identification document amendment. Routing considerations in a NID application or amendment (Decision 2014-004)

The Alberta Electric System Operator ("**AESO**") filed an application pursuant to Section 34 of the *Electric Utilities Act* with the AUC seeking to amend the Southern Alberta Transmission Reinforcement ("**SATR**") needs identification document ("**NID**") approval, Approval No. U2013-460. The AESO sought to replace the originally proposed 500-kV Crowsnest substation to be located near Crowsnest Pass with a 500/240 kV Chapel Rock 491S Substation necessitating a choice between two alternatives for the new 240-kV double-circuit transmission line from Chapel Rock 491S substation to Goose Lake 103S substation.

Alternative 1 would see the transmission line extend from Goose Lake 103S substation to Fidler 312S substation and then to Chapel Rock 491S substation, on a corridor primarily north of the Oldman Reservoir. Alternative 2 would see the transmission line extend from Goose Lake 103S substation to Castle Rock Ridge 205S substation and then to Chapel Rock 491S substation, on a corridor primarily south of the Oldman Reservoir.

The AUC accepted the evidence that development of the transmission facilities in the Pincher Creek area remains necessary.

The next consideration was whether the need for Alternative 1 or Alternative 2 should be approved.

Many of the concerns of the parties related to the specific routing of the transmission line and location of the substation. Generally concerns such as noise, impacts on health and property values are better considered at the facility application stage when detailed routes have been determined. The AUC recognized, however, that in selecting either Alternative 1 or Alternative 2, it is selecting a corridor within which future routes will be located and, in that sense, its decision will affect routing. Potential impacts that can be analyzed at a high level, such as some environmental impacts, must therefore be considered not only at the facility application stage, but also at the NID stage.

The AUC approved Alternative 2 on the basis that it provides an effective and even preferable technical solution to satisfy the need for system enhancement, its cost is $8 - $51 million lower, it has lesser potential for environmental impacts, greater opportunities to parallel existing linear infrastructure, and was preferred by a larger number of stakeholders.

North East Water Systems Ltd. ("NEWS") Application No. 1610229 Seizure / Public Utility / Non-Compliance with Order

A. Interim Order: (Decision 2014-005)

In Decision 2011-413, the AUC prohibited NEWS' from disconnecting customers for failure to pay irrigation start-up and shut-down charges in the East Airdrie Water System ("**EAWS**") because such changes were not provided for in the terms of use agreements with customers or in restrictive covenants on titles. The resulting order prohibited NEWS from disconnecting water in its service area for non-payment of the start-up and shut down irrigation charges or any other amounts related to such fees.

The AUC recently received a complaint from a customer of EAWS owned and operated by NEWS that their water service will be disconnected by NEWS on January 9, 2014, if certain charges have not been paid, and that customers disconnected will be required to pay a

reconnection fee of $100 in order for water service to be reconnected.

An order compelling water service was issued without notice pursuant to Section 24 of the *Alberta Utilities Commission Act*.

B. Order Compelling Service: (Decision 2014-011)

Following the Interim Order, the AUC found that NEWS currently did not have approved rates and terms and conditions of service in place and had not complied with past orders, and was subject to an enforcement order from Alberta Environment requiring samples to be provided, failing which the license to operate would not be renewed.

Accordingly, the AUC issued an order compelling NEWS and its sole director to provide confirmation of a valid approval to operate from Alberta Environment.

C. Enforcement Order: (Decision 2014-017)

The license to operate was not renewed by Alberta Environment resulting in the AUC issuing an order to seize, take possession and operate the EAWS. Section 119(1)(a) of the *Public Utilities Act* allows the AUC to forcibly enter on, seize and take possession of the whole or part of the movable and immovable property of the owner of any public utility, together with any books and offices.

Although customers now had the ability to contract for water services in the EAWS area (given the consent order granted by the Court of Queen's Bench on January 15, 2014), service could not be made quickly enough to address the requirements of the EAWS customers. Accordingly a third party was contracted by the AUC to operate and maintain the system.

FortisAlberta Inc. 2012-2014 Phase II Distribution Tariff (Decision 2014-018)
Phase II Application

The AUC considered FortisAlberta Inc.'s ("**FortisAlberta**") 2012-2014 Phase II Distribution Tariff application, which was made in keeping with the previous performance based regulation ("**PBR**") methodology approved in Decision 2012-237. FortisAlberta proposed updates to its component allocation model ("**CAM**"), which the AUC accepted. The AUC directed FortisAlberta to include several additional data sources in its next cost of service study to ensure that the new CAM was representative.

