National Energy Board

Office national de l'énergie

Reasons for Decision

Set-aside and collection mechanisms

MH-001-2013

May 2014

Pipeline Abandonment – Financial Issues

Canada

National Energy Board

Reasons for Decision

In the Matter of

NEB-regulated Pipeline Companies

Applications for approval of set-aside and collection mechanisms for abandonment cost funding

MH-001-2013

May 2014

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Glossary of Terms and Abbreviations

ACA	Annual Contribution Amount
ACE	Abandonment Cost Estimate(s)
Alliance	Alliance Pipeline Ltd.
Annual Contribution Amount	The total dollar amount to be contributed annually to the trust to reach full coverage of future abandonment costs by the end of the Collection Period. Some parties refer to this as Annual Collection Amount
ARO	Asset Retirement Obligation
Base Case	A set of preliminary assumptions (including cost parameters and physical assumptions) set out by the Board to facilitate the filing of preliminary estimates of future abandonment costs, proposals to collect abandonment funds, and processes and mechanisms to set aside abandonment costs
Beneficiary or Beneficiaries	The person or persons who are entitled to the use and enjoyment of the property held in trust
CAPP	Canadian Association of Petroleum Producers
Cash Flow Matching	Investing in securities with expected future cash flows that match the expected cash outflows from liabilities
Cochin	Kinder Morgan Cochin ULC
Collection Period	The number of years to fully fund future abandonment costs
COM	Collection Mechanism
CTHI	Centra Transmission Holdings Inc.
Duration Matching	Adjusting a portfolio’s duration to match the duration of an investor’s future liabilities
Emera	Emera Brunswick Pipeline Company Ltd.
Enbridge	Enbridge Pipelines Inc. and Enbridge Pipelines (NW) Inc.
Enbridge (NW)	Enbridge Pipelines (NW) Inc.
Enbridge Bakken	Enbridge Bakken Pipeline Company Inc. on behalf of Enbridge Bakken Limited Partnership
Enbridge Pipelines	Enbridge Pipelines Inc.
Enbridge SL	Enbridge Southern Lights GP Inc. on behalf of Enbridge Southern Lights LP
Express	Express Pipeline Ltd.
Foothills	Foothills Pipe Lines Ltd.
Gaz Métro	Société en commandite Gaz Métro

Genesis	Genesis Pipeline (Canada) Ltd.
GP	General Partner
Group 1 companies	In general, companies that are regulated by the Board with more extensive pipeline systems and as such, subject to a greater degree of regulatory oversight on financial matters than Group 2 companies
Group 2 companies	Companies regulated by the Board, other than Group 1 companies. Group 2 companies tend to have smaller pipeline systems, with fewer shippers. Group 2 companies are subject to a lighter degree of regulatory oversight on financial matters than Group 1 companies
Immunization Strategy	A strategy that ensures changes in interest rates will not affect the value of a portfolio
Imperial	Imperial Oil Resources and ExxonMobil Canada Properties
Investment Maturites	The period of time for which a financial instrument remains outstanding
Keystone	TransCanada Keystone Pipeline GP Ltd.
Kinder Morgan	Kinder Morgan Cochin ULC and Trans Mountain Pipeline ULC on behalf of Trans Mountain LP
KM or km	Kilometre(s)
LMCI	Land Matters Consultation Initiative, an NEB initiative consisting of four distinct topic streams
LNG	Liquefied natural gas
LOC	Letter of Credit or Letters of Credit
LP	Limited Partner
M&NP	Maritimes & Northeast Pipeline Management Ltd.
Mark to Market	Recording the price or value of a security, portfolio or account to reflect its current market value rather than its book value
MM or mm	Millimeter(s)
MPLA	Manitoba Pipeline Landowners Association
MPLL	Montreal Pipe Line Limited
NCCL	Nova Chemicals (Canada) Ltd.
NEB	National Energy Board
NEB Act	*National Energy Board Act*
NGTL	NOVA Gas Transmission Ltd.
Niagara Gas	Niagara Gas Transmission Limited
oBo	On behalf of
OSFI	Office of the Superintendent of Financial Institutions
Pembina	Pembina Energy Services Inc.

PMC	Plains Midstream Canada ULC
Pouce Coupé	Pouce Coupé Pipe Line Ltd.
QET	Qualifying Environmental Trust, as defined in the *Income Tax Act*
Qualifying Investments	Qualifying Investments, as defined in the *Income Tax Act*
Repsol	Repsol Energy Canada Ltd.
SAM	Set-aside mechanism
Settlor	The person who conveys property to the trustee for the benefit of the beneficiaries
SIPP	Statement of Investment Policy and Procedures
Souris Valley	Souris Valley Pipeline Limited
Spectra Empress	Spectra Energy Empress Management Inc.
Spectra Midstream	Spectra Energy Midstream Canada L.P.
St. Clair	St. Clair Pipelines Management Inc.
Tax Act	*Income Tax Act*
TQM	Trans Québec & Maritimes Pipeline Inc.
Trans Mountain	Trans Mountain Pipeline ULC or Trans Mountain LP
TransCanada	Foothills Pipe Lines Ltd., NOVA Gas Transmission Ltd., Trans Québec & Maritimes Pipeline Inc., TransCanada Keystone Pipeline GP Ltd., and TransCanada PipeLines Limited
TransCanada PipeLines	TransCanada PipeLines Limited
Trans-Northern	Trans-Northern Pipelines Inc.
Trustee	The person who holds legal title to the property held in trust
Union	Union Gas Limited
UPA	Union des producteurs agricoles
Vector	Vector Pipelines Limited Partnership
WCSB	Western Canadian Sedimentary Basin
Westcoast	Westcoast Energy Inc., carrying on business as Spectra Energy
Westspur	Enbridge Pipelines (Westspur) Inc.

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* and the Regulations made thereunder;

IN THE MATTER OF applications for orders approving, among other things, the set-aside and collection mechanisms for abandonment funding proposed by the NEB-regulated pipeline companies set out in Appendix II; and

IN THE MATTER OF Hearing Order MH-001-2013 dated 19 April 2013.

HEARD in Calgary, Alberta on 14 - 17, 20 – 23 January 2014 and 19 February 2014;

BEFORE:

L. Mercier	Presiding Member
R. R. George	Member
D.A Young	Member

Appearances	**Participants**	**Witnesses**
T. O'Leary	Alliance Pipeline Ltd.	N. Coghlan K. Sundvall T. Molik
O. Kotelko	Canadian Natural Resources Limited	
T. Karry	Centra Transmission Holdings Inc.	
N. Gretener	Emera Brunswick Pipeline Company Ltd.	
D. Crowther D. Foster M. Fowke	Enbridge Pipelines Inc., Enbridge Pipelines (NW) Inc., 2193914 Canada Limited, Enbridge Bakken Pipeline Company Inc. on behalf of Enbridge Bakken Limited Partnership, Enbridge Southern Lights GP Inc. on behalf of Enbridge Southern Lights LP, Niagara Gas Transmission Limited and Vector Pipelines Limited Partnership	M. Hrynchyshyn P. Douvris C. Heller F. Gazie O. Soto
R. Powell	Encana Corporation	
R. Moore	ExxonMobil Canada Properties and Imperial Oil Resources	
J. Smellie	Genesis Pipeline (Canada) Ltd., NOVA Chemicals (Canada) Ltd.	E. Beattie

E. Beattie	Kaiser Exploration Ltd.	
M. Buchinski M. Synnott	Kinder Morgan Cochin ULC and Trans Mountain Pipeline ULC on behalf of Trans Mountain Pipeline LP	H. Mark J. Hulbert
N. Gretener	Maritimes & Northeast Pipeline LP	I. Leadley M. Rideout
D. Cyr C. Gillies	Montreal Pipe Line Limited	
V. Light R. Twyman	Pembina Energy Services Inc. and Pouce Coupé Pipe Line	
J. Cusano	Plains Midstream Canada ULC	
D. Holgate	Souris Valley Pipeline Limited	M. Foss T. Rosenberg
L. Smith W. Reinisch	St. Clair Pipelines Management Inc.	
G. Nettleton K. Howard	Sunoco Logistics Partners Operations GP LLC on behalf of Sunoco Pipeline LP and Sun-Canadian Pipe Line Company Limited	
T. Hughes G. Giesbrecht	Talisman Energy Inc.	D. Tonellato L. Innes G. Giesbrecht S. Ness
T.-L. Oleniuk K. Thrasher	TransCanada Keystone Pipeline GP Ltd., Foothills Pipe Lines Ltd., Trans Québec & Maritimes Pipeline Inc., NOVA Gas Transmission Ltd., and TransCanada PipeLines Limited	M. Ritsch F. Pilley D. Allen T. Bishop
A.(S) Carpenter	Trans-Northern Pipelines Inc.	M. Speagle

K. Miller	Veresen Energy Infrastructure Inc.	C. Rousch W. Fu S. Boucher-Chen
D. Davies R. Kolber	Westcoast Energy Inc., carrying on business as Spectra Energy Transmission, Express Pipeline Ltd., Spectra Energy Empress Management Inc., Spectra Energy Midstream Canada L.P.	T. Curry G. Johnson M. Burnyeat B. Morse A. Witts
N. Schultz	Canadian Association of Petroleum Producers	
J. D. Goudy	Manitoba Pipeline Landowners Association	
P. Lemieux	Union des Producteurs agricoles	P. Lemieux
N. Gretener	Alberta Northeast Gas Limited	
S. Ladha K. Johnston	BP Canada Energy Group ULC	
D. Langen	Enbridge Gas Distribution Inc.	A. Welburn J. Redford J. Makholm
L. Smith W. Reinisch	Union Gas Limited	
C. King	Alberta Department of Energy	
P. Khan H. Gitersos	National Energy Board	

Disposition

In May 2009, the Board issued its RH-2-2008 Reasons for Decision that set out guiding principles and considerations, and a list of attributes for any mechanism that would set aside funds for pipeline abandonment. It also established a five-year Action Plan for all NEB-regulated companies, including Group 2 companies. The tenth and final step of the Action Plan specified that the NEB issue decisions on Group 1 companies' set-aside and collection mechanisms by 31 May 2014. The decisions contained within these reasons complete the tenth step and conclude the RH-2-2008 Action Plan.

By 1 January 2015, NEB-regulated pipeline companies must have a mechanism in place that will provide adequate funds to pay for pipeline abandonment. Few companies are exempt. Pipeline companies must establish a trust or provide a letter of credit issued by a Schedule 1 bank or a surety bond supplied by a surety company regulated by the Office of the Superintendent of Financial Institutions.

A trust, when properly constructed, can be a suitable mechanism to set aside funds for pipeline abandonment. However, the question of whether any particular trust is suitable, and whether it meets the principles and attributes set out by the Board in the RH-2-2008 Reasons for Decision, depends on the terms and conditions that govern the trust. The Board accepts Souris Valley's proposed trust agreement provided minor modifications are made. The Board does not accept the trust framework proposed by the Joint Applicants. The Board was not persuaded that the Joint Applicants' proposal would adequately protect the trust funds.

Since the question of whether any particular trust is suitable depends on the terms and conditions that govern the trust, the Board will require pipeline companies to provide their proposed trust agreements. To assist pipeline companies, this decision provides guidance and direction for trust agreements, including indicative terms and a model trust agreement.

All companies proposing a trust also proposed to use the QET provisions of the *Income Tax Act.* The Board supports using the QET as it is tax-efficient. The QET provisions also limit the type of investments that can be made with the trust funds.

Within the confines of the investments specified in the QET provisions of the *Income Tax Act*, fixed income portfolios and balanced portfolios may both be appropriate investment approaches, depending on the circumstances and risk tolerance of each pipeline company. The interests of all parties bearing risk and sharing in the benefits of investment performance must be taken into account in determining a trust's risk tolerance and in developing the investment strategy.

The Board approves most companies' collection period as proposed. The Board also approves the cost allocation methodologies proposed by each pipeline company, with one exception. Few concerns were expressed about how funds were to be collected.

The Board reminds pipeline companies and shippers that the amount to be collected and set aside for pipeline abandonment is not subject to negotiation as part of a settlement agreement.

A letter of credit or a surety bond, which provides a backstop for a pipeline company's obligation to pay for pipeline abandonment, can be a suitable set-aside mechanism. However, like a trust, the question of whether these instruments are reasonable depends on their terms. These Reasons for Decision provide a model letter of credit and a model surety bond.

Other mechanisms proposed by the Applicants are not appropriate because they do not have a third party – who is independent of the pipeline company and whose financial strength is easily verifiable on an ongoing basis – to provide security to pay for pipeline abandonment.

Generally, the Board did not exempt pipeline companies who argued that their abandonment costs are immaterial. In the Board's view, the public's interest in having funds available to abandon a pipeline safely outweighs the cost to the pipeline company of providing acceptable coverage.

The Board expects pipeline companies will retire different components of their systems at different times. Pipeline companies have a responsibility to identify and manage the risk that funds will be needed before full coverage is reached even though there is inherent uncertainty in future abandonment timelines. The Board directs Group 1 and Group 2 companies to file a preliminary abandonment funding plan in time for the next Board review.

The amount of abandonment funds being set aside must be included in annual reports filed with the Board. The Board will, at regular intervals, publicly review companies' estimates of the cost of abandoning a pipeline, the coverage provided by their set-aside mechanisms, and the assumptions about how those funds will grow. Landowners, landowner organizations and shippers have an interest in staying informed about the money set aside to pay to abandon pipelines. To allow for greater transparency and facilitate consultation, the Board expects pipeline companies to consider specific tools to communicate information about abandonment funding.

Some companies declared that they would not set aside funds to pay for pipeline abandonment. Others ignored this proceeding. The Board requires each of these companies to provide a set-aside mechanism. Compliance with Board orders is not optional. The Board has the ability to compel compliance through its enforcement process.

L. Mercier
Presiding Member

R.R. George
Member

D.A. Young
Member

Chapter 1

Introduction

1.1 Background

1.1.1 Pipeline Abandonment – Financial Issues

In early 2008, the National Energy Board (Board or NEB) identified a proposed approach for the Land Matters Consultative Initiative (LMCI) consisting of four distinct topic streams. Stream 3 of the initiative dealt with financial issues related to pipeline abandonment. The Board indicated that the key issue to be considered in that stream was: "What is the optimal way to ensure that funds are available when abandonment costs are incurred?"

On 3 March 2008, the Board issued the RH-2-2008 hearing order to convene a public hearing to consider, at a general level, the financial issues related to pipeline abandonment. In May 2009, the Board issued the RH-2-2008 Reasons for Decision.[1] The Reasons set out guiding principles and considerations, and a list of attributes for any mechanism that would be used to set aside funds for pipeline abandonment. It also established a five-year Action Plan for companies to follow. The Board directed all NEB-regulated companies (Appendix II) to begin setting aside abandonment funds in the first toll year after May 2014.

1.1.2 Development of the Base Case

The RH-2-2008 Reasons for Decision provided pipeline companies with Base Case assumptions to use when preparing their preliminary abandonment cost estimates. The Decision also provided an assumption for the inflation rate applicable to those estimates, and an assumption for the rate of return on funds to be set aside.

As a follow-up to the RH-2-2008 Reasons for Decision, the Board held a technical conference in November 2009 to discuss and, if necessary, revise the Base Case assumptions. On 4 March 2010, the Board issued a revised set of Base Case assumptions,[2] and added further detail regarding collection periods, return on funds collected and risk allocation, among other things.

Specifically, the Board stated that the rate of return on funds collected for the Base Case should be based on a conservative, low-risk portfolio with a goal of capital preservation. The Board determined that the yield from Government of Canada marketable bonds, which averaged from 1.4

1 National Energy Board, RH-2-2008, Reasons for Decision, Land Matters Consultation Initiative Stream 3, Pipeline Abandonment - Financial Issues, May 2009. Pursuant to subsection 15(1) of the NEB Act, the Board authorized three members to conduct the hearing and to report and make recommendations to the Board in respect of the decision to be made by the Board on the hearing. The three-member panel conducted the hearing and presented its report and recommendation to the Board in April 2009. The Board adopted the panel's report and recommendations in the RH-2-2008 Reasons for Decision.

2 The Base Case assumptions for preparing preliminary cost estimates were subsequently revised by the Board in a December 2010 letter. The letter included amended tables (these amended tables contained Unit Costs). Base Case assumptions which were unrelated to preliminary cost estimates were not addressed in that letter.

to 1.5 per cent above the rate of inflation, would serve as an appropriate proxy for that portfolio. The Board specified an inflation rate of two per cent, and therefore set 3.5 per cent as the pre-tax rate of return to be used for the Base Case. The Board also set a Base Case maximum collection period of 40 years. However, the Board noted that companies that did not wish to rely on the Base Case assumptions could prepare and file their estimates according to their own specific circumstances.

1.1.3 Abandonment Cost Estimates (ACE)

The five-year Action Plan required companies to file preliminary ACE for pipeline abandonment by 30 November 2011.

Group 1 companies filed their ACE in November 2011. The Board issued the MH-001-2012 hearing order to convene an oral public hearing to consider the ACE of Group 1 companies, with the exception of Maritimes & Northeast Pipeline Management Ltd. (M&NP).[3] The Board issued its MH-001-2012 Reasons for Decision in February 2013 and required Group 1 companies (excluding M&NP and Enbridge NW)) to file their revised ACE with the Board, for approval, on 16 April 2013. The Board has since approved the revised ACE of these Group 1 pipeline companies.

Group 2 pipeline companies were also required to file their abandonment cost estimate in November 2011. On 14 February 2013, the Board issued a letter to Group 2 companies regarding their ACE. In that letter, the Board categorized Group 2 companies' cost estimates in one of three categories: Category A (acceptable), Category B (requiring additional information), or not filed. The Board issued subsequent updates to this letter, the most recent of which was in 30 January 2014. The Board has either found each Group 2 company's ACE acceptable, or has imposed the Base Case on them.

Group 1 and Group 2 companies will use their Board-approved ACE to calculate the annual amount they must set aside, in accordance with this decision.

1.1.4 MH-001-2013 Hearing Process

According to the five-year Action Plan, companies were required to file a proposal on how to collect funds, and a process and mechanism to set aside the funds. Group 1 companies were required to file their proposed mechanisms, for approval, no later than 28 February 2013. Group 2 companies were to file mechanisms no later than 31 May 2013. All Group 1 companies and those Group 2 companies that charge tolls were to file proposals for collection no later than 31 May 2013.

The Board issued the MH-001-2013 hearing order on 19 April 2013. In the hearing order, the Board stated that it would consider the set-aside and collection mechanisms proposed by all Group 1 and Group 2 companies. The Board finalized the List of Issues for the proceeding on 11 July 2013. The List of Issues is set out in Appendix I of this decision.

The deadline to submit an application to participate in the MH-001-2013 proceeding was 26 July 2013. The Board held information sessions for persons interested in participating in the hearing. The purpose of these sessions was to provide information about how to participate in the

3 M&NP used the Board's Base Case and therefore, pursuant to the Board's direction in the RH-2-2008 Reasons for Decision, did not require Board approval of its ACE.

hearing process. General information sessions in English and French were held on 23 April 2013 and a second English-only session was held on 24 April 2013. An information session for Group 2 companies unfamiliar with the Board's oral hearing process was held in both English and French on 18 June 2013. Finally, a workshop addressing how to complete the application to participate form was held in both English and French on 18 July 2013.

