

Pertinent Issues

Background

The ITSA was the result of the negotiations for a new toll agreement between TNPI and its existing shippers, namely Imperial Oil Limited (“Imperial”), Shell Canada Products (“Shell”), Suncor Energy Products Partnership (“Suncor”) and Valero Energy Inc. (“Valero”). Those negotiations resulted in Imperial and Shell signing the ITSA, while Suncor and Valero were not signatories to the ITSA.

Under the proposed ITSA, the TNPI System would be divided into two segments for toll calculation purposes. The Montreal-West segment would transport gasoline and diesel fuel westward from the refinery of Suncor near Montreal, and Shell’s and Valero’s Montreal terminals to Oakville, Ontario. The Nanticoke-East segment would transport gasoline, diesel and jet fuel eastward from Imperial’s refinery at Nanticoke, Ontario to Toronto and points in between.

Competitive Tolls and Cross-Subsidization

Suncor opposed the application arguing that the ITSA would not adhere to the CER’s economic efficiency tolling principle, since uncompetitive tolls would incentivize shippers to pursue marine and rail transportation alternatives. According to Suncor, this would lead to underutilization of a sub-segment of the Montreal-West segment comprised of facilities connecting Farran’s Point to Oakville via North Toronto (the “West Line”) of the TNPI Pipeline System (“TNPI System”), increasing tolls for remaining shippers and risking a toll spiral and cessation of service on the West Line.

The CER found that TNPI established that the ITSA will result in just and reasonable tolls. The proposed two-segment toll design will likely reduce existing cross-subsidization and better adhere to the fundamental tolling principle of cost-based/user-pay compared to a rolled-in methodology. The CER determined the ITSA tolls were generally expected to be competitive with marine and rail alternatives when all relevant and appropriate costs are considered. As such, a toll spiral, cessation of service on the West Line, and economically

inefficient outcomes were not likely consequences of the ITSA.

The CER acknowledged that Suncor’s capped toll proposal could reduce Montreal to the Greater Toronto Area (“GTA”) tolls and that it has the potential to increase competitiveness with transportation alternatives. However, as the CER determined that ITSA tolls are likely to be competitive, it found that Suncor did not establish a need for a toll cap or a compelling basis for departing from the cost-based/user-pay principle.

The CER noted that issues and concerns raised in this proceeding were often supported by generalized information about transportation alternatives. However, it was clear to the CER that West Line tolls under the ITSA, while generally competitive, are still close to marine and rail alternatives. During the initial five-year term of the ITSA, specific revenue requirements, throughputs, tolls, and the actual costs of alternatives are subject to possibly significant variability, particularly related to movements from Montreal to GTA. The CER expressed an expectation that TNPI will manage these uncertainties and the associated competitive risk that may emerge on the TNPI System.

The CER noted that TNPI accepted meaningful capital cost recovery risk under the ITSA and that West Line shippers have a degree of control over the competitiveness of their tolls since shippers can achieve lower tolls by increasing their utilization of the segment. The short, five-year initial term of the ITSA provides an opportunity for TNPI and shippers to reassess the toll design, competitive context and the overall justness and reasonableness of tolls, including economic inefficiency that could result from future variability relative to the estimates that were part of the record in this proceeding.

The CER found that the ITSA provided greater clarity and transparency regarding TNPI’s revenue requirement compared to the existing tolls agreement. The CER was satisfied that the revenue requirement under the ITSA better reflected TNPI’s cost of providing service and that the ITSA will provide TNPI the ability to fund and recover costs associated with the integrity and safety of the TNPI System.