FortisAlberta's 2012 and 2013 rates would not be based upon the Phase II application, but would follow the PBR approved rates from Decision 2013-072 and Decision 2013-270. FortisAlberta's 2014 rates, however, would incorporate the Phase II application, applying the PBR methodology.

In disposing of the application, the AUC also considered a complaint by Harvest Operations Corporation ("**Harvest**") in respect of Oil & Gas Service rates for adjustments to unmetered accounts that were transitioned to metered rates (rate codes 44 and 45). Harvest complained that there was no basis to bill based on unmetered history for new metered accounts. The AUC upheld the complaint and directed FortisAlberta to refund the amounts collected using historic unmetered values for metered accounts.

The AUC directed FortisAlberta to refile its application by March 3, 2014 to address the minor directions of the AUC.

Approved - AESO / ATCO Electric Ltd. combined NID and Facility application required to provide power to the MacKay oilsands development (NID Approval No. U2014-8) (Decision 2014-002)

The AUC accepted the AESO proposal that electricity demand in the area can be met by constructing the new transmission lines to connect the industrial facility to the Birchwood Creek substation. Accordingly, the proposed project, as amended, would consist of:

1. Constructing two 240-kV single-circuit transmission lines designated as 9L19 and 9L28, from the Birchwood Creek substation to the MacKay AMR02 Substation 937S (the "**MacKay Substation**");
2. Altering the proposed Birchwood Creek substation, including the addition of eight 240-kV circuit breakers, one telecommunications tower, backup generator and associated communications equipment, and an enclosure surrounded by a chain-link fence; and
3. Connecting ATCO's proposed 240-kV transmission lines 9L19 and 9L28 to the MacKay Substation.

This decision resulted in the issuance of Utility Orders 2014-11 to14:

- Approved - Permit and Licence amendment for ATCO Electric Ltd. to alter and operate the Birchwood Creek 960S substation (Permit and Licence No. U2014-11).
- Issued - Permit and Licence to ATCO Electric Ltd. to construct and operate a 240-kV single-circuit transmission line designated as 9L19 from Birchwood Creek 960S substation to the MacKay Substation (Permit and Licence No. U2014-12).
- Issued - Permit and Licence to ATCO Electric Ltd. to construct and operate a 240-kV single-circuit transmission line designated as 9L28 from Birchwood Creek 960S substation to the MacKay Substation (Permit and Licence No. U2014-13).
- Approved - Connection of ATCO Electric Ltd. Transmission Lines 9L19 and 9L28 to the MacKay Substation (Order No. U2014 -14).

Approved - ATCO Gas and Pipelines Ltd. (South) amendment to Permit and Licence No. 20954 (Decision DA2014-3 and Permit and Licence No. 20954)

Permit and Licence amended to permit splitting Line 3 into lines 3 and 17, splitting Line 5 into lines 5, 18 and 19, and removal of Line 18. Lines 5, 15, 16, 17 and 19 to be abandoned in place under a future application.

Issued - Notice of AESO needs application to alter Spring Coulee 385S substation in the Cardston area. Notice of AltaLink Management Ltd. facility application requesting approval to meet the need described in the AESO application (Application Nos. 1610168 and 1610177)

The proposed alterations to the existing Spring Coulee 385S substation would include the addition of one 69/25-kV, 15/20/25-megavolt-ampere transformer and a fence expansion of approximately 20 metres by 24 metres to the west. Submissions were due January 24, 2014.

Issued - Notice of ATCO Pipelines facility application to replace the Nevis transmission pipeline with the southeast Red Deer pipeline in the city of Red Deer and abandon the Nevis transmission pipeline (Application No. 1610051)

NATIONAL ENERGY BOARD

Abandonment Hearing MHW-002-2013: AltaGas Holdings Inc. for and on behalf of AltaGas Pipeline Partnership - Application pursuant to para. 74(1)(d) of the National Energy Board Act for Coutts Gas Export Pipeline Abandonment
Abandonment requirements - Post abandonment costs - Environment Protection Plan

AltaGas Holdings Inc. ("**AltaGas**") sought to abandon the Coutts Gas Export Pipeline (the "**Coutts Pipeline**") for which the NEB previously approved the deactivation pursuant to Order MO-032-2012.