On 14 August 2013, the Board announced that the oral portion of the MH-001-2013 hearing would be held in Calgary, and that participants would be able to participate in person, by teleconference or by webinar. The Board also issued a list of interested persons that had been granted intervenor status. A complete list of all parties to the proceeding is set out in Appendix II.

1.2 Proposals made by Group 1 and Group 2 Applicants and Oral Portion of the MH-001-2013 Hearing

Thirty-four companies, including all thirteen Group 1 companies, proposed to use a trust to set aside funds for pipeline abandonment. Sixteen Group 2 companies proposed a letter of credit or surety bond. Other Group 2 company proposals included letters of guarantee, reliance on provincial liability management programs and reliance on future cash flows. A variety of collection mechanisms were proposed by both Group 1 and Group 2 companies.

Before the oral portion of the hearing, the Board issued a series of procedural directives concerning the majority of the Group 2 companies. The effect of the procedural directives was to narrow the number of applicants that participated during the oral portion of the MH-001-2013 hearing.

With few exceptions, the Board did not require further information on the set-aside and collection mechanisms of companies not proposing a trust. Therefore, their attendance at the oral portion of the hearing was not mandatory.[4] The Board also advised Group 2 companies proposing to use a trust mechanism, other than Souris Valley Pipeline Limited (Souris Valley), that although it did have questions about the trust mechanism, these companies could choose to accept the evidentiary record relating to trusts.[5] In all cases, the Board noted that no company was precluded from seating a witness panel, and it invited companies to make final argument in support of their proposals.

The oral evidentiary portion of the hearing was held in Calgary, Alberta on 14-17 January 2014 and 20-23 January 2013. On 24 January 2014, the Board set out certain legal and practical issues in Procedural Directive No. 7 (a copy of which is in Appendix III) to be addressed in final argument by certain parties. Written direct argument was filed on 5 February 2014. Reply argument was heard orally on 19 February 2014.

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4 The Board stated that attendance was not mandatory as long as no other parties to the hearing intended to cross-examine those applicants.

5 Attendance was not mandatory as long as no other parties to the hearing intended to cross-examine those applicants.

Chapter 2

Trust Mechanisms

Group 1 companies (the Joint Applicants) jointly proposed to use a trust mechanism to set aside funds to pay for pipeline abandonment. Possible features of their proposed trust were set out in their application to the Board (Joint Application). Some Group 2 companies collaborated with the Joint Applicants, while others relied on or adopted features of the Joint Application. A list of these Group 2 companies is set out in Appendix V. Souris Valley, a Group 2 company, did not rely on the Joint Application. It proposed a different trust structure and filed a form of trust agreement in support of its application.

This chapter considers the evidence and arguments about the trust proposals submitted on the record of this proceeding, as well as various features of these proposals. It also considers whether these trust proposals would be an appropriate mechanism to set aside funds for pipeline abandonment.

2.1 Views of the Joint Applicants[6]

The Joint Applicants proposed a trust framework that would be irrevocable and use the qualifying environmental trust (QET) provisions in the *Income Tax Act* (Tax Act). Under these provisions, a pipeline company may deduct amounts contributed to a QET from the pipeline company's income tax obligation, provided that the trust is maintained for the sole purpose of funding the reclamation of a qualifying site,[7] among other things. Enbridge Pipelines Inc. and Enbridge Pipelines (NW) Inc. (collectively Enbridge) indicated that the Government of Alberta announced its intention to enact QET legislation that parallels the relevant provisions of the Tax Act. Enbridge, and many of the Joint Applicants, indicated that their trust would be resident in Alberta for taxation purposes.

The Joint Applicants did not file a proposed form of trust agreement. Instead, the Joint Application set out indicative terms. The Joint Applicants indicated that the draft indicative terms were not exhaustive, and could be subject to change. They noted that each company would finalize their own trust agreement after the Board issued its decision in this proceeding.

2.1.1 Attributes set out in the RH-2-2008 Reasons for Decision

The Joint Applicants contended that their trust structure meets the nine attributes set out in the RH-2-2008 Reasons for Decision.[8] They stated that abandonment funds would be held in trust by an independent trustee, exclusively for pipeline abandonment purposes and therefore would not be commingled with a pipeline company's general corporate funds. Safeguards would be put into the trust agreement and in associated governance procedures, so the funds are protected from misuse.

[6] This section also includes the views of Group 2 companies which made similar submissions to the Joint Applicants.

[7] A qualifying site is defined in section 211.6 of the Tax Act as a site in Canada that is or has been used primarily for, or for any combination of, (a) the operation of a mine, (b) the extraction of clay, peat, sand, shale or aggregates (including dimension stone and gravel), (c) the deposit of waste, or (d) if the trust was created after 2011, the operation of a pipeline.

[8] The nine attributes from the RH-2-2008 Reasons for Decision are set out in Appendix IV.

The Joint Applicants noted that regular reviews would be conducted of their proposed mechanism and that they would report to the Board annually. For further information on reporting, see

Chapter 6. In addition, a sound investment policy would be developed for the funds held in trust and the Board would be able to audit the trust.

It was contended that the pipeline company's creditors would not be able to attach to the pipeline company's beneficial interest in the trust. In particular, the Joint Applicants noted that:

- a trustee in bankruptcy, or a receiver, could "step into the shoes" of a pipeline company and would have no better rights than the pipeline company to the trust property;
- the pipeline company has a beneficial interest in the trust property. It does not legally own the trust property. The trustee legally owns the trust property;
- the nature of the pipeline company's beneficial interest is set out in the trust agreement and would not provide the pipeline company with fixed payments from the trust;
- the trust agreement would specify that funds can only be released by the trustee if certain pre-conditions were met; and
- the trust agreement would require the trustee to make an application to the Board, or to a court, to appoint a new beneficiary if the pipeline company were in default.

The Joint Applicants also contended that paragraph 67(1)(a) of the *Bankruptcy and Insolvency Act*[9] protects the trust funds from the pipeline company's creditors. They submitted that funds held in trust are not included as part of the bankrupt's estate and therefore not available to its creditors. The provisions of the *Companies' Creditors Arrangement Act*[10] would also provide protection against creditors.

Enbridge stated that its intention is to limit, to the extent possible, the ability of a pipeline company's creditors to claim the funds held in trust. Enbridge had not yet developed what specific limitations would be implemented. However, it suggested some additional measures could be implemented to enhance the protection of the funds, such as requiring: (i) the trustee to notify the Board, a successor regulator, or a court if it became aware of a default by the pipeline company; and (ii) the pipeline company to notify the Board if it determined that there was some reason for concern that its creditors may seek to claim abandonment funds.

Westcoast Energy Inc. carrying on business as Spectra Energy Transmission (Westcoast), Alliance Pipeline Ltd. (Alliance), Kinder Morgan Cochin ULC and Trans Mountain Pipeline ULC on behalf of Trans Mountain LP (collectively, Kinder Morgan) and Emera Brunswick Pipeline Company Ltd. (Emera) set out how a company's creditors could challenge the trust proposed by the Joint Applicants, or the pipeline company's conveyance of funds to the trustee. They identified that the company's creditors could: (i) characterize the company's periodic conveyance of money as a fraudulent conveyance or preference; (ii) demonstrate that the trust is ineffective; (iii) amend the

9 R.S.C. 1985, c. B-3.

10 R.S.C. 1985, c. C-36.

trust agreement to allow trust funds to be used for non-abandonment purposes; and (iv) establish that the pipeline company has a residual interest in the trust and seek to obtain the existing value of that interest. These companies came to the conclusion that it was unlikely that a pipeline company's creditors would be successful in making these claims.

2.1.2 Board Oversight of the Trust and Amendments

Many of the Joint Applicants were of the view that the Board should not approve the trust agreements. In support of this position, these parties submitted, among other things, that the trust agreements are commercial agreements, and that it would be inappropriate and impractical for the Board to alter them. Instead of approving a trust agreement, they suggested that trust agreements would be made available to the Board when the Board carries out its audit function.[11]

The Joint Applicants proposed that a trust agreement could be amended if the trustee and the pipeline company were to agree on the amendments. The only constraint proposed in the Joint Application on the power of the trustee and pipeline company to amend a trust agreement was that no amendment could be inconsistent with the purpose of the trust (the proposed purpose would be to hold and distribute funds to enable the beneficiary to abandon the pipeline in accordance with applicable laws).[12] Some of the Joint Applicants suggested further constraints on the power to amend the trust agreement as the hearing unfolded. The constraints included prohibiting amendments to the clauses of the trust agreement that govern access to funds, and prohibiting amendments that would cause the trust to lose QET status. Enbridge also indicated that other constraints on amendments may be included in the trust documents; however, Enbridge did not provide any details on what those constraints would be.

Many of the Joint Applicants asserted that a requirement for the Board to approve the trust agreement, or amendments to it, would be inefficient and would cause uncertainty in negotiating the agreement. Enbridge expressed concern that requirements imposed by the Board may not be consistent with commercial terms and practice, and therefore may not be achievable. Alliance also suggested that the Board should exercise caution in attaching specific conditions to any approval it issues. In Alliance's submission, Board directions could have unforeseen implications, and risk undermining the purposes of the QET mechanism.

Pembina Energy Services Inc. (Pembina), Pouce Coupé Pipe Line Ltd. (Pouce Coupé) and Enbridge indicated that it was appropriate for a pipeline company to have broad discretion to amend the trust agreement. Pembina and Pouce Coupé indicated that a pipeline company should have broad discretion because it has responsibility to abandon the pipeline. According to Enbridge, a forward-looking approach to legal drafting suggested that the trust agreements should allow a number of provisions to be amended. Kinder Morgan and Emera contended that the trustee, as a fiduciary, cannot agree to amendments that would diminish the protection afforded to the funds held in trust, or that would be inconsistent with the trustee's role under the agreement. Emera also indicated that the trustee would be liable for damages if it failed to discharge its responsibilities.

11 Emera made similar submissions.

12 Emera and Plains Midstream Canada ULC also shared this view.

During the oral portion of the hearing, Foothills Pipe Line Ltd., NOVA Gas Transmission Ltd., Trans Québec & Maritimes Pipeline Inc., TransCanada Keystone Pipeline GP (Keystone), TransCanada PipeLines Limited (together, TransCanada) indicated that its initial trust documents, and any amendments to them, would be filed with the Board. TransCanada also indicated that it would not amend the trust documents without Board approval. TransCanada anticipated that amendments would be infrequent.

Some of the Joint Applicants indicated that if the Board were to require the trust agreements to be filed with the Board, then the Board should take measures to maintain their confidentiality. These parties argued, among other things, that a trust agreement is commercial information that a pipeline company would consistently treat as confidential. They indicated that the public disclosure of the trust agreement could be expected to result in a material loss.

2.1.3 Parties to the Trust and the Role of the Parties

Under the Joint Applicants' proposal, the pipeline company and the trustee would be parties to the trust agreement. Initially, the Joint Applicants noted that the pipeline company would have two roles in relation to the trust. First, the pipeline company would be the settlor of the trust because it would convey funds to the trustee pursuant to the terms of a trust agreement. Second, the pipeline company would be the beneficiary of its trust. As the proceeding continued, Alliance and Enbridge, along with Pembina and Pouce Coupé indicated that the beneficiary of the trust would not be defined as the pipeline company, but rather as the person who is obligated to abandon the pipeline.

The Joint Applicants submitted that their proposed trust would be administered by an independent trustee. In selecting the trustee, the Joint Applicants stated that they would, select a trustee from among those companies licenced under the *Trust and Loan Companies Act*.[13]

The Joint Applicants opposed having the Board as a party to the trust.[14] They contended, among other things, that: (i) accountability for the trust should rest with the pipeline company; (ii) it is inappropriate for the Board to enter into commercial relationships with the companies that it regulates; and (iii) the Board may become a fiduciary if it is party to the trust agreement. Kinder Morgan and Enbridge further noted that the Board has numerous powers that it can use to ensure that a pipeline company complies with a trust agreement without being a party to that agreement.

The Joint Applicants did not envisage landowners or other potential stakeholders having a direct role in administering the trust. They submitted that a pipeline company has the responsibility to abandon its pipeline and that, in the RH-2-2008 Reasons for Decision, the Board had previously rejected the concept of an oversight committee (which landowners would be a part of) responsible for ensuring that funds are collected and properly invested. The Joint Applicants further noted that landowner requests would be addressed at the abandonment stage as part of the development of their abandonment plans, which would be filed in support of an abandonment application to the Board. Landowners would have the opportunity to participate in a Board hearing considering an abandonment application.[15]

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[13] S.C. 1991, c. 45; Ex. B10-7.

[14] In addition to the Joint Applicants, Pembina, Pouce Coupé, Plains Midstream Canada ULC and Emera shared this view.

[15] Emera made similar submissions.

2.1.4 Changes to Parties

The Joint Applicants submitted that the trust agreement could be amended to change the beneficiary if a pipeline was sold. Alliance, Pembina and Pouce Coupé contended that the trust agreement would not be amended with the sale of a pipeline if their proposed definition of beneficiary were adopted.

Under the Joint Applicants' proposal, the Board or a court would be able to appoint a replacement beneficiary, if required. For example, if the trustee became aware that a pipeline company was in default, then the trustee would be required to request that the Board appoint another beneficiary. The Joint Applicants submitted that a company could be in default if it were insolvent or if it failed to contribute any abandonment funds that it had collected. If the Board did not appoint a beneficiary within a specified period of time, then the trustee would be required to apply to a court for direction and the trust agreement would empower the court to appoint another beneficiary.

The Joint Applicants proposed that the pipeline company could remove the trustee with or without notice. They provided a non-exhaustive list of circumstances when the trustee could be removed. The circumstances included: (i) when a disagreement took place between a pipeline company and a trustee over the trustee's services or fees; and (ii) when a pipeline company had an existing relationship with another trustee. If the pipeline company removed the trustee or if the trustee were to resign, then the pipeline company would be required to appoint a successor trustee. The successor trustee would have the same powers and duties as the outgoing trustee.

It was Enbridge's view that a pipeline company's ability to remove the trustee would not adversely affect the independence of the trustee and would not jeopardize the funds held in trust. Enbridge noted that: (i) the trustee could not be removed by a pipeline company if the pipeline company were in default; (ii) a change or removal of a trustee would not be a regular occurrence; and (iii) decisions to remove the trustee would not be taken lightly. Enbridge further contended that restricting the ability of a pipeline company to remove a trustee may work to perpetuate poor, or expensive, trustee performance.

Emera was of the view that it was appropriate for the pipeline company to have control over the appointment of the trustee. Emera submitted that the pipeline company is ultimately responsible for the consequences of the trustee's actions, and that the Board's oversight and audit role should provide comfort that the decisions made by the pipeline company with respect to the trust would be prudent.

Kinder Morgan noted that trustees have a fiduciary duty that causes them to act in a way that is highly protective of the purpose of their respective trusts. It argued that the trustee is also subject to an onerous code of conduct, which is found to an extent in Canada's provincial and federal trust legislation. Accordingly, in Kinder Morgan's submission, the potential for a trustee to be replaced does not affect the trustee's legal obligation to safeguard the trust property in accordance with the trust agreement.

Trans-Northern Pipelines Inc. (Trans-Northern) did not oppose the Board approving the replacement trustee. However, Trans-Northern asserted that such a requirement would add a further layer of administration and result in potential delays, which could be important if Trans-Northern wished to remove the trustee on a timely basis.

2.1.5 Control over Investments

The Joint Applicants submitted that, under the indicative trust terms, the trustee would have no responsibility for the investment decisions for the fund and would not be responsible for any losses resulting from any investment made in accordance with authorized instructions. Rather, the Joint Applicants would direct the trustee to make specific investments.

According to Enbridge, trustees do not take on an investment decision-making role in a trust. Kinder Morgan agreed that it would be atypical for a trustee to direct investments. TransCanada asserted that trustees do not typically appoint investment managers. Emera added that the pipeline company should control investments because the company is ultimately responsible for the costs of abandonment.

Enbridge indicated that it is appropriate for Enbridge to have direct control over the investments because of its single asset portfolio strategy. Enbridge noted that if it had an investment strategy with a broader mandate, including broader asset classes, it would likely hire an investment manager.

Kinder Morgan had not yet decided whether to hire a fund manager, but suggested that as the investment strategy becomes more complex, the need for an investment manager would change.

Westcoast anticipated that it would initially invest in exchange-traded funds and would hire an investment manager once the fund reached a certain size. Westcoast indicated that investments in equities would be constrained by the requirements of both the investment manager mandate and the Statement of Investment Policy and Procedures (SIPP).

Alliance indicated it would hire an investment manager that would act as an adviser to provide guidance to Alliance. Alliance would provide directions to the trustee based on the investment manager's guidance, and the trustee would purchase investments on behalf of Alliance. Such an approach was also anticipated by Trans-Northern.

TransCanada intended to hire an investment manager. The investment manager would make day-to-day investment decisions, based on the SIPP and investment mandate developed by TransCanada. According to TransCanada, the investment managers' mandate sets out specific investments and constraints which bind the investment manager. The investment manager is required to comply with its mandate and the SIPP.

2.1.6 Access to Funds

Under the Joint Applicants' proposal, the pipeline company would not have a fixed entitlement to the funds held in trust. The trustee would have discretion to decide whether to distribute funds to the pipeline company, and this discretion would be limited by the purpose of the trust. Until abandonment is complete, the funds could only be accessed for Board-authorized pipeline abandonment, reasonable expenses related to administering the trust and the trust assets, or other activities approved by the NEB. The Joint Applicants did not provide further details regarding the purpose of the trust.

To access funds for pipeline abandonment, the pipeline company would request that the Board approve the release of funds from the trust to pay for abandonment activities (as part of an application for leave to abandon a pipeline). Before releasing the funds, the trust agreement would require that the trustee receive a copy of the Board's abandonment order[16] and evidence confirming that the company is not insolvent.[17]

2.1.7 The Power to Borrow and to Recover Administrative Expenses and Income Tax

Most of the Joint Applicants indicated that they would be extremely cautious and ensure that they would not jeopardize the trust's QET status under the Tax Act.[18] In their final argument, the Joint Applicants clarified that under their proposed trusts, the trustee would not have the authority to borrow.

The Joint Application proposed that the funds in trust would be accessed, without Board approval, to recover expenses for administering the trust and taxes owed on income earned on the funds held in trust.[19] There were two types of administrative expenses that the Joint Applicants considered recovering from the trust: (i) administrative expenses incurred by the trustee; and (ii) administrative expenses incurred by the pipeline company. As the proceeding unfolded, the Joint Applicants differed among themselves about the extent to which the trust agreement could allow for funds to be withdrawn from the trust for these purposes while maintaining the trust's status as a QET.

Emera, Kinder Morgan and Westcoast were of the view that the Tax Act permitted withdrawals for the pipeline company's administrative expenses, the trustee's administrative expenses and income taxes. They submitted that these expenses and taxes are required to ensure that there is appropriate funding for pipeline abandonment or that they are necessary to maintain the trust. In their view, withdrawing funds for these purposes was consistent with the QET provisions of the Tax Act.