The NEB approved the abandonment application based upon the small size (168.3mm outside diameter) and short length (775m) of the Coutts Pipeline, finding that abandonment-in-place was a suitable method of abandonment, and that capping the ends of the pipeline fell within acceptable ranges for segmentation of Group 1 pipelines to avoid the Coutts Pipeline becoming a water conduit. The approval to abandon is subject to the following conditions:

1. AltaGas must abandon the Coutts Pipeline according to the current legislative requirements, including updates to the *National Energy Board Onshore Pipeline Regulations*, and Canadian Standard Association Z662-11, *Oil and Gas Pipeline Systems*;
2. AltaGas must demonstrate, to the NEB's satisfaction (consistent with the principles outlined in NEB Decision RH-2-2008), that funding is available for post-abandonment activities, and requiring AltaGas to file a letter acknowledging ongoing financial responsibility, for as long as AltaGas owns the Coutts Pipeline; and
3. The NEB ordered an Environment Protection Plan to outline how AltaGas would mitigate any contamination during abandonment of the Coutts Pipeline, and provide reclamation procedures for the right of way of the Coutts Pipeline.

Letter Decision re: York Energy Centre LP and Goreway Station Partnership Application, dated 3 September 2013 for Review and Variance/Complaint made in regard to the NEB's RH-003-2011 Decision
Impact of Cost Allocation on Individual Shipper's Tolls

York Energy Centre LP ("**York**") and Goreway Station Partnership ("**Goreway**") applied to review and vary Decision RH-003-2011 in order to reduce the tolls payable for Firm-Transportation Short-Notice ("**FT-SN**") on the Mainline Pipeline System. They argued that the increases in tolls were unjust and unreasonable, as tolls had increased by 100% and 154%, respectively for York and Goreway, since 2009. York and Goreway further submitted that the NEB had approved the toll changes without directing its mind to the magnitude of change in the tolls to York and Goreway, raising a doubt as to the correctness of Decision RH-003-2011.

The NEB dismissed the application on the grounds that changes to tolls as requested by York and Goreway would not be consistent with the cost allocation principles in Decision RH-003-2011. The NEB noted that although it did not specifically turn its mind to the exact magnitude of change for each path, it maintained that to do so would be of little benefit to shippers and would require an inordinate amount of effort.

Northern Gateway Joint Review Panel (OH-4-2011)

The Joint Review Panel (the "**JRP**") was established by the Minister of the Environment and the Chair of the NEB to conduct an environmental assessment and consider the Northern Gateway Project (the "**Gateway Project**") applications under both the *Canadian Environmental Protection Act* and *National Energy Board Act* (the "***NEB Act***"). The outcome of the review was that the JRP recommends the federal government issue certificates pursuant to Section 52 of the *NEB Act* based upon the following:

1. The JRP found the Gateway Project is, and will be, a public convenience and necessity; and
2. The JRP assessed potential environmental burdens arising from construction and routine operations, and a major oil spill on land or water. The JRP recommends that the Minister find that the Gateway Project effects in combination with cumulative effects to be significant only in respect of certain woodland caribou and grizzly bear populations, but that those potential environmental burdens are outweighed by the potential societal and economic benefits of the Gateway Project.

The foregoing findings and recommendations are subject to 209 conditions that apply to the Gateway Project including:

- Construction cannot commence and Part IV application for approval of tolls cannot be filed until the Gateway Project has demonstrated sufficient commercial support through the filing of Transportation Service Agreements.
- Maintenance of a record of landowner complaints through the life of the Gateway Project.
- Approval by the NEB of the Gateway Project's Environmental Effects Monitoring Program for both marine and pipeline, the Gateway Project's Marine Mammal Protection Plan, and Caribou Habitat Restoration Plan.
- NEB approval of valve spacing.

- NEB approval for the Gateway Project's Aboriginal, Local and Regional Employment Monitoring Plan, as well as the Aboriginal Contracting and Procurement Plan.
- Secondary Containment conditions at the Kitimat Terminal.
- NEB approval of watercourse crossing designs and least risk periods.
- NEB approval of enhanced Spill Trajectory and Fate Models.
- NEB approval of a Research Program for behavior and clean up of heavy oils.

An application for judicial review to the Federal Court of Appeal of the JRP's recommendations and report has been commenced by Forest Ethics Advocacy, Living Oceans Society and Raincoast Conservation Foundation. Key issues raised in the appeal include the consideration of upstream economic benefits without consideration of upstream impact, the JRP's assessment of the impact of a bitumen spill and the JRP's assessment of geohazards on the pipeline route.