Enbridge stated that the Canada Revenue Agency (CRA) issued a favourable tax ruling on a trust agreement that provided for reimbursement from a QET of any reasonable expenses incurred by the trustee in the administration of the trust. However, Enbridge was unable to provide the CRA ruling. Enbridge's expectation was that the CRA would take a similar view in respect of Enbridge's trusts. In final argument, Enbridge indicated that it would not seek reimbursement from the trust for expenses incurred by Enbridge in relation to the trust.

Alliance noted that QETs have historically been structured to allow funds to be withdrawn from the trust to pay for expenses incurred by the trustee; however, Alliance contemplated seeking an advance tax ruling on this point. In Alliance's view, it is appropriate for funds to be disbursed to pay the trust's tax liabilities. Alliance indicated that it would not seek to withdraw funds from the trust to reimburse itself for administrative expenses related to the trust.

16 The Joint Applicants anticipated that the Board's abandonment order would include the authorization for the company to request the release of funds from the trust.

17 If the funds are to be accessed before undertaking the abandonment activity, then evidence would be required that there is no reason to expect the company to become insolvent in the following 12 months.

18 Notwithstanding this caution, the Joint Application proposed to give the trustee authority to borrow funds. However, the Joint Applicants acknowledged that, under the Tax Act, a trust cannot be a QET if the trustee has the authority to borrow.

19 There were two types of taxes contemplated by the Joint Applicants: (i) income taxes payable by the trust on investment income; and (ii) income taxes payable by the pipeline company on trust investment income.

TransCanada contended that the Board could assist the pipeline company by issuing an order that would: (i) recognize that certain administrative expenses are properly related to the maintenance of the trust and necessary to give effect to its purpose; and (ii) authorize the use of trust funds to pay such expenses. TransCanada also suggested that a similar order could be made regarding the potential mismatch between the provincial tax paid inside the trust (on income earned on the investment of the funds), and the provincial tax paid outside the trust by the pipeline company (in respect of the same income). However, in reply argument, TransCanada indicated that it did not intend to use trust funds to pay income taxes or administrative expenses incurred by the pipeline company because it was uncertain whether this would be allowable under the Tax Act.

2.1.8 Surplus

The Joint Applicants were of the view that a trust is unlikely to have a significant shortfall or surplus of funds. The Joint Applicants noted that there will be periodic reviews of the abandonment funds that are collected, with any adjustments for underfunding or overfunding being made at regular intervals. If the issue of surplus arose, the Joint Applicants stated that the trustee would require a decision of the Board or a court before distributing any surplus funds.

Most of the Joint Applicants were of the view that it is not necessary to designate the person that would be entitled to a potential surplus. In final argument, Enbridge contended that the Board should not create uncertainty by designating who is entitled to the surplus where no uncertainty currently exists. Enbridge and Alliance submitted that if the Board were to decide to designate a beneficiary then the Board should designate the pipeline company. It was their view that if the funds held in trust are insufficient, then the pipeline company would pay for a shortfall.

Emera and Kinder Morgan indicated that further work was needed to determine where surplus funds should revert. Kinder Morgan, however, made clear that it did not expect to receive any surplus from the trust. Its preliminary views were that the surplus funds could remain available for post-abandonment activities, or could revert to the crown or some other party directed by the NEB or a court.

2.1.9 Duration of the Trust and the Rule against Perpetuities

Enbridge noted that long-lived trusts are routinely created in jurisdictions that have modified, but not abolished, the rule against perpetuities. Under its proposed approach, the perpetuity period would be monitored, and a royal lives clause would ensure that the trust would be wound up before the expiration of the perpetuity period. The assets held in trust would be transferred to a new trust, which would have the same purpose and objects as the original trust.[20] Enbridge noted that the Alberta *Perpetuities Act* may be amended to exclude the application of the rule against perpetuities to QETs.

Kinder Morgan proposed using a royal lives clause. Under Kinder Morgan's proposal, an application would be made to the Board – or a court, if the Board did not have jurisdiction – prior to the termination of the trust, before the end of the perpetuity period. Kinder Morgan suggested that the funds could be distributed from the trust to a new beneficiary under Board or court supervision, which could require immediate settlement of the trust. Alternatively, Kinder Morgan noted that the

[20] Alliance, Westcoast, Pembina, Pouce Coupé and Trans-Northern made similar submissions.

trust could be terminated by distributing the remaining funds to a government entity or other beneficiary.

2.1.10 Governing law and the Rule against Perpetuities

Pembina and Pouce Coupé were not aware of any legal authority that limits the ability of a pipeline company to choose the law governing their trusts. In written argument, Pembina and Pouce Coupé indicated that a settlor could choose the law of the trust's essential validity and the law of the trust's administration. Pembina and Pouce Coupé further contended that the rule against perpetuities was a matter related to the administration of the trust.

During oral argument Pembina and Pouce Coupé changed their position and suggested that a party could not choose the law of the trust's essential validity. They further suggested that the rule against perpetuities was a matter that went to the essential validity of a trust and that a pipeline company could not choose the perpetuity rule that applied to the trust. Pembina and Pouce Coupé submitted that the physical and economic lives of their pipeline systems would not be capable of surviving beyond the perpetuity period. Therefore, Pembina and Pouce Coupé contended that the Board should not require Pembina and Pouce Coupé to choose the law of a province that has abolished the rule against perpetuities.

In written argument, TransCanada noted that parties are generally free to choose the law that will govern their validity and administration of the trust. However, TransCanada also noted that a choice of law may not be given effect if the purpose of the choice is to avoid the mandatory provisions of the law of the jurisdiction to which the trust is most closely connected. Emera noted that the laws pursuant to which a trust is formed and administered can, to a limited extent, be specified in the trust agreement.

Kinder Morgan submitted that it is reasonable to choose Alberta law as the governing law of the trust and to address the rule against perpetuities in the trust agreement. Kinder Morgan was of the view that a trust with many connections to Alberta which designated, for example, Saskatchewan law as the governing law could be found to be subject to Alberta law, including the modified Alberta rule against perpetuities. It contended that designating another jurisdiction as the governing law of the trust introduces uncertainty and risk. Enbridge shared this view.

Kinder Morgan contended that the rule against perpetuities is a matter of the trust's essential validity. Kinder Morgan noted that conflicts relating to questions of essential validity are decided by the law of the jurisdiction that has the most substantial connection with the trust.

2.2 Souris Valley

Souris Valley proposed a trust structure, and provided a proposed form of trust agreement as part of its application. The trust would be irrevocable and qualify as a QET under the Tax Act. It noted that its trust agreement was based on existing QET precedents, one of which was the subject of an advanced tax ruling by the CRA.

2.2.1 Attributes set out in the RH-2-2008 Reasons for Decision

Souris Valley was of the view that its proposed trust satisfied the nine attributes identified by the Board in the RH-2-2008 Reasons for Decision. It explained that the structure of the trust was such that the funds would be segregated, would not be commingled with other funds and would be disbursed only for abandonment purposes. In Souris Valley's view, the process for accessing the funds was clearly set out in its trust agreement.

Souris Valley also noted that investments would be managed by the trustee, an independent third party, and that it has established and filed a SIPP with the Board. Souris Valley acknowledged that there would be reviews every five years, pursuant to the RH-2-2008 Reasons for Decision, and that the Board would be able to review contributions and disbursements from the trust on a regular basis.

In terms of protection from creditors, Souris Valley explained that, subject to provincial fraudulent preferences and conveyances laws, the funds in the trust would be protected from creditors because the contributions made to the trust are irrevocable and can only be returned to Souris Valley with the consent of the Board and the trustee.

2.2.2 Board Oversight of the Trust and Amendments

Souris Valley stated that in drafting the trust, a decision was made upfront to grant the Board with as much power as possible. Souris Valley added that it previously had a good experience entering into a trust with another government agency, and was comfortable in providing the Board with this level of oversight.

Souris Valley anticipated that some provisions of the agreement would require additional work to reflect the Board's decision in this proceeding. Accordingly, Souris Valley indicated that it would be prepared to work with whatever process the Board established for finalization of the trust.

The proposed trust required all amendments to be in writing and signed by all parties to the trust. Souris Valley proposed this structure because it assumed that the Board would want to understand and consent to any amendment to the trust. Souris Valley added that the trustee did not take issue with the requirement for the Board to consent to all amendments.

2.2.3 Parties to the Trust, Role of the Parties and Changes to Parties

Souris Valley proposed that the parties to the trust would be the Board, Souris Valley and the trustee. In Souris Valley's view, it would not be unusual for a regulator like the Board to be a party to the trust, for purposes of enforcement and to take advantage of express rights contained within the trust agreement. However, Souris Valley noted that the Board was not required to be a party to its proposed trust agreement.

Souris Valley proposed BMO Trust Company (BMO), a trust company regulated under the *Trust and Loan Companies Act*, be appointed as the trustee. Parties to the trust were required to agree to the appointment of the trustee and any successor trustees subsequently appointed under the trust. The trustee would be responsible and have powers to invest the funds held in trust.

The proposed trust agreement would permit the trustee to employ legal counsel, accountants, appraisers or other experts or advisors to discharge its duties. It would also allow the trustee to appoint its affiliates to assist in discharging its duties. The trustee would have the power to pay these advisors from the trust fund.

The trustee's appointment could be terminated upon 30 days notice if any party to the trust delivered a written notice specifying the intent to terminate. The Board or Souris Valley could also terminate the appointment of the trustee without notice if, for example, the trustee ceased to carry on business or became insolvent. The Board and Souris Valley would then appoint a new trustee. The terminated trustee, upon payment for any outstanding account for services or expenses, would transfer all of the trust property to the new trustee.

2.2.4 Control over Investments

While the Souris Valley trust provided the trustee with control over investments, it also allowed the trustee to appoint an investment manager to discharge this duty. Souris Valley stated that the trustee would legally be the entity with investing power, but from a practical perspective, there would be regular informal discussions between Souris Valley, the trustee and the investment manager.

Souris Valley submitted that, from a legal perspective, regard was given to ensuring that the trustee has sufficient duties or powers for creditor protection purposes. Souris Valley questioned whether an arrangement where the trustee's only responsibilities are to hold legal title to the funds and convey the funds on demand would be sufficient from a creditor protection perspective.

Souris Valley noted that QETs can be structured such that the beneficiary directs the investment of the funds in the trust. According to Souris Valley, this structure is not unusual and, in fact, more typical. Souris Valley stated that larger companies with sophisticated internal treasury departments may want to invest the funds to match the life cycle of the project or, in this case, the pipeline. Souris Valley added that a company directing where funds are invested should not cause a loss of creditor protection if there are other features present in the trust that create a real role for the trustee.

2.2.5 Access to Funds

The proposed trust provided that all funds would be held in trust for the sole purpose of funding Souris Valley's reclamation obligations. In addition, the trust allowed funds to be released by the trustee upon written direction from the Board that would specify the person to whom the funds should be released. Under the trust agreement, the funds could be released to Souris Valley, a third party designated by the Board or to the Board itself.

The Souris Valley trust agreement also contemplated a sale, assignment, transfer or other disposition of the Souris Valley pipeline.

2.2.6 The Power to Recover Administrative Expenses and Income Tax

The proposed trust allowed for the trustee's remuneration to be paid out of the funds held in trust. The trustee would also be entitled to be reimbursed for all reasonable expenses, disbursements and advances incurred or made by it in the administration of its duties under the trust. The trust enabled the trustee to pay any taxes owed by the trust out of the funds held in trust. Souris Valley stated that the common law and the *Saskatchewan Trustee Act* provided the trustee with these rights. Souris Valley would be required by the trust agreement to make additional contributions for these obligations.

The Souris Valley trust did not provide the trustee with the power to borrow money. Souris Valley stated that the QET provisions of the Tax Act prohibited the trust from borrowing money.

2.2.7 Surplus

The trust agreement indicated that if any funds were left after Souris Valley satisfied its abandonment obligations, those funds would be repaid to Souris Valley.

To access the surplus funds, Souris Valley suggested that it could make a request to the Board to direct the trustee to forward the remaining funds to Souris Valley. Alternatively, the trust could be redrafted to state that upon termination of the trust, any remaining funds would revert directly to the company without any Board involvement.

2.2.8 Duration of the Trust, Governing Law and the Rule against Perpetuities

Souris Valley proposed that Saskatchewan law would govern its trust agreement. Souris Valley stated that this decision was driven by the fact that Souris Valley carries on business in Saskatchewan and that its proposed trustee was located in Saskatchewan.

Souris Valley noted that the rule against perpetuities was abolished under Saskatchewan law and therefore did not apply to the Souris Valley trust. Accordingly, the proposed trust did not have a specific term and would continue until it was terminated in writing by the Board and Souris Valley or until all of the company's abandonment obligations had been satisfied.

2.3 Corporation Champion Pipe Line Ltée (Champion)

Champion proposed to establish an irrevocable trust that would comply with the QET provisions of the Tax Act. Champion indicated that the structure of the trust would be very similar to that proposed by the Joint Applicants.

2.3.1 Attributes set out in the RH-2-2008 Reasons for Decision

Champion was of the view that a trust is the only set-aside mechanism that complies fully with the nine attributes set out in the RH-2-2008 Reasons for Decision. Champion submitted that under the *Civil Code of Québec* and the *Bankruptcy and Insolvency Act*, the property of the trust would not be accessible either to the creditors of Champion in its capacity as either settlor or beneficiary of the trust, or to the trustee's creditors.

2.3.2 Board Oversight of the Trust and Amendments

While the trust agreement could be filed confidentially with the Board, in Champion's view, it would not be necessary for the Board to approve the trust agreement or subsequent amendments. Pursuant to sections 1294 and 1295 of the *Civil Code of Québec*, any amendment to the trust agreement (other than a minor amendment to a purely administrative provision, and only where the trust agreement expressly allows), must be presented in an application to the Superior Court of Québec.

2.3.3 Parties to the Trust, Role of the Parties and Changes to Parties

Champion proposed that the parties to the trust would be the pipeline company and the trustee. Champion was of the view that the Board should not be a party to the trust agreement. Champion noted that under the *Civil Code of Québec* the pipeline company, as the settlor of the trust, can appoint one or several trustees or provide the mode of their appointment or replacement. However, it noted that the settlor could only replace a trustee in exceptional circumstances and with the Superior Court of Québec's intervention.

Champion submitted that it was neither desirable nor necessary that landowners play a role in the trust because pipeline companies (and not landowners) are ultimately responsible for the full costs of abandoning their pipelines. Moreover, additional oversight mechanisms involving landowners were not necessary because the funds would be managed by an independent third party and a pipeline company would require a Board order to access those funds. In terms of keeping landowners informed, Champion noted that landowners would have access to the information to be filed with the Board in the form of financial statements and annual reports.

2.3.4 Control over Investments

Champion proposed that it would, in its capacity as settlor of the trust, adopt an investment policy that complies with the QET provisions of the Tax Act. This policy would then be communicated to the trustee, and the trustee would be mandated to invest the trust funds in strict compliance with the investment policy. Champion submitted that this methodology complies with sections 1260, 1265, 1278 and 1308 of the *Civil Code of Québec*.

2.3.5 Surplus

Champion noted that under its proposal, any surplus funds would be returned to the customer groups that contributed to the trust. It indicated that Champion's annual invoice to Société en commandite Gaz Métro (Gaz Métro) would include a new line specifically for abandonment costs. Therefore, the surplus would be used to reduce Champion's annual invoice to Gaz Métro, via a rate adjustment at the time the surplus was identified.

2.3.6 Duration of the Trust, Governing Law and the Rule against Perpetuities

Champion intended to have Québec law apply to its trust and submitted that the choice of Québec law would be logical from a business, legal and taxation perspective. It noted that under Québec law, it is possible for a private trust to be perpetual. Therefore, the trust would not have to address the rule against perpetuities.

2.4 Union Gas Limited (Union), Genesis Pipeline (Canada) Ltd. (Genesis) and Nova Chemicals (Canada) Ltd. (NCCL)

Union, Genesis and NCCL originally proposed to set aside funds to pay for pipeline abandonment by using a trust mechanism. These companies' proposals relied largely on the submissions of the Joint Applicants. Union, Genesis and NCCL subsequently suggested that the Board should provide Group 2 companies the opportunity to use other Board-approved set-aside mechanisms, if appropriate.

Views of Intervenors

2.5 Canadian Association of Petroleum Producers (CAPP)

CAPP supported the Joint Applicants' submission that a trust best satisfies the criteria set out by the Board in the RH-2-2008 Reasons for Decision. CAPP was also supportive of the QET structure proposed by the Joint Applicants. CAPP noted that regular reporting and periodic review would be important since experience would be gained with the collection and setting aside of funds, the forecasting of the cost of abandonment, the realization of returns in the QETs, technology improvements for physical abandonment and other elements associated with pipeline abandonment.

2.5.1 Board Oversight of the Trust and Amendments

CAPP submitted that trust agreements should be filed with the Board and available to stakeholders. Furthermore, CAPP stated that the Board should be prepared to find that a trust agreement fails to conform to the principles and directions established by it with respect to the management and disposition of the funds. If such an event were to occur, the Board could then direct that changes be made to bring the trust document into compliance.

2.5.2 Parties to the Trust, Role of the Parties and Changes to Parties

CAPP submitted that the parties to the trust should be the pipeline company and trustee, as proposed by the Joint Applicants. With respect to the role of the pipeline company in the trust, CAPP noted that the pipeline company is accountable for the management of the fund in accordance with the orders and directives of the Board. If the trustee is not performing to the satisfaction of the pipeline company, then the pipeline company must have the power to remove and replace the trustee.

In CAPP's view, the role of the Board is as the regulator; it would not be appropriate for the Board to be actively engaged in the management of the fund. However, CAPP noted that the Board would retain an ongoing regulatory role in relation to the trust mechanism. CAPP was of the view that stakeholders, including landowners, have a role through the Board's ongoing regulatory process.

2.5.3 Access to Funds

CAPP submitted that the trust agreement should be clear that any released funds would be used exclusively for funding abandonment expenses.

2.5.4 Surplus

CAPP noted that any under or over collection of funds would not likely be material. However, CAPP's view was that any surplus funds should be transferred to a general fund that would be available to fund abandonment costs for orphan pipelines. CAPP contended that the use of the money for such a public purpose is consistent with the goal of ensuring proper abandonment when required. Further, the transfer of the money to a general fund is consistent with the purpose for which funds were collected. CAPP recognized that the establishment of a general fund is a distant prospect at this time.

2.6 Imperial Oil Resources and ExxonMobil Canada Properties (Imperial)

In Imperial's view, the incentive for a pipeline company to benefit from performance of the funds held in trust (other than for abandonment activities) must be completely precluded. Imperial also noted that the funds contributed to the trust would be collected from shippers, and thus do not belong to the pipeline company.

Imperial was of the view that companies should have no right or access to any surplus funds. Rather, surplus funds should be provided to a charitable institution or a similar recovery fund. Imperial requested that the Board clearly state that the pipeline company has no right to surplus funds.

2.7 Manitoba Pipeline Landowners Association (MPLA)

MPLA considered a trust to be the most appropriate mechanism to set aside abandonment funds. However, MPLA submitted that the Board should reject the Joint Application. MPLA was supportive of the form of trust proposed by Souris Valley, and was of the view that the Joint Applicants should be directed to base their trusts on the Souris Valley trust.

MPLA submitted that landowners have an interest in ensuring that sufficient funds are in place to cover the costs of pipeline abandonment. In MPLA's view, the Board must put into place a regulatory framework that guarantees the full and fair participation of landowners in processes related to the trust funds and pipeline abandonment, including the five year reviews.

2.7.1 Attributes set out in the RH-2-2008 Reasons for Decision

MPLA was confident that funds held in trust established under the Souris Valley model would be sufficiently protected from creditors of the pipeline company. MPLA noted that the funds would be better protected from the pipeline company's creditors if the funds are paid out upon an order of the Board and in respect of costs already incurred or costs that are certain to be incurred (in the form of prepayments to contractors). MPLA submitted that funds should not be paid out of the trust prematurely to the pipeline company.

With respect to segregation of funds by pipeline, MPLA noted that it does not oppose a single trust being established for each pipeline company. However, MPLA was of the view that a separate segregated account must be established within each trust for each pipeline owned by that company. In MPLA's view, co-mingling of abandonment funds for multiple pipelines would result in cross-subsidization of abandonment costs between pipelines. MPLA submitted that cross-subsidization could influence company choices about abandonment activities and increase the risk of under-funding, in particular with respect to pipelines that are among the last to be abandoned within a company's system.

2.7.2 Board Oversight of the Trust and Amendments

MPLA contended that the Joint Applicants' proposal would leave companies free to design and establish the trust without Board involvement or approval, and without public participation in the review and approval process. It was MPLA's view, that this is not the correct approach.

MPLA submitted that the Board has a central role to play in establishing and governing the trusts. MPLA asserted that the Board could take two approaches in fulfilling this role. First, the Board could enact detailed prescriptive regulations that set out the requirements for trusts and for the administration of trusts (similar to legislation and regulations relating to pension plans). Second, the Board could be made a party to the individual trust agreements, with its regulatory role built into the trust arrangement itself. MPLA noted that oversight of investments could be addressed through the Board being a party to the trust.

MPLA was supportive of the Souris Valley approach where the Board is a party to the trust in its capacity as regulator. However, MPLA submitted that the Souris Valley trust would best achieve the goal of the abandonment funding process if it was combined with regulations governing the operation and administration of the trust. The regulations could also establish the regulatory processes for public reviews of the trusts.

MPLA argued that the trust agreements, and any amendments to them (including the removal and appointment of trustees), must be approved by the Board in a public hearing process, established through the enactment of regulations applying to all companies.

2.7.3 Access to Funds

MPLA opposed using abandonment funds for decommissioning. MPLA asserted that using abandonment funds for decommissioning depletes the funds available for abandonment activities, increasing the risk of a shortfall of funds for abandonment and post-abandonment activities.

2.7.4 Surplus

MPLA submitted that surplus funds should be dealt with in this proceeding to avoid the possibility of future litigation. However, MPLA was of the view that, with the requirement of monitoring in perpetuity, a surplus is not possible unless the pipeline has been removed from the ground and the affected lands have been fully reclaimed.

MPLA contended that the reversion of surplus funds to the pipeline company would influence decisions about abandonment activities. The company would have an incentive to limit spending to ensure that a surplus existed. MPLA was of the view that, if there is a surplus in one pipeline's account, those funds should be transferred pro-rata (based on pipeline length), to the accounts of any other pipelines remaining within the same pipeline easement. When no pipelines remain within the same easement, the funds could then be directed to the accounts of the pipeline company's remaining pipelines. After that, any remaining surplus could be transferred into an orphan pipeline fund. MPLA noted that the Board would have to establish a regulatory framework and orphan fund in the future.

2.7.5 Governing Law and Rule against Perpetuities

MPLA was of the view that the Board must require that pipeline companies choose the law of a Canadian jurisdiction that has abolished the rule against perpetuities. MPLA argued that the rule against perpetuities poses a significant risk to the proposed trusts. If a trust were to fail through the application of the rule against perpetuities, protection of the trust fund against creditors of the pipeline company would be compromised.

2.8 Union des producteurs agricoles (UPA)

2.8.1 Board Oversight of the Trust

UPA submitted that the Board should monitor the actions of the pipeline companies and the trust, and receive reports on and approve any changes that affect the abandonment funds. In UPA's opinion, these actions would significantly enhance agricultural and forestry producers' confidence in the mechanism.

UPA was concerned about the future treatment of agricultural and forestry producers' requests during the post-abandonment phase. UPA urged the Board to clarify the role it will play during the post-abandonment period, particularly with respect to the management of the trusts and the approvals required to disburse from the funds. UPA also requested that the Board identify a process for handling post-abandonment requests from agricultural and forestry producers.

UPA was of the view that the Board should do everything possible to ensure that the necessary funds are available when pipelines are abandoned. To this end, UPA asked that the Board review each pipeline company's trust agreement. UPA submitted that it would prefer that the Board review the trust agreement for approval, rather than being a party to the trust.

2.8.2 Parties to the Trust

UPA noted that agricultural and forestry producers would be the first to be impacted by the abandonment of pipelines on their property. UPA further stated that they will be directly affected if the funds collected for the abandonment and post-abandonment periods prove insufficient. In UPA's view, the only way to ensure that no risk is transferred to landowners is to involve landowners in the management of the trust funds and in any decisions on the use of the funds. In this regard, UPA requested that the Board require the pipeline companies include the associations that represent agricultural and forestry producers as co-trustees of their trust.

2.9 Views of the Board

2.9.1 Overview

It is the Board's view that a trust, when properly constructed, can be a suitable mechanism to set aside funds for pipeline abandonment. A trust is able to meet the principles and attributes set out by the Board in the RH-2-2008 Reasons for Decision, including the attribute of protecting funds from a pipeline company's creditors. Whether a trust is suitable depends on what terms are included in the trust agreement which establishes the trust, and how those terms are drafted.

Given the flexibility associated with trusts, the Board is of the view that it must analyze specific terms set out in a trust agreement before determining whether a particular trust is a suitable set-aside mechanism. Therefore, the Board directs all companies proposing a trust (with the exception of Souris Valley) to file their trust agreements, for approval, by 2 September 2014. All trust agreements must be consistent with this decision.

The Board has reviewed the Souris Valley trust agreement and finds that Souris Valley's proposed trust would be a suitable set-aside mechanism, provided that minor modifications are made. These modifications are set out in this decision. Souris Valley is required to file a proposed modified trust agreement consistent with this decision by 2 September 2014. The agreement should be in draft form and Souris Valley should not convey funds to the trustee until directed to do so by the Board.

It is the Board's view that the Joint Applicants' proposed trust framework would not establish a suitable mechanism for setting aside abandonment funds. As described in the sections of this chapter that follow, the Board was not persuaded that the Joint Applicants' proposed trust framework adequately protects the funds held in trust from misuse or from a pipeline company's creditors.

It is the Board's view that the Joint Applicants, and the companies relying on the Joint Application, require guidance on how to establish their trusts. To assist pipeline companies in constructing a suitable trust, the Board has decided to provide indicative terms. The indicative terms are set out in Appendix VI to this decision, and should be viewed as the substantive minimum requirements that must be incorporated into a trust agreement. The Board has also drafted a model trust agreement, which is set out in Appendix VII of these Reasons for Decision (the Model Trust Agreement). Parties proposing a trust as a set-aside mechanism may use this Model Trust Agreement and the indicative terms.

2.9.2 QET Approach

All pipeline companies proposing a trust as a mechanism to set aside funds for pipeline abandonment proposed to use the QET provisions of the Tax Act. Under these provisions, contributions made to a QET are tax-deductible in the year they are made, and disbursements are taxable when they are returned to the company.[21] At that time, however, the pipeline company would likely have offsetting expenses because it would have to pay to abandon the pipeline.

[21] Investment income earned within the QET is also taxable.

The Board supports a tax-efficient approach to setting aside funds for pipeline abandonment provided the set-aside mechanism adequately adheres to the principles and attributes set out in the RH-2-2008 Reasons for Decision. A tax-efficient approach lowers the cost to shippers without impacting the amount of funds available. In the Board's view, it is prudent for pipeline companies to pursue and maintain a tax-efficient approach, including a trust that complies with the QET provisions of the Tax Act.

The Board notes that its support of a tax-efficient approach should not be construed as a future requirement for all companies to comply with QET provisions of the Tax Act. If, in the future (for example, during five-year reviews) other tax-efficient approaches are proposed, the Board would consider them based on the facts of the particular case before it.

2.9.3 Joint Applicants

Oversight over Trust Documents

The Board has decided that the Joint Applicants and all companies described in Appendix V (with the exception of Souris Valley), must apply to the Board for approval of their trust agreements. As noted in section 2.9.5, the Board has given Group 2 companies the option of using a letter of credit or surety bond. If they choose to use either instrument, they do not need to file a trust agreement. The Board notes that no company, other than Souris Valley, provided a proposed form of trust agreement during the course of the proceeding.

The Joint Applicants relied on draft indicative terms in support of their trust framework. The Joint Applicants did not commit to including those indicative terms in their trust agreements and could not say with certainty which of those terms would be incorporated. Rather, they left open the possibility that some of the terms could be left out or that further terms could be added. The Board was unable to gain a definite understanding of the Joint Applicants' proposed trust framework.

Even if the Board assumed that the Joint Applicants would include all of their indicative terms in their trust agreement, the Board would not be in a position to approve the Joint Applicants' trust framework without reviewing the trust agreement. In the Board's opinion, the Joint Applicants' indicative terms were vague. They were not drafted with the precision and accuracy necessary for the Board to fully understand the rights and obligations of the parties to the trust. Without assessing the rights and obligations of these parties, the Board cannot determine whether a proposed trust is suitable.

The Board requires each pipeline company's trust agreement to assess whether a proposed trust is appropriate, and whether it meets the attributes set out in the RH-2-2008 Reasons for Decision. A trust is a flexible instrument. Terms and conditions of a trust can vary widely. Furthermore, the manner in which these terms and conditions are drafted can affect whether a trust is a suitable set-aside mechanism. The Board recognizes that it can gain a high-level understanding of the framework of a trust from the indicative terms. However, the Board is of the view that it must review the specific terms of a proposed trust agreement to make a fully informed decision about the proposed trust.

Many companies suggested that rather than filing the trust documents for approval, the Board could review them when it carries out its audit function. In the Board's view, the audit process is not an appropriate forum for the Board to evaluate whether the terms of a trust agreement establish a suitable mechanism to hold funds for pipeline abandonment. In general, the Board's audit function reviews whether companies comply with specific regulatory requirements, for example, the *Onshore Pipeline Regulations*, and verifies that information contained in various company applications or submissions is consistent with the pipeline company's records.

Amendments

The Board has determined that all amendments to a trust agreement must be subject to Board approval. It is the Board's view that the terms and conditions of a trust must remain suitable on an ongoing basis. To determine whether a trust remains suitable, the Board must have oversight of any amendments made to the trust agreement. Otherwise, terms and conditions that, for example, would put the funds held in trust at greater risk of being misused could be incorporated into the trust agreement.

The Board has not been persuaded by the argument that the Joint Applicants' purpose clause acts as a sufficient constraint on the ability of the pipeline company to amend a trust agreement. The scope of the ability to amend a trust agreement would ultimately depend on the subjective interpretation of the pipeline company and trustee to determine whether any particular amendment is consistent with the trust's stated purpose. For example, amendments removing the Board's role in accessing funds or in approving the appointment of a trustee may not be considered inconsistent with the trust's purpose, given that they would reduce the burden associated with administering the trust. However, these amendments would be unacceptable to the Board.

All companies using a trust as a set-aside mechanism must include a provision in their proposed trust agreement specifying that the trust agreement may not be amended unless an amendment is agreed to in writing by the trustee and the pipeline company, and approved by the Board.

In providing this direction, the Board has noted that Souris Valley's proposed trust agreement allowed the Board to approve amendments to the trust agreement. Souris Valley noted that BMO had no issue with this approach.

The Board has also considered the regulatory burden associated with requiring Board approval of amendments to a trust agreement. TransCanada commented that amendments to the trust agreement will be infrequent. Accordingly, the Board has determined that any regulatory burden associated with this requirement will likely be minimal.

The Parties to the Trust and the Role of the Parties

Settlor, Beneficiary and Trustee

The Board is of the view that it is acceptable for the pipeline company to be the settlor and a beneficiary of the trust. The Board understands that the pipeline company must have both roles to use the QET provisions of the Tax Act. Some of the Joint Applicants indicated that the pipeline company would be the sole beneficiary of the trust, whereas others described the beneficiary as the person who is obligated to abandon the pipeline. The Board favours the latter approach.

Under the latter approach, the pipeline company operating a pipeline at the time of abandonment would be a beneficiary of the trust because it would fall within the class of persons who are beneficiaries under the trust. An advantage of this approach, as indicated by Alliance and others, is that the rule in *Saunders v. Vautier* is avoided in jurisdictions where the rule remains in effect.[22] It also has advantages in regard to surplus, as discussed below.

All companies establishing a trust to set aside funds for pipeline abandonment must define the beneficiary of their trust as a class of beneficiaries, as described above.

The Board agrees with the Joint Applicants that the trustee should be limited to companies that are licensed trustees under the *Trust and Loan Companies Act*. This is consistent with the QET provisions of the Tax Act, which require the trustee to be licensed or otherwise authorized in Canada. The Board also recognizes the need for a trustee with experience in managing large trusts.

All companies establishing a trust to set aside funds for pipeline abandonment must, in the trust agreement, require that any trustee appointed be regulated under the *Trust and Loan Companies Act*.

The Board as a Party

The Board agrees with the submissions of the Joint Applicants and UPA that the Board should not be a party to pipeline abandonment trust agreements. The Board recognizes that government entities are parties to other trust agreements, for example, QETs in the mining sector. However, the Board is of the view that it can rely on its authority under the NEB Act to supervise the conduct of a pipeline company in relation to its trust. Where appropriate, the Board will require this authority to be reflected in the trust agreements.

Once the Board has reviewed and approved each company's proposed trust, it intends to order each company to obtain Board approval in circumstances where Board approval is required in the trust agreement. The Board will then register this order in Federal Court. Under section 17 of the NEB Act, any Board order registered with the Federal Court can be enforced as if it was a rule, order or decree of that court.

Landowner Involvement

The Board has decided that landowners and landowner organizations should not be named as co-trustees of the trust. Nor will the Board establish an oversight committee involving landowners to review abandonment funding. The Board previously rejected this idea in its RH-2-2008 Reasons for Decision, where it noted that such a committee requires a significant amount of time, resources and financial expertise. It is the Board's view that ongoing Board oversight of funding for pipeline abandonment, as outlined above, and public participation in the Board's processes, such as five-year reviews of set-aside and collection mechanisms, will provide adequate oversight.

The Board continues to be of the view that landowners and other members of the public must have sufficient information about the abandonment funding process. Landowners have an interest in

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22 [1841] EWHC Ch. J82. The rule in *Saunders v. Vautier* permits beneficiaries of the trust (when all are capacitated adults) to call upon the trustee to terminate the trust and to distribute the trust proceeds (as directed by the beneficiaries). The rule has been abolished in Alberta and Manitoba. In Québec, it has no application: Donovan W.M. Waters Q.C., *Waters' Law of Trusts In Canada* 4th ed. (Carswell: Toronto) p. 1441.

staying informed about funding for pipeline abandonment and, as the Board indicated in its RH-2-2008 Reasons for Decision, abandonment funds must be set aside in a transparent manner. It is the Board's view that transparency requires interested persons to be aware of and understand the mechanism that is being used to set aside the funds. Some of the Joint Applicants stated that landowners could access information about the trust that will be on the public record with the NEB. The Board finds this approach to be inadequate. Landowner communications are further discussed in Chapter 6.

The Board emphasized the importance of landowner consultation in the MH-001-2012 Reasons for Decision and reiterated that consultation is required throughout all phases of a pipeline's life cycle, including abandonment. In this proceeding, many companies indicated that they were considering additional methods and strategies to provide information about their trust mechanisms to landowners. The Board expects companies to create specific landowner communication tools regarding their set-aside and collection mechanisms. Such tools will allow for greater transparency in respect of companies' mechanisms, and will also further facilitate consultation with landowners.

Any landowner communication must, at a minimum, include the information contained in companies' annual reports to the Board on the trust's funding status, as set out in Chapter 6. Information provided in the landowner communication must be clear. This information must be made available to landowners, for example, on the company's website or through other communication tools that allow for information to be provided directly to any interested landowners. The Board strongly encourages companies to consult with landowners regarding the creation of these communication tools. The feedback received from this consultation will result in a more helpful communication strategy.

Change of parties to the trust agreement

Trustee

The Board has decided that pipeline companies must obtain Board approval before appointing a trustee. While pipeline companies may select among the trustees that are licensed under the *Trust and Loan Companies Act*, the Board is of the view that its oversight of this selection is necessary. The trustee has significant power and discretion in relation to the trust fund. The trustee will have control over the assets of the trust and will have decision-making power over the terms of the trust, when considering amendments to the trust agreement. Given the public interest in having adequate funding available for pipeline abandonment, the Board has determined that its approval should be required before a trustee's appointment is effective.

Kinder Morgan stated that Board approval is not necessary, given that trustees are fiduciaries and, therefore, the potential for the trustee to be replaced does not jeopardize the trust funds. In the Board's view, the mere fact that a trustee is a fiduciary is not determinative or helpful in assessing whether additional Board oversight is required over the appointment of the trustee. In the Board's view, the identity of the person to whom the trustee owes a fiduciary duty is important. Kinder Morgan's submissions were silent on this point. Trustees typically owe a fiduciary duty to the beneficiary of a trust and, pursuant to that duty, the trustee must act in the beneficiary's best interests. It follows that under the Joint Applicants' proposed trust framework, the trustee must act in the pipeline company's best interests because it is a beneficiary. Assuming that Kinder Morgan was referring to this fiduciary duty, then Kinder Morgan's submission is not persuasive in supporting its argument that no Board oversight of the trustee's appointment is required.

Alliance and Enbridge stated that a requirement of Board approval would burden them with unnecessary regulation. These companies, and Trans-Northern, also pointed out that Board approval could potentially result in delay. The Board does not agree. It is the Board's view that the regulatory burden associated with requiring Board approval of the trustee would be minimal. Alliance and Enbridge indicated that they would not frequently remove a trustee. By necessary implication, a trustee's appointment would also not be frequent.

With respect to removal of the trustee, the Board sees no reason to modify the circumstances set out in the Joint Application under which the pipeline company can remove the trustee. Under the Joint Applicants' proposed trust framework, the trustee must carry out its obligations under the trust agreement until a new trustee is appointed. Because the Board will review the appointment of any new trustee, and the prior trustee must continue to fulfill its duties before a new trustee can be appointed, the choice of each trustee would be subject to Board supervision.

All companies establishing a trust to set aside funds for pipeline abandonment must, in the trust agreement, require that Board approval be obtained before a trustee's appointment becomes effective. The pipeline company's choice of trustee should be included in the trust agreement filed with the Board on 2 September 2014.