Four Letter Decisions re Liquefied Natural Gas ("LNG") Export

On December 16, 2013, the NEB issued four decisions on applications for licences to export LNG. In each case, a licence was issued for a 25 year term with a 10 year sunset clause (except for Woodfibre LNG sunset clause of 8 years) and a 15% annual tolerance. The NEB also exempted each applicant from the filing requirements in Section 12 of the *Oil and Gas Regulations* on the basis that the regulations are in the process of being updated to reflect amendments to the *NEB Act*, and that not all of the filing requirements in Section 12 apply to these applications. Other issues unique to each application are discussed below.

1. WCC LNG Ltd. - Application for a Licence to Export Liquefied Natural Gas
Impact of aggregate licences - Reporting on composition of natural gas liquids ("NGLs") being exported - Annual tolerance considers ramp up volume

Industrial Gas Consumers Association of Alberta ("**IGCAA**") raised concern about the aggregate impact of multiple LNG export licence applications before the NEB not being considered. The NEB found that the Surplus Criterion test had been met by the applicant's expert evidence. The NEB noted that it has discretion in how it assesses the criterion, and the NEB did not find the evidence presented by IGCAA useful.

Chemistry Industry Association of Canada requested that the licence conditions include a requirement to report the NGL composition in exported gas. The NEB denied the request on the basis that it is limited to imposing the conditions contained in Section 14 of the *Oil and Gas Regulations*.

The NEB confirmed that the maximum term quantity is inclusive of the annual tolerance amount and takes into consideration a ramp up period in the export terminals initial period of operation.

2. Woodfibre LNG Export Pte. Ltd. - Application for a Licence to Export LNG
Alternative to annual tolerance

The NEB denied the applicant's request, as an alternative to the annual tolerance, that any unutilized portion of the annual volume remain available for export in the subsequent 5 years.

3. Prince Rupert LNG Exports Limited - Application for a Licence to Export LNG
Application as agent for affiliates and third parties - Relief from Section 4 Export and Import Reporting Regulations

The NEB confirmed that it is the party exporting the NGL that requires the licence, not the owner of the gas being exported. Accordingly the application need not be made partly as agent for affiliated and third party owners of the gas being exported.

The applicant requested exemption from the monthly return reporting requirements in Section 4 *Export and Import Reporting Regulations* on the basis that such information prevents it from maintaining confidentiality of its export sales contracts including the buyers' identity. The NEB denied the request. The NEB supports transparency but will exercise discretion in what information is released.

4. Pacific Northwest LNG Ltd. - Application for a Licence to Export LNG
Impact of aggregate licences

IGCAA raised the same concern about the aggregate impact of multiple LNG export licences as it did in the WCC licence application. The NEB similarly dismissed the concern in this application.

TransCanada PipeLines Limited ("TransCanada") - Application for Approval of Mainline Tariff Amendments (RH-001-2013)
Tariff changes - Diversions and Alternate Receipt Points - Overruns - Open Seasons - Renewal

TransCanada filed the Tariff Amendment Application following the release of the NEB's RH-003-2011 Decision. TransCanada applied to review and vary the RH-003-2011 Decision (the "**Review Application**"), but the NEB dismissed the Review Application. In doing so, however, the NEB directed that part of the Review Application requesting variances to the Canadian Mainline Gas Transportation Tariff (the "**Tariff**") be re-filed as an

application under Part IV of the *NEB Act* (the "**Tariff Amendment Application**").

In the Tariff Amendment Application, TransCanada requested NEB approval to amend the Tariff as follows to meet the objective in the RH-003-2011 Decision to maximize net revenues over the multi-year fixed toll period:

- To modify provisions applicable to Diversions and Alternate Receipt Points ("**ARPs**");
- To eliminate the overrun feature of Storage Transportation Service ("**STS**");
- To eliminate provisions that establish requirements for the timing and duration of open seasons for Short-Term Firm Transportation ("**STFT**") service and Short-Term Short Notice ("**ST-SN**") service; and
- To modify renewal provisions for Firm Transportation Service ("**FT**"), STS, STS Linked, Firm Transportation Short-Notice service ("**FT-SN**") and Short-Notice Balancing.