Beneficiary and Settlor or Contributor

As noted above, all companies establishing a trust must define the beneficiaries of the trust as a class. As a result of this direction, the Board has determined that the definition of beneficiary contained in the trust agreements would not require amendment, even in the case of the sale of the pipeline system, pursuant to section 74 of the NEB Act.

The settlor or contributor of the trust is responsible for conveying funds to the trustee, pursuant to the terms of the trust agreement. Accordingly, in the case of sale of the entire pipeline system, the name of the settlor or contributor may be amended and Board approval would be required for the amendment.

Control over Investments

The Board has decided that the trustee must be given final authority for making day-to-day investment decisions and executing investment transactions, within the confines of the pipeline company's SIPP (hereinafter referred to as "Investment Authority"). The SIPP is further discussed in Chapter 3.

It is the Board's view that the trust framework proposed by the Joint Applicants – that is, where the company has full decision-making authority regarding investment decisions – unnecessarily increases the risk that trust funds would be used for a purpose other than to pay for pipeline abandonment. The pipeline company's creditors may characterize the relationship between the pipeline company and trustee as a principal-agent relationship, not a trust relationship. Under the Joint Applicant's framework, the pipeline company is settlor and beneficiary of the trust, and has significant control and discretion over the trust and trustee, including the unfettered ability to access the trust for reasonable administrative expenses. If the relationship between the pipeline company and trustee is a principal-agent relationship, the funds held by the trustee would not be protected from the pipeline company's creditors.

It is the Board's view that pipeline companies should reduce and not exacerbate factors that increase the risk that the trust funds would be used for any purpose other than pipeline abandonment. Having total control over the investment of the fund increases this risk. The Board sees no reason to expose the funds to this additional risk when, as set out below, the trustee consults with the settlor and/or beneficiary of the fund when deciding how to invest.

The Board recognizes that in the pension context, the settlor directs the investment of the fund. However, in the Board's view, the pension context is not helpful in assessing the Joint Applicants' trust framework. In contrast to the Joint Applicants' trust framework, pensions are heavily regulated under various provincial and federal enactments. A trust established by a corporation for the benefit of its employees, where the settlor and beneficiary are different, is not analogous to the proposed trust framework set out in the Joint Application.

In conferring Investment Authority upon the trustee, the Board placed more weight on Souris Valley's evidence than on the evidence of other pipeline companies. Enbridge's witnesses (none of which had any experience with QETs) indicated, among other things, that trustees would not want to invest the trust funds because they would not want the additional risk of doing so. Souris Valley's expert witness, Mr. Rosenberg, indicated that a trustee often assumes investment responsibilities under a trust relationship. In practice, he noted that trustees make investment decisions with the involvement of the settlor and/or beneficiary. Therefore, the Board understands that while the trustee has Investment Authority pursuant to the trust agreement, from a practical perspective, no investments are made without consulting the settlor and/or beneficiary.

Furthermore, the Board notes that, consistent with Chapter 3, all investments made by the trustee will be required to be consistent with the SIPP. Therefore, depending on the pipeline company's circumstances, it may be appropriate for the trust agreement and SIPP (or the investment mandate, if applicable) to clearly articulate when various expertise should be sought in making investment decisions. For example, the trustee may consult with and rely on investment firms for complex portfolios or the pipeline company's expertise with regard to a more straightforward portfolio.

All pipeline companies proposing to set aside funds for pipeline abandonment using a trust must, in the trust agreement, confer Investment Authority on the trustee. The trustee may delegate this duty to another person, including an affiliate. This direction is consistent with the attribute in the RH-2-2008 Reasons for Decision that funds must be managed by an independent third party.

Access to Funds

Circumstances when funds may be accessed

It is the Board's view that, to protect the funds held in trust, the trust agreement must not give the pipeline company a fixed entitlement to the funds and that the trust agreement must allow the trustee to release funds at its discretion.

The Joint Applicants differed regarding when the trust funds could be accessed. For example, Kinder Morgan suggested that funds could be used to pay for industry studies to further knowledge pertaining to pipeline abandonment, while TransCanada proposed accessing the fund for consulting costs, among other things. Many companies also included a category called “other”, and submitted that the exact nature of all expenses that could be accessed pursuant to the trust agreement could not be determined at this time.

The Board notes that one of the attributes listed in the RH-2-2008 Reasons for Decision was that the process for accessing the funds must be clearly set out in the mechanism. The Board is of the view that in order for this process to be clear, the circumstances when the trust can be accessed must also be clear. The Board has decided to define when the trust can be accessed. Subject to other provisions of this chapter, the trust can only be accessed for costs in relation to a pipeline company’s:

(a) duty to carry out the physical abandonment, decommissioning or deactivation of the pipeline, including costs incurred to satisfy any conditions imposed by the Board in any order or direction approving the decommissioning or deactivation of the pipeline or granting leave to abandon the pipeline;

(b) duty to develop an abandonment plan, and to prepare an application for leave to abandon or for approval of the deactivation or decommissioning of the pipeline; and

(c) duty to carry out post-abandonment monitoring and remediation of the pipeline, where post-abandonment refers to the period of time after a company has satisfied the conditions of an order or direction issued by the Board granting leave to abandon the pipeline.

It is the Board’s view that the circumstances outlined above would be broad enough to allow access to the funds when the sale of a segment of a pipeline system occurs. In that case, the purchasing pipeline company will have a duty to deactivate, decommission and/or abandon the segment purchased.

All pipeline companies proposing a trust must, in the trust agreement, limit access to the funds to the above circumstances.

Mechanics of Access

The trust agreement must also describe how funds are to be released. The trustee must be able to release funds only after the Board has approved the release and after the pipeline company has certified that it is not in default. If funds are to be accessed before abandonment activities are undertaken, then the trust agreement must require the pipeline company to certify that there is no reason to believe that it will be in default in the twelve months following the release of the funds.

The Board also requires the trust agreement to allow for funds to be released to a third party tasked with undertaking abandonment activities. This approach is consistent with Souris Valley’s trust agreement, which allows the trustee to release the funds to any person named in a Board order. In the Board’s view, this is a straight-forward approach which can be used in many cases, including if the pipeline company were insolvent. The Joint Applicants’ approach stated that in the case of insolvency, the trustee would be required to apply to the Board or a court to appoint a new beneficiary. In the Board's view, the Joint Applicants' approach adds unnecessary uncertainty where no uncertainty should exist.

All pipeline companies proposing a trust must include an access provision as described in this subsection.

Timing of Access

The Board agrees with MPLA's submission that withdrawing funds before activities are paid for puts the funds withdrawn from the trust at greater risk. However, the Board is of the view that it may not be possible in all circumstances for the pipeline company to pay for abandonment activities in advance of those activities occurring. Accordingly, the Board has determined that the trust agreement must allow the trustee flexibility to release funds both before and after costs are incurred.

It is the Board's view that the risk to the funds withdrawn in advance is mitigated by safeguards that must be set out in a pipeline company's trust agreement and the conditions that can be placed in a Board order authorizing the release of funds. The trust agreement must require the pipeline company to certify that it is not in default and that there is no reason to believe that it will be in default in the twelve months following the release of the funds. The Board could insert conditions in an order authorizing the withdrawal of the funds held in trust. For example, the Board could require the trustee to pay the funds at specific milestones, as physical abandonment activities progress. These payments could be conditioned upon the pipeline company not being in default and having no reason to believe that they will be in default in the future.

The Board expects that pipeline companies would seek funding in advance only when it is not possible for the pipeline company to pay for the physical activities in advance. The Board is of the view that withdrawal of funds from the trust in advance would be infrequent, and would only be permitted if justified.

Decommissioning

Funds can be made available for pipeline abandonment, decommissioning and deactivation. The Board was not persuaded by MPLA's submission that funds should only be used for terminal end of life abandonment. The Board notes that many pipelines regulated by the Board are complex, and therefore, parts of these pipelines are likely to be subject to different truncation dates. Accordingly, the Board has determined that it may be reasonable, in some cases, to use funds for decommissioning purposes. The Board previously contemplated, in its RH-2-2008 Reasons for Decision, access to the fund for decommissioning and deactivation in certain cases. The Board has heard nothing in this proceeding which suggests that it should deviate from this approach.

Pipeline companies must deactivate, decommission or abandon in a timely manner. Both deactivation and decommissioning contemplate continuation of system service. Applications to access funds for either decommissioning or deactivation should justify why other revenue is not sufficient to undertake the work, and to explain the impact on the coverage for other future costs for the remaining activities needed to complete abandonment.

No pipeline company in this proceeding studied the timing of its cash flow requirements for withdrawals from the trust. Each company assumed that abandonment will be a one-time event, which would not be the case if funds were accessed for decommissioning and deactivation activities. The Board would expect companies requesting funds from the trust to have completed an abandonment funding plan as set out in Chapter 6. Such a plan would allow the Board to assess whether funds should be released.

Trustee Remuneration and Administrative Expenses

It is the Board's view that a trust agreement should not allow a pipeline company to be reimbursed for any of its administrative expenses associated with the trust.

In the Board's view, it would be imprudent for a company to develop a trust agreement that allows the trustee to release funds to the company to reimburse the pipeline company for its expenses. This approach unacceptably risks being inconsistent with the QET provisions of the Tax Act. Pipeline companies should follow a cautious approach in respect of the trust's tax efficiency. Otherwise, they risk increasing the costs associated with abandoning their pipeline.

The Board heard conflicting submissions on whether a pipeline company could withdraw funds from the trust to reimburse it for its administrative expenses while maintaining the trust's QET status. The Board places the most weight on the evidence of Souris Valley's expert. Mr. Rosenberg was the only income tax expert that provided evidence in this proceeding. In his evidence, Mr. Rosenberg questioned whether allowing direct payments to a pipeline company to reimburse it for its administrative expenses was consistent with the QET provisions of the Tax Act.

The Board was not persuaded that it is necessary or appropriate for a pipeline company to have unrestricted access to the funds held in trust to be reimbursed for its administrative expenses. There was little suggestion that a pipeline company would have difficulty if it was given an opportunity to recover its administrative expenses through its revenue requirement, subject to the tolling methodology or any settlement agreement applicable to the pipeline in question.

The Board heard conflicting submissions on whether it was consistent with the QET provisions of the Tax Act for a trust agreement to permit withdrawals from the trust to pay for the trustee's remuneration and expenses, and taxes on income earned on the funds held in trust. The Souris Valley trust was based on a precedent QET that was the subject of an advance tax ruling by the CRA. It allowed for funds to be withdrawn by the trustee to pay for these costs. If a pipeline company determines that it is consistent with the QET provisions of the Tax Act, the trust agreement may allow for withdrawals by the trustee to pay for the trustee's remuneration and expenses, and taxes on income earned on the funds held in trust.

It is a pipeline company's obligation to act prudently to maintain the trust's tax efficiency. Any pipeline company establishing a trust must therefore take steps to determine that allowing withdrawals to pay trustee remuneration, expenses and income tax earned on investments held in the trust would not risk the trust's tax efficiency. In this regard, the Board declines to issue an order, as suggested by TransCanada, which declares that expenses withdrawn from the trust are necessary to maintain the trust. The Board also declines to issue an order regarding potential mismatch between the provincial taxes paid inside the trust and those paid outside of the trust by the pipeline company. It is not the Board's role to assist pipeline companies in persuading CRA that a certain expense should have a particular tax treatment. The discretion to determine the tax status of a trust rests with CRA, not the Board.

Segregation by Pipeline

The Board is of the view that the proposals in this proceeding will result in trust funds being adequately segregated by pipeline. Pipeline companies indicated that they would establish a trust, or a sub-account within a single trust, for each pipeline within their system. Provided these companies maintain the ability to report on funding coverage for each of their pipelines, the Board is of the view that all companies will comply with this particular attribute of the RH-2-2008 Reasons for Decision.

The Board, therefore, rejects MPLA's submission that a separate segregated account for each pipeline segment owned by the company be established within a trust. In the Board's view it would be difficult to implement the approach contemplated in MPLA's submission, as each company's ACE would have to be calculated on a per pipeline segment basis. The estimates approved in the MH-001-2012 Reasons for Decision did not contemplate such a separation. The Board would be required to determine whether funds from another pipeline segment should be used in the abandonment.

The Board recognizes MPLA's concern that cross-subsidization between segments could increase the risk of under-funding, particularly with respect to pipelines that are among the last to be abandoned within a company's system. However, the Board notes that it will hold regular reviews of the amount of funds to be set aside. These reviews will mitigate the risk that a pipeline company will be under-collecting funds. The Board notes that the separation of cost estimates by pipeline segment may be a possible consideration in the future, as cost estimates are refined.

Surplus

The Board requires all trust agreements to specify the person entitled to surplus funds remaining after a company's abandonment obligations have been discharged. The Board agrees with parties that the existence of surplus funds would be extremely unlikely. However, a trust agreement must address a circumstance, such as surplus, that has the potential to occur. In the Board's view, silence creates uncertainty; specifying how surplus would be dealt with does not.

All companies' trust agreements must allow the trustee to decide the person or persons among the class of beneficiaries, or an orphan pipeline fund, able to receive any surplus or portion thereof. Before disbursing the funds, the trustee must obtain Board approval. This approach achieves certainty because it clarifies which persons are eligible to receive surplus. It does not, however, guarantee that any particular pipeline company would be the recipient. This reduces the incentive to over-collect.

The Board recognizes that an orphan pipeline fund does not currently exist. The Model Trust Agreement accounts for this fact.[23] The Board was persuaded by CAPP's and MPLA's submissions,

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23 The Model Trust Agreement defines "orphan pipeline fund" as "a not for profit organization to be established pursuant to a statute of the Parliament of Canada whose purpose includes paying for the cost to abandon a pipeline constructed or operated under a statute of the Parliament of Canada".

advocating that any surplus be deposited into an orphan pipeline fund. The transfer of any surplus to such a fund would be consistent with the goal of ensuring that abandonment of all pipelines is carried out. The Board encourages CAPP to pursue the legislative changes necessary to establish such a fund.

All pipeline companies proposing a trust must, in the trust agreement, include a surplus provision as described in this subsection.

The Duration of the Trust, the Rule against Perpetuities and Governing Law

It is the Board's view that the duration of the trust must be determined by the law governing the trust.[24] All pipeline companies proposing a trust must determine the duration of the trust consistent with this subsection.

Trusts with Indefinite Duration

Pipeline companies must set up a trust with an indefinite duration if their trust has a real and substantial connection to:

(a) more than one jurisdiction, one of which has abolished the rule against perpetuities (in both its common law and modified form);

(b) a jurisdiction where the rule against perpetuities does not exist; or

(c) New Brunswick or British Columbia. Each of these provinces has enacted a *Conflict of Laws Rules for Trusts Act*,[25] which allows the settlor to designate the law governing the trust.

A company must choose the law of a jurisdiction that has abolished the rule against perpetuities when it has the ability to do so. The Board agrees with the submissions of MPLA that the rule against perpetuities, in its common law and modified form, creates a risk to the trust funds. This concern is especially heightened for trusts that may have a real and substantial connection to New Brunswick,[26] where the rule against perpetuities exists in its unmodified form.

In provinces without a statute that sets rules to determine conflict of laws for trusts, the Board will not require pipeline companies to choose the law of a jurisdiction that has abolished the rule against perpetuities. It is the Board's view that the common law has not evolved to the point where the settlor's choice of law is determinative. The Board notes that there is limited authority specific to Canada on this point; furthermore, most of the authority that does exist is not recent. Based on the Canadian authorities that do exist, the Board observes that a settlor's intention with respect to choice of law is one factor a court would use when determining the proper law of the trust, or components thereof. However, the settlor's intention does not appear to be determinative.

Trusts with a Definite Duration

24 The Board uses the term the law "governing the trust" or the law that "governs the trust" as the unitary law that encompasses all aspects of the trust, including the trust's administration and the trust's essential validity. The Board recognizes that Canadian law allows the law of two or more jurisdictions to govern differ aspects of the trust. However, for simplicity, the Board suggests that one law govern all matters applicable to the trust.

25 2012 R.S.N.B., c. 102 and 1996 R.S.B.C., c. 65.

26 No NEB-regulated pipeline is located in Prince Edward Island and Newfoundland.

Trusts must have a definite term if the governing law is a jurisdiction that has modified the rule against perpetuities. This is to guard against the possibility of an interest vesting after the expiration of the perpetuity period. The trust agreement must require that, no earlier than five years prior to the expiration of the perpetuity period:

(a) the trustee, with the approval of the Board, pays the funds held in trust to the pipeline company (provided that the company is not in default);[27] and

(b) the pipeline company covenants, upon receipt of the funds, to immediately establish a new trust, which would have the same purpose and terms and conditions as the original trust.

The Board will issue an order supervising the pipeline company's transfer of the funds to the new trust. As mentioned, the Board will register this order in the Federal Court pursuant to section 17 of the NEB Act. In the Board's view, this will minimize risk that funds would be misused during the transfer of funds.

It is the Board's view that a trust with a definite duration potentially increases the cost of abandoning a pipeline. There will likely be tax consequences associated with the trustee's disposition of the fund to the pipeline company near the end of the perpetuity period. These tax consequences would be imposed even though the policy rationale most often given for the rule against perpetuities is inapplicable to a trust holding funds to pay for pipeline abandonment.[28] Trusts holding funds to pay for pipeline abandonment must have the potential to be long-lasting, due to the long-lasting underlying obligation that the trust seeks to pay for (that is, pipeline abandonment), and the fact that ownership of the pipeline has the potential to change over time.

The Board notes that Enbridge argued that there is the potential that Alberta will abolish the rule against perpetuities. The Board expects that Enbridge is working to achieve this goal in view of its submissions.

2.9.4 Souris Valley

The Board has determined that, with minor modifications, the Souris Valley trust would meet the attributes set out in the RH-2-2008 Reasons for Decision. The trust restricts the company's access to the funds because funds can only be released with the Board's approval; the company has no ability to remove funds at its discretion. The trust confers significant discretion and control of the funds to the trustee, including investment decision-making, and allows the Board to review the appointment of the trustee and amendments to the trust. These characteristics were significant in the Board concluding that Souris Valley's trust is suitable.

Souris Valley engaged a lawyer with a specialized knowledge of QETs. Unlike the Joint Applicants, Souris Valley's evidence clearly set out the specific rights and obligations of all parties to the trust

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27 The Board defines default as the pipeline company: (1) ceasing to carry on business; (2) becoming insolvent or committing any act of bankruptcy; (3) filing a petition for bankruptcy, or suffering a petition for bankruptcy being filed, against it; (4) making any proposal to or seeking arrangement with its creditors; (5) making an assignment for the benefit of creditors; (6) appointing or suffering the appointment of a receiver in respect of its property and/or assets; or (7) having or suffering proceedings being commenced (voluntarily or involuntarily) for the liquidation, dissolution or winding up of itself.

28 Most often, it is argued that the rule is necessary to balance the freedom of the present generation and that of future generations to deal as they wish with property. If a settlor had complete freedom to dispose of property, the recipients would be fettered by the settlor's wishes and would never enjoy the same freedom.

agreement. Souris Valley also engaged in preliminary discussions with a potential trustee and was able to provide information regarding those discussions. The Board found Souris Valley's evidence and submissions extremely helpful. Given the above, the Board has decided to use a lighter-handed approach with Souris Valley on a go-forward basis.

It is the Board's view that Souris Valley must modify its trust agreement so that it is consistent with the directions provided to the Joint Applicants and all other parties relying on the Joint Application. For example, Souris Valley must remove the Board as party to the trust. Souris Valley must also modify its trust agreement to allow for additional funds to be settled on the trustee, if the Board were to increase Souris Valley's ACE. The Board notes that in many cases, as set out above, Souris Valley's trust is already consistent with its directions to the Joint Applicants. Accordingly, the Board has determined that the required modifications are minor in nature. With these modifications, the Board finds that Souris Valley's proposed trust is a suitable set-aside mechanism.

When making modifications, Souris Valley may wish to consider the Model Trust Agreement. The Model Trust Agreement, along with the Reasons for Decision in this proceeding, should give Souris Valley sufficient direction to finalize its trust agreement. Souris Valley's modified trust agreement must be filed with the Board by 2 September 2014. The agreement should be in draft form and Souris Valley should not convey funds to the trustee until directed to do so by the Board.

2.9.5 Union, Genesis and NCCL

Union, Genesis and NCCL, and any other Group 2 company, may use a letter of credit or surety bond that is consistent with Chapter 5 of this decision. However, if any of these companies decide to use a trust to set aside abandonment funds, they must ensure that their trust agreements are consistent with this decision. They must also file their agreements, for Board approval, by 2 September 2014.

2.9.6 Champion

The Board cannot approve Champion's proposed trust. Champion did not file its trust agreement with the Board and, therefore, the Board cannot evaluate whether Champion's proposed trust is a reasonable and appropriate set-aside mechanism.

The Board directs Champion to file, for Board approval, a trust agreement that is consistent with this decision, by 2 September 2014. Champion does not need to include in its trust agreement a clause that requires the Board to approve a replacement trustee or amendments to the trust agreement. The Board understands that under the Civil Code of Québec the approval of the Superior Court of Québec must be obtained before a new trustee is appointed (other than in exceptional circumstances) or a trust agreement is amended (with the exception of minor administrative amendments).

It is the Board's view that the Superior Court of Québec provides adequate oversight over the replacement of a trustee and amendments to the trust agreement. The Board directs Champion to notify the Board in writing when it intends to make an application to the Court. The Board also directs Champion to notify the Board when it intends to replace the trustee or to amend its trust agreement, in circumstances where Court approval is not required. Moreover, the Board directs Champion to notify the Board if there are amendments to the Civil Code of Québec such that the above-mentioned Court approval is amended or repealed.

Chapter 3

Trust Investment and Accounting

This chapter addresses the investment approach of pipeline companies that proposed trusts as a set-aside mechanism in this proceeding. It also considers these companies' submissions on the accounting treatment of their trusts.

3.1.1 Views of Group 1 Companies

3.1.2 Joint Applicants

The Joint Applicants proposed that each company would adopt a SIPP, and the funds held in the trust would be invested pursuant to the SIPP, and the Joint Applicants submitted that, consistent with pension legislation, companies' SIPPs should not be required to be filed with the Board, however, they would be available for Board audit. The SIPP would be reviewed periodically by the company and may contain, among other things, investment objectives, to ensure that the investment of the funds is consistent with the trust's legal obligations.

In the Joint Applicants' view, the types of investments permitted under the QET provisions of the Tax Act are already restrictive and the Board need not place additional restrictions on investment. However, the Joint Applicants noted that the Board could at any time, by order, place additional restrictions on the company with regard to the classes of investments that are permitted for the QET.

While the Joint Applicants proposed different treatments of variances in investment return, they all indicated that investment gains and losses would flow through to shippers.

The Joint Applicants indicated that the books and records of the trust would be kept in accordance with each company's accounting standards, such as, U.S. Generally Accepted Accounting Principles (GAAP),[29] Canadian GAAP, International Financial Reporting Standards (IFRS) or Accounting for Private Enterprises.

3.1.3 Alliance

Alliance proposed to invest pipeline abandonment funds in a portfolio consisting of 50 per cent Government of Canada long-term bonds and 50 per cent provincial long-term bonds. The return objective from this strategy is consistent with a conservative, low-risk portfolio with a goal of capital preservation. Alliance engaged the services of an actuary to support this proposal. The actuary performed sensitivity testing in its review, and determined that the use of the Base Case provides some margin for adverse deviation in the rate of future bond yields.

[29] The Joint Applicants also noted that individual pipeline companies whose proposed trusts' financial statements are to be prepared in accordance with U.S. GAAP may be required to prepare those statements in accordance with Accounting Standards Codification (ASC) 946 Financial Services - Investment Companies. In the case where the trust does not qualify as an Investment Company for U.S. GAAP purposes, the proposed investment types will be classified as Available for Sale (AFS). In either case, the trust assets would be presented at fair value (that is, investments would be marked-to-market).

In regards to asset class restrictions, Alliance was of the view that although these may be appropriate in certain circumstances, asset class restrictions are not necessary at this time. Any restrictions should be uniform and consistent across pipeline companies except in extraordinary circumstances.

According to Alliance, cash flow matching of future abandonment costs and investment maturities, or even duration matching, would not be initially achievable or necessarily desirable given the long duration of the fund and the current historically low interest rate environment. Similarly, an immunization strategy would not be initially considered for these same reasons.

Alliance indicated that the term of the trust exceeds the term of long-term bonds expected to be available at initial purchase. As such, the expected term of the investments would be very long, which would assist in minimizing the reinvestment risk. In addition, the market value risk is also of lesser concern, even though the market value of the long-term bonds might change significantly. If such bonds were sold and reinvested over the long-term, reinvestment would be at the higher (or lower) yield that resulted in the market value of the original bonds decreasing (or increasing).

Alliance submitted that the type of information in the SIPP is considered proprietary and confidential, as are other internal documents of the pipeline company. Alliance noted that the SIPP would be available for the Board's examination through its financial regulatory audit function. Alliance asserted that it, and other pipeline companies should have latitude to adjust investments, asset allocations and investment objectives to respond to changing circumstances.

With respect to accounting, Alliance submitted that the impacts of the trust financial position and results and the impact of the recognition of abandonment obligations under GAAP should be segregated for purposes of determining revenue requirement, capital structure and other financial parameters in setting tolls.

3.1.4 Enbridge

Enbridge submitted that it would invest in portfolios of Government of Canada bonds and that its portfolios' risk objectives would be consistent with a conservative, low-risk portfolio with a goal of capital preservation. Enbridge considered risk and return objective (including both willingness and ability to take risk), investment principles and beliefs, time horizon, liquidity requirements, legal provisions, and tax constraints in developing its investment policy. Feedback was received from both shippers and landowners regarding this strategy. While Enbridge considered taking on an investment portfolio with greater incremental risk, it noted that shippers and landowners would expect funds to be available for abandonment of their pipelines, and were comfortable with a low-risk portfolio.

Enbridge submitted that it would consider each pipeline's time horizon and liability duration when determining the appropriate portfolio of Government of Canada bonds and the associated return assumption. Further, Enbridge noted that consideration would be given to the estimated timing of future abandonment cost, the duration of the liabilities, and interest rate risk.

With respect to the SIPP, Enbridge noted that it would require all investments to satisfy the restrictions contained in the Tax Act. However, Enbridge was of the view that neither the Board nor other stakeholders should have any involvement with the SIPP, and that the initial SIPPs, as well as any changes to them, did not need to be filed with the Board for approval. Enbridge was unsure if filing a SIPP for approval could result in the Board becoming a fiduciary under trust law, but stopped short of a detailed description explaining why, for fear that such a description could later prove useful to potential plaintiffs. Enbridge noted that a fiduciary duty could arise when one party has an obligation to act for the benefit of another, and when that obligation carries with it a discretionary power. Enbridge was of the view that the more a governmental entity involves itself in reviewing and dictating the content of a document, such as a SIPP, the greater the practical and legal risk for the regulatory agency.

Enbridge submitted that it would consult with shippers and other interested persons prior to any proposed change to asset allocation. Should the change in asset allocation result in a change to the annual contribution amount and surcharge, an application or filing to the Board would be required. In that case, any interested person would have the opportunity to comment.

Enbridge shared Alliance's view regarding the segregation of impacts of the trust financial position and of the recognition of abandonment obligations under GAAP. Enbridge confirmed that any Asset Retirement Obligation (ARO) expenses would not be included in Enbridge's collection amount. The timing of recognition of abandonment expense and income may differ in companies' GAAP financial statements.

3.1.5 Kinder Morgan

Kinder Morgan's preliminary investment strategy would invest the funds collected in Government of Canada bonds. This investment strategy is consistent with the Base Case assumptions and is low risk, with a view of capital preservation. Kinder Morgan submitted that there will be some volatility in the return such that the actual return on funds is unlikely to precisely match the Base Case, even with a low risk investment strategy.

Kinder Morgan noted that it had not received any negative feedback from stakeholders or interested persons regarding its proposed use of the Base Case. Kinder Morgan submitted that a conservative approach was appropriate to allow for an accumulation of capital within the fund. Over time, and with the assistance of an organization with relevant investment expertise, Kinder Morgan intended to undertake asset allocation studies to further develop its investment strategy.

Kinder Morgan stated that additional restrictions to investments, other than restrictions already in the Tax Act, could hinder abandonment fund performance. Furthermore, restricting investments would not necessarily ensure that the allocation of risks and costs would remain constant, given that other circumstances could change. Kinder Morgan submitted that it would inform shippers and other interested persons prior to changing the asset allocation and, should there be any concerns, these persons could provide comments to the Board.

Kinder Morgan confirmed that there would not be any duplication in expenses from ARO and the collection of abandonment funds.

3.1.6 TransCanada

TransCanada determined that the initial allocation to a portfolio of long-term Government of Canada bonds was appropriate after it assessed and considered various portfolios. TransCanada noted that this investment strategy could be subject to change in the future. At this time, there was no clear articulation of the allocation of risk and reward between shippers and other stakeholders; therefore, TransCanada could not recommend another portfolio.

TransCanada noted that no consideration would be given to the timing of abandonment costs in selecting maturities given, among other things, the uncertainty regarding the timing of these expenditures. According to the actuary report submitted by TransCanada, the expected return on its proposed portfolios over 20 years was 3.1 per cent, with a standard deviation of 10.5 per cent due to the duration of the portfolio.

TransCanada stated that it would not take issue if the Board required companies to explicitly include the restrictions in the Tax Act for qualifying investments in its SIPP or trust constating documents. TransCanada indicated that it could file the SIPP and any subsequent changes to the SIPP with the Board. However, TransCanada's view was that it is not necessary for the Board or other stakeholders to review or approve the SIPP. If TransCanada wished to change its asset allocation in the future, TransCanada would make an application to the Board. If the Board approved that application, then TransCanada would revise its SIPP and file the revised SIPP with the Board.

TransCanada noted that the trust assets, liabilities, income and expenses would be consolidated 100 per cent into the sponsor entity's financial statements under all reporting frameworks. There would be a separate footnote disclosure of the consolidated amounts as they will represent restricted funds. TransCanada added that the nature and extent of the impacts of the trust on the financial position of the sponsor company will depend on whether the entity qualifies for rate-regulated accounting (RRA) and the accounting principles are adopted. For example, if the sponsor company applies U.S. GAAP and is eligible to apply Topic 980-Regulated Operations, the balance sheet will be grossed-up by the level of the investments in the trust with an offsetting regulatory liability, and cash flow will reflect the cash flow of the trust. Alternatively, if an entity does not qualify for RRA, there will be no regulatory liability and therefore, trust activity will be reflected in income. TransCanada also noted that the ARO will only be recorded on the sponsor company's financial statements because the abandonment liability rests with the sponsor company, not with the trust.

3.1.7 Trans-Northern

Trans-Northern proposed to invest in Government of Canada bonds as a conservative and low-risk portfolio with a goal of capital preservation. Trans-Northern asserted that funds will be available at the time of abandonment, given that the bonds would have a maturity date to provide for the required liquidity at that point in time.

Trans-Northern submitted that any restrictions on allowable asset classes were not appropriate at this time. Trans-Northern indicated that it did not intend on altering the trust's investment asset allocation without prior Board approval. If a change in the asset allocation was contemplated, there would likely be a coinciding change required in the annual contribution amount and surcharge. At that time, Trans-Northern would seek Board approval and all shippers would be notified in accordance with normal Board procedures.

3.1.8 Westcoast and M&NP

Westcoast and M&NP both proposed to invest in balanced portfolios, consisting of 40 per cent fixed income and 60 per cent equity. An actuary was engaged to conduct an asset allocation study and according to the actuary's report, the portfolio proposed is appropriate for any term of 20 years or longer.

The actuary's report noted that the proposed asset allocation is considered attractive from a risk and return perspective, and would be deemed appropriate and reasonable by a prudent investor. According to the report, Westcoast and M&NP's approach is consistent with asset allocations seen in other long-term Canadian investment portfolios, such as those underlying Canadian registered pension plans.

The report showed that the proposed asset mix (with a 20 year return assumption of 6.25 per cent and standard deviation of 9.4 per cent) has a lower risk and higher return than the long-term government bond asset class (with a 20 year return assumption of 3.1 per cent, standard deviation of 10.5 per cent, and duration of 14.7 years). The report also showed that only five per cent of the time, would the portfolio be expected to achieve an annualized return of under 2.7 per cent over 20 years[30], or lose more than 10.6 per cent in a given year[31]. The report indicated that the proposed asset allocation would lie on the efficient frontier, maximizing the return for the given level of risk.

Westcoast stated that it had a number of different objectives in mind, including capital preservation over the long-term. However, in Westcoast's view, capital preservation would typically become a primary objective only when the liabilities to be funded become more certain. During the later stages of accumulation, it may be appropriate to adjust the asset mix to address an increased need for capital preservation and greater liquidity.

Westcoast and M&NP indicated that their risk and return objectives have been communicated to shippers. Westcoast submitted that its shippers had not raised any concerns or objections regarding its proposed rate of return. However, Westcoast noted that endorsement or support was not specifically sought from its tolls and tariffs task force.

Westcoast and M&NP submitted that they could provide the Board with their respective SIPPs, once completed; although neither believed that changes to the SIPP should require Board approval. Westcoast added that it would not make any material changes to its portfolio without consulting with shippers (regarding changes applicable for the transmission facilities), and without filing such changes with the Board. Westcoast noted that if the Board imposed additional restrictions on investments, it would effectively be making companies' investment decisions. This scenario would unduly restrict Westcoast's flexibility in determining the appropriate investment policy and asset allocation.

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[30] Based on the assumptions employed in the asset allocation study.

[31] Based on the assumptions employed in the asset allocation study.

3.2 Views of Group 2 Companies

3.2.1 Emera

Emera's intent was to develop an investment strategy consistent with the Base Case. Emera was of the view that a target gross return in the range of 4.0 to 4.5 per cent was likely sufficient. Emera noted that, given the length of its proposed amortization period of 34.5 years, a balanced investment portfolio consisting of cash, bonds, and equities would be reasonable and appropriate. Emera added that these classes of investments are permitted investments under the Tax Act.

Emera submitted that the SIPP is not a document that should be filed with the Board for approval purposes, although it would be subject to audit by the Board.

3.2.2 Souris Valley

Souris Valley filed its proposed SIPP, as well as a sample portfolio, with the Board. Souris Valley's proposed SIPP restricted investments to those permitted for a QET under the Tax Act. Souris Valley indicated it would have no issue with the Board reviewing or approving the SIPP.

Souris Valley's proposed asset allocation included various bonds and fixed income securities. Souris Valley noted that its primary objective was capital preservation, and its return objective would be in line with the yield available in the investment-grade fixed income market. In its view, the key to successful investing is not avoiding risk, but managing risk and reward tradeoffs and maintaining diversification among and within asset classes.

3.2.3 Other Group 2 Companies

2193914 Canada Limited, Enbridge Bakken Pipeline Company Inc. on behalf of Enbridge Bakken Limited Partnership (Enbridge Bakken), Enbridge Pipelines (Westspur) Inc. (Westspur), Enbridge Southern Lights GP Inc. on behalf of Enbridge Southern Lights LP (Enbridge SL), Niagara Gas Transmission Limited (Niagara Gas) and Vector Pipelines Limited (Vector) proposed the same portfolio and pre-tax return assumption as Enbridge. Similarly, Montreal Pipe Line Limited (MPLL), Pembina and Pouce Coupé, and Champion proposed to invest in portfolios of Government of Canada bonds with a 3.5 per cent pre-tax rate of return.

Spectra Energy Empress Management Inc. (Spectra Empress), Spectra Energy Midstream Canada LP (Spectra Midstream) and Express Pipeline Ltd. (Express) proposed to invest in balanced portfolios similar to the proposal submitted by Westcoast. These companies filed asset allocation studies in support of their proposals. In regard to their policy's objectives, constraints and principles, these companies relied on Westcoast's submissions.

Union and St. Clair Pipelines Management Inc. (St. Clair) originally proposed to use a 2.0 per cent inflation rate and a 3.5 per cent pre-tax rate of return. Union and St. Clair subsequently stated that they would rely on Westcoast's evidence regarding objectives, constraints, principles and asset allocation. In final argument, Union and St. Clair submitted that their set aside proposal should be evaluated on the same basis as Westcoast's proposed mechanism. Union also indicated that given the relatively immaterial amount of its ACE, it would prefer to use either a letter of credit or surety bond.

Genesis, NCCL, Plains Midstream Canada ULC (PMC) and Centra Transmission Holdings Inc. (CTHI) indicated that they would develop an investment strategy consistent with the Base Case. In final argument, Genesis and NCCL suggested that the Board should provide Group 2 companies the opportunity to use other Board-approved set-aside mechanisms, if appropriate.

3.3 Views of Intervenors

3.3.1 CAPP

CAPP supported the proposal of each of the Group 1 companies. However, CAPP was of the view that if the Board permitted pipeline companies to pursue riskier investments, the toll payer should not be at risk for the loss of capital. Otherwise, toll payers would end up paying twice.

CAPP agreed with Imperial's submissions regarding the Board establishing capital preservation as a fundamental principle of companies' investment policies and establishing a capital floor. CAPP submitted that the Board should be prepared to direct that an investment policy fails to respect the capital preservation principle and, therefore, requires changes.

CAPP submitted that the SIPP should be filed with the Board and available to stakeholders.

3.3.2 Imperial

In Imperial's view, the abandonment fund model, as currently proposed by the Joint Applicants, suggests that in the event the investment portfolio does not provide sufficient funds for abandonment obligations, any shortfalls and losses would be recovered from shippers. Imperial took exception to this aspect of the model.

Imperial argued that it would not be unreasonable for the Board to be more involved in directing the manner in which abandonment funds are managed and invested. In Imperial's view, just because pension legislation does not require a SIPP to be filed or approved by a regulator, it does not follow that the same should apply for abandonment funds.

Imperial submitted that the Board should establish capital preservation as an axiom to any investment policy. This could be accomplished by establishing a capital floor value that would be equal to the funds provided (and invested at low-risk, high quality government bonds). If the fund performance took the fund below this level, it should be the full responsibility of the pipeline company to make up the shortfall.