1. Modifications to Diversions and ARPs

   Modifications proposed by TransCanada were denied on the basis that the NEB found that the detrimental effects of the proposed changes exceeded the detrimental effects of the circumstances that the proposal sought to remedy. It found that this change was not required to maximize the revenues. The NEB did state, however, that TransCanada should apply to the NEB for a remedy if a short-path strategy by shippers has demonstrable material detrimental effects on the Mainline. The NEB also suggested that TransCanada consult with shippers, in determining any such remedy.

2. Elimination of the overrun feature of STS

   STS overrun is a feature of STS that allows STS shippers to deliver gas in excess of their contract demand at the STS daily demand toll on a usage basis. TransCanada suggested that if STS elimination were not approved, that in the alternative the STS tolls should be tolled equal to the interruptible toll in effect at that time. The NEB refused to approve the elimination of the STS toll. While the NEB expects local distribution company ("**LDC**") customers to contract on a firm basis for its firm need, the NEB acknowledged that changes in weather and the demand patterns of a customer make it impossible to anticipate all load changes. The NEB also did not find it necessary to change the STS toll.

3. Elimination of provisions that establish requirements for the timing and duration of open seasons for STFT service and ST-SN service

   TransCanada's Tariff requires it to post available capacity for STFT and ST-SN for five banking days during specified periods for both seasonal service and for individual monthly blocks within the seasonal periods. TransCanada proposed to modify its Tariff such that all open seasons would match the process for existing daily open seasons. To that end it proposed to reduce the posting requirement from 5 days to a period determined by TransCanada but not less than 17 hours, and remove the obligation to offer open seasons for these services. TransCanada's rationale was that the existing tariff provisions inhibited its ability to react to changes in market conditions.

   Intervener concerns included that this created an opportunity for TransCanada to withhold capacity from the market and that LDC's would not know whether STFT would be offered and could not anticipate it in planning.

   The NEB denied the proposed changes. Instead it retained the specified periods but did reduce the minimum duration for posting from five banking days to two full days. The NEB's rationale was that the posting of these open seasons was important for transparency which allowed shippers to know when the service is offered. The NEB found that the value of transparency outweighed the negative impact of the prescribed periods. Transparency had been emphasized by the NEB when it granted TransCanada the right to set interruptible transportation and STFT bid floors in the RH-003-2011 Decision.

4. Modifications of renewal provisions for FT service, STS, STS Linked, FT-SN service and Short-Notice Balancing

   The existing renewal provisions associated with Firm Mainline Services give a shipper the option to extend the existing term of its contract for a period of one year by providing notice to TransCanada at least six months before the contract's termination date.

   TransCanada proposed incorporating the Early Long-Term Renewal Option ("**ELTRO**") as an amendment to the existing renewal provisions in the Tariff and proposed amendments which would give it discretion to decline certain contract renewals related to the ELTRO. TransCanada submitted that the change was required for it to better understand shippers' long term firm contractual requirements where TransCanada is faced with major capital or maintenance expenses. Under the ELTRO, existing firm contract holders whose contracts are in an area affected by a major expenditure, maintenance or redeployment have to choose one of two options:

   (a) Extend their contracts for a minimum term not to exceed 10 years for long-haul paths or 15 years for short-haul paths. Shippers choosing to extend their contracts would retain their renewal rights; or

   (b) Continue their existing contracts, subject to annual renewals up to the "Final Renewal Termination Date." After that date TransCanada

could use the shipper's capacity to reduce expansion facilities, costs, or to redeploy facilities to another purpose.

The NEB denied TransCanada's proposed renewal provisions but did amend renewal provisions to require two years notice of renewal and require a minimum renewal term of one year. The NEB imposed the amendment because it found that the existing renewal terms were among the most generous in the pipeline industry. The NEB also found that the existing renewal provision did not provide enough information to TransCanada about shippers' future contracting intentions. The new two year renewal period with a minimum renewal term of one year gives TransCanada a three year window in the future intentions of shippers which better aligns with industry standards. In making the changes the NEB stated that it expected TransCanada to use the greater contractual information provided by this decision, in conjunction with information from other sources, to manage the Mainline and make reasonable and informed estimates and projections about the future demand for Mainline transportation services.

Finally, the NEB found that the general renewal provisions are not the appropriate mechanism for determining long term contractual support for specific expenditures and accordingly denied the ELTRO, the discretion to decline contract renewals, and other proposals with specific triggering events.