3.3.3 UPA

UPA submitted that if a company's SIPP is too high-risk (that is, seeking big gains in the short-term) and the market collapsed, the trust may not be able to fund pipeline abandonment appropriately. UPA suggested that a portfolio made up of 40 per cent equity would be too risky, and that a maximum ratio of high-risk investments should be 10 per cent. UPA preferred an approach where trust funds are stable and viable over time and stated that the SIPPs should define or provide guidelines on the level of risk for investments. UPA recommended that the Board require the companies to commit to certain objectives within their SIPPs; for example, low-risk returns, a maximum collection period of 40 years and a comprehensive monitoring procedure.

UPA also recommended that the Board ensure that the companies were more transparent by requiring them to file their SIPPs and any subsequent changes to the SIPP. UPA was of the view that companies should include associations that represent agricultural and forestry producers as members of any committees formed to adopt SIPPs.

3.4 Views of the Board

3.4.1 Range of Allowable Investments

In the RH-2-2008 Reasons for Decision, the Board explained that any mechanism used to set aside funds should have a sound investment policy. It is the Board's view that an appropriate investment policy is essential for a pipeline company to mitigate the risk of having insufficient funds set aside for abandonment activities.

Some parties in this proceeding suggested that the Board should limit risky investments. However, no party described in detail what would constitute a risky portfolio or risky investment. All applicants that are proposing trust mechanisms in this proceeding have decided to use the QET provisions of the Tax Act. To do so, all investments must comply with the list of qualifying investments set out in the Tax Act.

QETs are permitted to make only certain investments, which are set out in Appendix VIII of this decision.[32] Trusts that have made investments not described in this Appendix,[33] or that have made prohibited investments, may not use the QET provisions of the Tax Act in the future. As stated in Chapter 2, there are also tax consequences associated with a loss of QET status. The Board has determined that the restrictions in the Tax Act are sufficient, and that further limitations are not necessary at this time. The Tax Act restricts QETs from investing in several asset classes, such as derivatives where the potential loss can exceed the purchase price. The Board is of the view that all investments permitted under the QET provisions of the Tax Act could be appropriate, depending on the company and the risk tolerance and return objectives in question, among other things.

While the Board has decided that the restrictions contained in the Tax Act are sufficient, the Board directs each company establishing a QET to include in the trust agreement, a statement indicating that all investments must be made in accordance with sections 204 and 211.6 of the Tax Act, as amended.

The Board recognizes that landowners and shippers have an interest in the investment of funds set aside for pipeline abandonment. However, the Board is not persuaded that landowners or shippers should have a decision-making role with respect to investments. Pipeline companies are ultimately accountable for the abandonment of their pipelines. It is the Board's view that each individual pipeline company is solely responsible for determining the appropriate investment policy in order

32 See, more specifically, the definition of "qualified investment" in section 204 and of "excluded trust" and "prohibited investment" in section 211.6.

33 That is, they do not fit within the definition of "qualified investment" in section 204 of the Tax Act.

for their trust to accumulate the necessary funds required for pipeline abandonment. In doing so, it is the Board's view that pipeline companies must consider the risk tolerance of landowners and shippers when determining the investment policy.

At a minimum, the SIPP and related investment documents must describe the following:

- Risk Objective and Return Objective, including a consideration of the risk tolerance of interested persons;
- Investment Principles and Beliefs;
- Time Horizon, and Liquidity Requirements;
- Legal Provisions and Tax Constraints;
- Strategic Asset Allocation, including target allocation and permissible range and a description of each asset class;
- List of eligible investments within the QET and any further constraints, such as individual security constraints, or industry limits;
- Rebalancing criteria; and
- Fee structure, including investment management and any incentive fees.

The SIPP and any related investment documents should contain more details as the size of the fund and the complexity of the investment strategy increases.

The Board requires pipeline companies to communicate their investment strategy to shippers, landowners, interested persons and the Board. The communication must include a clear articulation of the risks of any portfolio used, a clear explanation of the investment strategy and rationale for employing the strategy. Communication of the company's investment strategy is important. Shippers may have risk associated with the year-to-year variation in fund returns, and landowners are interested in the company having adequate funding available for abandonment activities. In addition to communicating their investment strategy, pipeline companies must have a plan for responding to any questions and comments that they receive from landowners and shippers regarding investments and investment strategies.

3.4.2 Filing the Investment Policy

The Board is of the view that the SIPP and any other related investment documents should be filed with the Board. The Board recognizes that pension regulators do not require the SIPP and related documents to be filed. As stated in Chapter 2, the pension plan context differs from the pipeline abandonment context. In the pipeline abandonment context, pipeline companies' investment strategies will have a direct impact on toll payers. In addition, landowners are interested in the pipeline company having funds available for pipeline abandonment; they have advocated for transparency and expressed an interest in reviewing the investment documents. Abandonment funds must be set aside in a transparent manner. The Board is of the view that this transparency should extend to a company's SIPP and other related investment documents.

The Board therefore directs all pipeline companies proposing trusts to file their SIPP and related investment documents with the Board by 1 December 2014.

The Board notes that some companies were of the view that information contained in the SIPP is confidential in nature. However, other companies expressed no concerns with filing the document with the Board, and at least one company filed it on the record of this proceeding. If companies are of the view that certain information in their investment documents is confidential, they may submit a request for confidentiality pursuant to section 16.1 of the NEB Act at the same time the SIPP is filed. Given that some companies have no concerns with publically accessible investment documents, the Board would expect companies applying for confidential treatment to show, with specific reference to their circumstances, why such treatment is warranted.

Enbridge noted that the Board could become a fiduciary under trust law if the Board required the SIPP to be filed for approval. When specifically asked by the Board to clarify its submissions on this point, Enbridge first provided a court case, but failed to explain how that case was analogous to the pipeline abandonment context. Enbridge later stated that it feared that substantiating its argument could later prove useful to potential plaintiffs. Enbridge's submissions on this point were not persuasive. Enbridge's argument has no merit in fact or in law, and warrants no further discussion in this decision.

3.4.3 Changes to the Investment Policy

The Board is of the view that changes to the SIPP and other investment documents, except the immaterial changes described below, must be filed with the Board. The Board directs pipeline companies to file with the Board, 60 days prior to implementing a change, a notification letter which: (i) identifies the change; (ii) provides a clear articulation of the risk and return among the pipeline and stakeholders, including shippers and any affected public; and (iii) explains whether the change is supported by the company's shippers and interested persons.

The following are immaterial changes that do not need to be filed with the Board:

(a) Subtracting a year from the time horizon due to the passage of time; and

(b) A less than or equal to a 25 basis point change in the expected rate of return on a particular asset class, as set out in the SIPP filed with the Board.

The company must attach a copy of the amended SIPP or other investment document (if applicable) to its notification letter to the Board.

The Board does not require that investment activities falling within the confines of the SIPP, such as the purchase or sale of securities, within the investment parameters and strategic asset allocation of the SIPP, be communicated to the Board in advance. The trust reporting documents filed by pipelines, as discussed in Chapter 6, will provide sufficient information in this regard.

Some companies commented that they require flexibility in changing circumstances to adjust parameters such as asset allocation, and that filing such adjustments with the Board may impede flexibility. Many companies indicated that major changes to the SIPP would likely be infrequent. The Board agrees. It is the Board's view that the notification process set out above strikes an appropriate balance such that the Board, shippers and landowners will have an opportunity to review, and if necessary, comment on major changes before they are implemented while minimally impairing a pipeline company's flexibility.

3.4.4 Proposed Investment Approaches

Portfolio Risk and Capital Preservation

The Board notes that there were several portfolios proposed in this proceeding. The proposals ranged from 100 per cent allocation to long-term Government of Canada bonds, balanced portfolios consisting of 60 per cent equity and 40 per cent fixed income, and bond fund portfolios, among others. Many companies made reference to the Board's Base Case when describing proposed portfolios. However, the Board notes that the Base Case set out its 4 March 2010 letter specified a 3.5 per cent return; it did not specify the investment portfolio necessary to achieve such a return.

The Board has determined that all the strategies proposed in this hearing could be appropriate in the pipeline abandonment context. The Board does not endorse any particular investment strategy over any other. What is critical to the Board is that the investment strategy employed is appropriate for a company's circumstances and that it appropriately takes into account risk objectives, return objectives, time horizon, and suitable investment constraints. The Board does not subscribe to the concept of elimination of risk. Consistent with this principle, the Board notes that all investment portfolios, including those proposed in this proceeding, come with some risk.

The Board is of the view that preservation of capital is an important criterion for companies when companies are considering their investment strategy. The Board has determined many approaches could have reasonable likelihood of preserving capital, but no approaches can guarantee capital preservation.

The Board will not impose the concept of a "capital floor", as proposed by CAPP and Imperial. There was no evidence filed on the record of this proceeding that suggests that a capital floor would be useful. Given the nature of the submissions made, the Board would have expected Imperial and CAPP to bring their concerns earlier in the proceeding.

The Board has further determined that standard deviation of a proposed portfolio is another important factor that pipeline companies should consider when determining an investment strategy. The Board recognizes that the value of any portfolio can fluctuate. Companies should consider whether the standard deviation of a portfolio is appropriate for their circumstances, including whether annual variations in investments are being flowed through to shippers.

Selective Risk Characteristics of the Proposed Portfolios

The portfolios proposed in this proceeding can be grouped into two general categories, balanced portfolios and portfolios with a 100 per cent fixed income allocation. The Board has determined that both categories of portfolios have benefits and drawbacks, with differing risk and return characteristics.

The Board is of the view that a portfolio of long-term bonds would largely guarantee a stream of future cash flows, and, in certain circumstances, can provide a high degree of assurance of capital preservation. However, the Board notes that a portfolio composed solely of long-term bonds can carry a high degree of interest rate risk, particularly if the portfolio is not properly managed. Partially offsetting this effect is that yields and expected returns going forward should be higher, and coupons, principal repayment, and new investment would earn a higher rate of return.

The Board accepts that a balanced portfolio could have a lower standard deviation and higher expected return than a portfolio composed solely of long-term government bonds For example, the equity component would help protect against future increases in inflation. However, in the Board's view, potential losses in the market value of equity may not necessarily be followed by an offsetting increased expected return in the future, as may be the case with a government bond portfolio.

Capital Preservation and Planning for Abandonment

Long-term fixed income instruments can, in certain circumstances, provide a high degree of assurance of capital preservation. However there is an inherent risk that if the bonds must be liquidated after interest rates increase, they will obtain a lower value. The Board is also mindful of Westcoast's submission that matching cash outflows with only fixed income assets would create a mismatch because abandonment liabilities will be impacted by inflation. This is not accounted for by offsetting these liabilities with investments in Government of Canada bonds. Therefore, in the Board's view, a portfolio comprised solely of long-term bonds does not guarantee capital preservation.

Nevertheless, capital preservation could be almost certain if the specific timing and amount of future cash outflows were known from the outset of setting aside funds. If companies could use immunization or cash flow matching strategies to ensure that the required amount of cash was available for abandonment, then interim changes in the market value of the bond portfolio, and reinvestment rate risk, would be less important.

The Board notes that none of the applicants proposed asset-liability management, cash flow matching, or immunization strategies. The Board accepts that for most companies, the amount and timing of cash outflows cannot be predicted accurately enough at this time to employ these strategies. These strategies could be highly beneficial in the future. The Board is directing companies to file an abandonment funding plan. The Board expects companies' abandonment funding plans to include consideration of these strategies such that, to the extent practicable, investment decisions take into account the timing of cash requirements for abandonment, particularly during the later stages of accumulation.

De-risking

The Board was encouraged by the submissions of several companies, which indicated that as abandonment neared, portfolios or portions thereof required to fund abandonment activities would be de-risked by investing in shorter term, more cash-like securities. The Board is of the view that the de-risking of a portfolio is a critical step in the life cycle of an abandonment portfolio.

The Board would therefore expect companies to, in time for the next five-year review, update the rate of return and planning assumptions in their SIPP to incorporate a de-risked phase. This phase should include a lower portfolio rate of return and a higher composition of short-term, liquid, low risk and lower return investments.

Companies Proposing One Hundred Per Cent Fixed Income Allocation

The Board is of the view that the portfolios chosen by Enbridge, TransCanada, Kinder Morgan, Trans-Northern, Alliance, Souris Valley, and all other Group 2 companies proposing fixed income porfolios (that are not mentioned below), are reasonable and appropriate. Capital preservation is a very important investment objective for a portfolio holding funds for pipeline abandonment. A fixed income porfolio can provide a high degree of assurance of capital preservation in certain circumstances.

No shipper took issue with the portfolio composition or risk and return objectives associated with fixed income portfolios. While CAPP and Imperial noted that the toll payer should not be at risk for the loss of capital associated with riskier investments, neither took issue with marked-to-market losses arising on the fixed income portfolios and potential subsequent flow through to shippers. While several of these companies contemplated alternative portfolios, they ultimately decided that a 100 per cent allocation to fixed income securities was appropriate at this time, given their particular circumstances.

NCCL, Genesis and PMC stated that they would develop a portfolio which was consistent with the Base Case. However, these companies failed to describe the exact asset allocations that their portfolios would have. The Board has decided to require all companies to file their SIPP. Therefore, if NCCL, Genesis and PMC decide to use a trust to set aside abandonment funds, they must file their SIPP and any related investment documents in accordance with the Board's direction.

Companies Proposing a Balanced Portfolio

The Board is of the view that the investment approach proposed by Westcoast is reasonable and appropriate. The Board was persuaded by Westcoast's submission that a balanced portfolio approach would have lower standard deviation than a 100 per cent allocation to government bonds, and provide a higher expected return. Westcoast provided an asset allocation study in support of this claim. Based on the study, it appears that such a portfolio would be close to the optimal frontier from a modern portfolio theory perspective. Although the Board agrees with Westcoast's investment approach, the Board notes that it is approving a collection period of 40 years rather than the requested 80 years.

Westcoast communicated its investment strategy to shippers. Westcoast indicated that its shippers were supportive of its approach. Shippers may benefit from the higher expected investment returns and a lower standard deviation. The Board reiterates that an investment strategy must be appropriate in the context of the risk and return objectives of the investor, and in regard to the risk tolerance of shippers. Shippers will bear the year-to-year risk of variances in returns. Westcoast has satisfied the Board in this regard.

The Board is of the view that the investment approaches proposed by Spectra Empress, Spectra Midstream and Express are reasonable. Asset allocation studies were filed in support of these companies' approaches.

In respect of the investment approach proposed by M&NP, the Board is approving a collection period of 19.5 years, rather than the 40 applied for by M&NP. M&NP's actuary report was supportive of a portfolio consisting of 40 per cent fixed income and 60 per cent equity for collection periods 20 years or longer. Given that investment strategy is significantly influenced by time horizon, the Board cannot conclude that the portfolio proposed by M&NP is reasonable. M&NP must re-examine its strategy and determine whether its proposed investment approach is appropriate.

The Board directs M&NP to file an updated investment strategy by 1 December 2014. This strategy may be similar to the one originally proposed, if M&NP determines the strategy is still appropriate. However, it must reflect the new time horizon imposed by the Board. The filing should include, at a minimum:

(a) Evidence supporting the appropriateness of M&NP's revised strategy, given the Board's imposed time horizon;

(b) A high-level description of the strategy;

(c) M&NP's proposed SIPP;

(d) A description of the risk and reward framework of the strategy; and

(e) A description of whether M&NP has the support of its shippers for such a strategy.

The Board is of the view that Emera must re-examine its investment strategy. Emera proposed a return of 4 to 4.5 per cent (gross). The Board's Base Case was 3.5 per cent (gross). In its 4 March 2010 letter, the Board stated that returns higher than the Board's Base Case may be feasible, but any company pursuing a higher return must provide a clear articulation of the allocation of risk and return among shippers, the pipeline and any affected public, and a discussion of whether the pipeline company has the support of interested parties for a higher return. Emera did not provide the supporting information required by the Board.

The Board further notes that Emera did not provide a detailed asset allocation study or a description of the risk and reward framework of its portfolio. Emera's evidence was unclear regarding its investment strategy. The Board is approving a 19.5 year collection period for Emera, in line with M&NP's approved collection period.

The Board directs Emera to file an updated investment strategy by 1 December 2014. This strategy must consider the new time horizon imposed by the Board. The filing should include, at a minimum:

(a) Evidence supporting the appropriateness of the new strategy, given the Board's imposed time horizon;

(b) A high-level description of the strategy;

(c) Emera's proposed SIPP;

(d) A description of the risk and reward framework of the strategy, and

(e) A description of whether Emera has the support of its shippers for such a strategy.

Union and St. Clair both indicated that they would use the Base Case rate of return of 3.5 per cent, but then subsequently stated that their proposals were consistent with Westcoast's. The exact nature of these companies' investment strategies is unclear. To the extent that Union and St. Clair are proposing an investment approach similar to Westcoast's, the Board notes that neither company provided the Board with an asset allocation study supporting their approach.

As stated above, the Board requires companies pursuing a higher return to provide a clear articulation of the allocation of risk and return among shippers, the pipeline and any affected public, and a discussion of whether the pipeline company has the support of interested parties for a higher return. Accordingly, the Board directs Union and St. Clair to file an updated investment strategy by

1 December 2014. The filing should include evidence supporting the appropriateness of the new strategy, as well as the information described in points (b) through (e) in the Board's direction to Emera. If Union or St. Clair use a letter of credit or surety bond that is consistent with Chapter 5 of this decision, they would not be required to file this evidence.

The Board has directed all pipeline companies to report annually, as set out in Chapter 6. Additionally, the Board directs the pipeline companies to provide an annual confirmation that:

- Investments have been made in accordance within the quantitative limits of the SIPP on file with the Board;
- Investments have been made in accordance with the risk and return objectives and constraints of the SIPP on file with the Board; and
- Investments have been made within the definition of allowable investments as defined in the QET provisions of the Tax Act.

The Board is of the view that the above information, in conjunction with companies' SIPPs, and the Board's authority to audit trust funds, should provide adequate information about the current funded status of the trust to the Board, shippers and landowners.

3.4.5 ARO Impact on Pipeline Financials

In this proceeding, the Board has considered how the economic cost of pipeline abandonment will be recovered. Abandonment is part of the cost of doing business for a pipeline. The Board is of the view that any future expenses arising from the recognition of an abandonment liability, including ARO expenses, are not recoverable from shippers. Recovery of these expenses from shippers would result in double collection if they are already contributing funds to a trust for pipeline abandonment. Net trust assets presented on the pipeline company's financials should not be included in a pipeline's rate base for purposes of the rate of return calculation, among other things.

3.4.6 Accounting Treatment

The Board is of the view that the Joint Applicants' proposed accounting treatment for investments is appropriate. All companies proposing a QET under the Tax Act should follow this accounting treatment.

Chapter 4

Collection Mechanisms

This chapter examines the collection period, source of abandonment funds, and collection methodology proposed by each pipeline company that applied to use a trust to set aside funds for pipeline abandonment. Pipeline companies proposed different collection periods, dependent on the supply, market and competitive risks affecting their pipelines. They also proposed to obtain funds from different sources, including collecting funds from shippers and self-funding.

4.1 Views of Group 1 Companies

4.1.1 Alliance

Alliance proposed a 40 year collection period for its pipeline system. It noted that the Western Canadian Sedimentary Basin (WCSB) remaining marketable reserves estimate of 432 Tcf from the Board's 2011 Energy Futures report would be sufficient to support almost 90 years of production at current rates and, therefore, 40 years was a conservative assumption. Alliance also noted that growing Midwest and Ontario demand, as well as access to premium U.S. NGL markets, would help it maintain deliveries to its traditional markets.

To collect funds for pipeline abandonment, Alliance proposed to establish a monthly surcharge applied to firm transportation service. The surcharge would be calculated based on Alliance's firm service contract level and would, in effect, represent an additional line item on a firm transportation shipper's monthly invoice.

Alliance noted that it is in the process of moving to a new tariff and services model which will necessitate a change in its collection methodology. Alliance submitted that it intends to account for the Board's directions made in this proceeding, as appropriate, when it seeks approval for its new tariff and services model in the first half of 2014.

4.1.2 Enbridge Pipelines Inc. (Enbridge Pipelines)

Enbridge Pipelines proposed a collection period of 40 years. Enbridge Pipelines noted that there was approximately 153 years of productive capacity remaining from established reserves of conventional crude oil and oil sands. Enbridge Pipelines contended that a 40 year collection period was appropriate given the high degree of uncertainty in forecasting oil supply from vast reserves when measured against the long-term nature of oil sands projects. Enbridge Pipelines stated that oil sands projects have lifespans that range from 10 to 50 years. In terms of markets, Enbridge Pipelines noted that the consuming markets for its Canadian Mainline are vast. It carries a wide range of products to core markets in western and eastern Canada and the U.S. Midwest.

Enbridge Pipelines submitted that an abandonment surcharge, set out as a separate toll, is the most appropriate method for collecting abandonment funds because collections must be conducted in a transparent manner. Enbridge Pipelines asserted that a distinct abandonment surcharge provides flexibility to accommodate differences from the underlying pipeline toll structure. According to Enbridge Pipelines, shippers were consulted on its proposed abandonment surcharge methodology, and provided their support.

Enbridge Pipelines proposed an abandonment surcharge for Line 9 calculated on a stand-alone basis and an abandonment surcharge for the Canadian Mainline and Line 8 to be calculated on a combined basis. Line 9 throughput would be utilized to calculate the Line 9 abandonment surcharge, and combined throughput for the Canadian Mainline and Line 8 would be used to calculate the combined abandonment surcharge for the Canadian Mainline and Line 8. Enbridge Pipelines proposed that abandonment surcharges for the Canadian Mainline, Line 8 and Line 9 be set for an initial five-year period to provide toll stability for shippers.

With respect to its Canadian Mainline, Enbridge Pipelines indicated that most line item abandonment costs are directly attributable to one of three service categories that exist on the Enbridge Pipelines system (terminalling, transmission, and tankage). Where abandonment costs were not directly attributable to one specific service category, an allocation of these abandonment costs was made. Enbridge Pipelines proposed separate abandonment surcharges for terminalling, transmission and tankage.

For terminalling services on the Canadian Mainline, Enbridge Pipelines proposed a postage stamp abandonment surcharge due to the shared nature of terminalling facilities and the minimal toll impact. A postage stamp surcharge was also proposed for Canadian Mainline tankage services due to the shared nature of tankage facilities and the minimal toll impact. Enbridge Pipelines asserted that a more detailed allocation of abandonment costs between receipt and delivery terminalling and tankage would be overly burdensome and may not result in a more accurate allocation of costs. In addition, breakout tankage would be allocated to transmission, which is consistent with the existing toll design, as break-out tanks facilitate transmission service.

For transmission services on the Canadian Mainline and Line 8, Enbridge Pipelines proposed a distance-based abandonment surcharge that is not subject to commodity surcharges. Enbridge Pipelines asserted that this is consistent with the current transmission tolls as well as the cost causality principle.

The throughput forecast for the purposes of setting the initial five-year abandonment surcharges for all three service categories would be calculated by escalating (or decreasing) the Canadian Mainline's previous year's actual throughput based on the most recently available CAPP Canadian Crude Oil Supply forecast. Enbridge Pipelines would average the Canadian Mainline throughput forecast for the initial five year period and use that average for the purpose of setting the abandonment surcharges for the initial five-year period. The Line 8 throughput would be estimated using the previous year's actual throughput, which reflects that Line 8 serves one supply source and one market area and has limited growth opportunities.

Under Enbridge Pipelines' Competitive Toll Settlement for the Canadian Mainline, its tolling year runs from July 1 to June 30 of the following year. However, Enbridge Pipelines suggested that it may be more appropriate to set the fiscal year for the abandonment surcharge on a calendar year basis.

The abandonment costs for Line 9 would be fully allocated to the transmission abandonment surcharge, which would be distance-based and not subject to commodity surcharges. Enbridge Pipelines asserted that, as with current transmission tolls, abandonment costs are directly related to the distance travelled and should be collected on a distance basis. Given that full reversal of Line 9 is not scheduled to occur until 2014, a full year of actual throughput will not be available prior to setting the Line 9 abandonment surcharge. Therefore, for the initial five-year period, the Line 9 transmission abandonment surcharge would be determined by dividing the annual contribution amount by Line 9 capacity, less the amount being held available for uncommitted volumes, as a proxy for actual throughput.

4.1.3 Enbridge Pipelines (NW) Inc. (Enbridge NW)

Enbridge NW proposed a collection period of six years. Enbridge NW noted that remaining established reserves in the mainland Northwest Territories and Yukon are approximately 62.8 million barrels according to the NEB's Annual Energy Overview for 2013. At current production levels, there are approximately 13 years of remaining productive capacity. Enbridge NW noted that although there is also potential for exploitation of shale oil resources, the remaining contract life of the anchor shipper on its system at the onset of collection of funds for abandonment is six years.

Enbridge NW proposed an abandonment surcharge that would be calculated to be consistent with the current toll design. The surcharge would be distance based and layered on the existing transportation tolls. Enbridge NW asserted that a distance based surcharge is the most appropriate for this system given that there are multiple receipt points that vary in distance to the ultimate delivery point. The abandonment surcharge would be based on an annual contribution amount; and, when calculating the abandonment surcharge, Enbridge NW would use as a denominator the lesser of: the shippers' estimated throughput; or the previous year's actual throughput. Enbridge NW used this approach because its system has a shorter collection period and historically declining throughput.

Enbridge NW indicated that it has consulted with its shippers on the proposed surcharge methodology, and that shippers did not have objections to the proposed abandonment surcharge design.

4.1.4 Foothills Pipelines Ltd. (Foothills)

Foothills proposed a collection period of 30 years. Foothills noted that the competitive position of its system, and its ability to attract and retain supply, suggest it would be appropriate for the Foothills System to select a shorter collection period than the maximum 40 years. In addition, the supply available to the Foothills System is similar to that of NGTL and therefore it is appropriate to align its collection period with NGTL's collection period.

Foothills expected Pacific and Midwest markets to continue to rely on natural gas; however its system faces competition in supplying these markets. These evolving supply, market and competitive factors support an initial collection period of 30 years.

Foothills proposed to collect abandonment costs through a surcharge applied to all Foothills transportation services and all zones on an equal dollar per gigajoule basis. Foothills stated that the surcharge would be calculated based on the annual contribution amount divided by total forecast energy billing determinants for all zones. For firm transportation services, such as Firm Transportation (FT) and Short Term Firm Transportation (STFT), the surcharge would be applied to the contract demand quantity. For commodity services such as Interruptible (IT), the surcharge would be applied to each unit scheduled for transportation. Because the abandonment costs for the Foothills System have been calculated for the entire system, Foothills proposed that services on all zones contribute equally to the collection of abandonment funds by having one energy surcharge for all zones.

Foothills stated that it will be collecting its annual contribution amount itself, from all of its shippers. This includes NGTL as a shipper on the Foothills System. The portion of Foothills abandonment costs allocated and charged to NGTL by Foothills will, in turn, be included in NGTL's annual contribution amount that NGTL will collect from its shippers, along with the abandonment costs for NGTL's own system.

4.1.5 Kinder Morgan Cochin ULC (Cochin)

Cochin proposed a collection period of 19.5 years to reflect the length of the extension term under its transportation services agreements. Cochin indicated that demand for diluent will continue to grow towards 2020 and significantly exceed Canadian supply. It did, however, note that supply of light condensate available to its pipeline system is subject to market uncertainties beyond 10 years. Cochin stated that these uncertainties include the price of oil, alternatives to the Cochin system, alternatives to diluent for enabling transportation of oil sands production by pipeline (including upgrading), and the transportation of oil sands production by rail (which may reduce or eliminate the requirement for diluent).

Cochin proposed to collect abandonment funds through a surcharge applied on a per barrel basis, which would be calculated by dividing the annual amount of funds to be collected by the volume for transportation service. The same surcharge would be charged on all volumes committed to the Cochin Pipeline and on all uncommitted shipments. Cochin stated that the proposed methodology reflects that each barrel of condensate shipped on the pipeline will be transported the same distance, since it is to be received at a single point and delivered to a single point. Cochin submitted that its proposed collection mechanism will provide a simple, transparent toll for shippers that will minimize the overall administrative burden to Cochin. Cochin also noted that interested parties have been consulted regarding Cochin's collection and set-aside mechanisms.

The proposed methodology accounts for a portion of the pipeline in Ontario that will be idled for a period of time. The idling of this portion of the line is a consequence of the recent reversal of the pipeline, and until an alternative use is determined and is utilized by shippers, Cochin submitted that it is therefore just and reasonable that its reversal shippers contribute towards the abandonment costs of that segment.

4.1.6 M&NP

M&NP proposed a collection period of 40 years. Its system currently receives production from the Sable Offshore Energy Project. Production from that project has been declining and M&NP had no estimate of its remaining productive life, although it noted that the original life of the project –

which commenced production in 1999 – was 20 years. M&NP noted that contractual backstops for its pipeline, associated with the Sable Offshore Energy Project, will expire in November 2019 and there have been no discussions with shippers to extend them.

M&NP also receives gas supplies from the Deep Panuke gas field. It understood that the productive life of the Deep Panuke gas field is between 8 to 17.5 years. In addition, M&NP indicated that Corridor Resources currently produces about 10,000 MMBtu per day of gas into its pipeline and has the potential to increase that amount through shale gas production. However, few wells have been drilled and none have been successful. M&NP stated that pipeline additions would be required in upstream areas if Western Canadian gas or Marcellus gas was to be transported to M&NP, and noted that Spectra and Kinder Morgan were considering these additions to serve on-system demand for the 2017/18 timeframe.

M&NP stated that its proposed collection period of 40 years was reasonable. It was of the view that its pipeline appears to be moving from a supply driven pipeline to a market driven pipeline. M&NP noted that domestic markets for gas shipped on its pipeline have steadily grown and will provide continuing demand over the proposed collection period. According to M&NP, its markets are strong and long-term and could support the operation of the pipeline for more than 40 years.

M&NP proposed to collect abandonment costs from its shippers in the form of a pipeline abandonment surcharge on tolls. M&NP submitted that it would charge the surcharge to firm shippers based on their daily firm contract maximum daily transportation quantity, whereas interruptible shippers would be charged based on their daily interruptible usage. The surcharge would be charged on a postage stamp basis. M&NP asserted that in the postage stamp tolling system, all shippers are equally accountable for the costs, whether operations and maintenance costs, property taxes or abandonment costs.

Each year, the abandonment surcharge would be calculated by dividing the annual collection amount by that year’s daily firm demand determinants forecast. M&NP did not propose to forecast interruptible volumes in the 2014 proposed abandonment surcharge calculation. As a result, M&NP would propose adjusting future annual collection amounts downward, as required, to deal with surcharge collections on those volumes.

M&NP and its shippers had agreed to include $3.038 million for pipeline abandonment costs in its 2013 revenue requirement; however, the actual collection of that amount was deferred. For 2014, M&NP proposed to collect an amount which incorporates both the annual contribution amount for 2014, as well as an amount of $3.038 million for 2013.

4.1.7 Nova Gas Transmission Ltd. (NGTL)

NGTL proposed a collection period of 30 years. NGTL noted its competitive position and its ability to attract and retain supply suggested that it would be appropriate to select a collection period shorter than 40 years. NGTL noted that its 2012 depreciation study showed that the composite remaining life of its system was between 19 and 25 years, though this represents the expected midpoint of significant retirement activity and is not the estimated date operations cease. Because the NGTL system is large and spread over a wide geographic area, different parts of its system have longer or shorter composite remaining lives than the weighted 25-year average. NGTL noted that, with its footprint in Western Canada, NGTL can attract a large portion of the WCSB resource base. However, the timing of resource development and the ultimate levels of supply are uncertain.

NGTL noted that the markets that underpin its system include Alberta markets and export markets served by pipelines connected to major border points such as Spectra Empress, McNeill and Alberta/British Columbia (BC) border. NGTL indicated that it faces growing competitive pressures in serving central and eastern Canada markets as well as U.S. Midwest and U.S. Pacific markets. It noted that liquefied natural gas (LNG) export markets served by potential pipelines to the Pacific coast are a possible future market for NGTL; however, the impact remains uncertain.

NGTL proposed that pipeline abandonment costs be collected through a surcharge on transportation services by applying the surcharge to the contract demand quantities for all firm transportation services. For commodity-based services such as Interruptible Receipt (IT-R) and Interruptible Delivery (IT-D), the surcharge would be applied to each unit scheduled for transportation. NGTL stated that the surcharge would be calculated each year by dividing the annual contribution amount by the total forecast transportation billing determinants for the applicable year. The surcharge would be structured such that each unit of transportation on the NGTL System pays the same surcharge, whether for receipt service or delivery service.

NGTL proposed that the surcharge be added to the following services:

- Firm Transportation – Receipt (FT-R)
- Interruptible – Receipt (IT-R)
- Firm Transportation – Non-Renewable (FT-RN)
- Firm Transportation – Delivery (FT-D)
- Firm Transportation – Delivery Winter (FT-DW)
- Short Term Firm Transportation (STFT)
- Interruptible – Delivery (IT-D)
- Any Load Retention Services (LRS)
- Firm Transportation – Points to Point (FT-P)
- Certain Other Services (OS)

NGTL fully contracts for the capacity on the Foothills System’s Zones 6 and 7. It indicated that it will add the associated Foothills contribution to its own contribution calculation and recover the total amount through a surcharge applied to all applicable NGTL transportation services. NGTL submitted that the amount it collects with respect to Foothills’ abandonment costs will be a forecast of the portion of Foothills’ abandonment costs that NGTL expects to pay as a shipper on the Foothills System. Foothills will invoice NGTL every month and NGTL stated that any surcharge funds remaining after paying the Foothills surcharge will be deposited into the NGTL abandonment trust. The collection and management of abandonment funds would be completely transparent for both Foothills and NGTL.

4.1.8 Trans Mountain Pipeline ULC (Trans Mountain)

Trans Mountain proposed a 40 year collection period. Trans Mountain considered this period to be shorter than the economic or physical life of its pipeline. It noted that its pipeline is connected to a major source of supply and has access to world markets via the Westridge marine terminal.

Trans Mountain proposed to implement a toll surcharge to collect pipeline abandonment funds. The toll surcharge would be determined based on volume and distance of haul, which Trans Mountain maintained is consistent with its current tolling methodology. The same surcharge would be charged on both committed and uncommitted barrels.

To efficiently administer the abandonment surcharge and to provide toll payers with predictability of the amount of the surcharge, Trans Mountain does not intend to true up the surcharge on an annual basis. Trans Mountain stated that it intends to true-up its abandonment surcharge every five years, or earlier should there be a significant change in circumstances (for example, pipeline expansion). Trans Mountain further stated that it did not consider amortizing the variance between its anticipated and actual collection amounts. According to Trans Mountain, it is anticipated that a more frequent review of the annual contribution amount would be required as a pipeline approaches abandonment.

Trans Mountain submitted that it consulted with interested parties regarding its collection and set-aside mechanisms, and will continue to do so as appropriate.

4.1.9 Trans-Northern

Trans-Northern indicated that it supplies refined products from multiple refineries in southern Ontario and Québec to the Greater Toronto Area, Ottawa and Montreal. It stated that at this point in time, there is no indication that the supply of these products in these markets will disappear over its proposed collection period of 40 years and that demand is expected to grow.

Trans-Northern proposed that pipeline abandonment costs be recovered through an abandonment surcharge. The surcharge would be charged once a month based on volumes transported and billed. Trans-Northern indicated that the proposed abandonment surcharge is distance-based, and it follows the same process as Trans-Northern’s incentive tolling agreement, which is also distance-based. Trans-Northern did not discuss its abandonment surcharge methodology with all of its shippers, but intended to have these discussions following the Board’s decision regarding this proceeding.

4.1.10 Keystone

Keystone proposed a collection period of 25 years. Keystone stated that it used a 30 year economic life as the basis for its decision to invest in the pipeline. It noted that when collection starts in 2015, five years would have elapsed from the date when service commenced. Keystone stated that the supply and markets fundamentals provided in the original Keystone Pipeline and Cushing expansion applications are still valid. Keystone pointed to a Purvin & Gertz analysis, part of the Keystone Pipeline application filed in 2006, that expected U.S. refinery demand in the PADD II market to grow. Otherwise, the same application stated that increasing Canadian supplies and offshore imports would be needed to offset declining U.S. production. Further, the Cushing Expansion application, originally filed in 2007, expected that Alberta oil sands production would grow to 3.26 million barrels per day by 2016.

Keystone proposed to collect its annual contribution amount through a surcharge on transportation services. It stated that since the Keystone System is a single line of pipe with one receipt point and one delivery point within Canada, a volume-distance surcharge would have the same result as a volume surcharge. It proposed that the surcharge be applied on an equal dollar per barrel basis to all shippers on the pipeline system, regardless of crude type or delivery location. The surcharge would be calculated each year by dividing the annual contribution amount by the greater of Keystone's forecast throughput and the aggregate monthly volumes under all transportation service agreements in effect for such year. For term shippers, the surcharge would apply to all monthly volumes, irrespective of actual volume tendered in a given month and any excess volumes allocated in such month. For non-term shippers, the surcharge would apply to the greater of volumes tendered and 95 per cent of the highest allocated volume.

Keystone indicated that it has not specifically discussed its proposals with its shippers.

4.1.11 TransCanada PipeLines Limited (TransCanada PipeLines)

TransCanada PipeLines proposed a collection period of 25 years. It indicated that the competitive position of the Mainline and its ability to attract and retain supply suggest it would be appropriate for the Mainline to select a shorter collection period than 40 years. TransCanada PipeLines cited its Mainline depreciation study, which indicates that the Mainline has a composite remaining life of 15 years, though this not an end-of-life date for the system but the expected midpoint of significant retirement activity. On this basis, TransCanada PipeLines asserted that 25 years would still be appropriate. The Mainline is a large system spread over a wide geographic area, thus different parts of the system have longer or shorter composite remaining lives than the weighted average of 15 years. The Mainline can be sourced by WCSB gas from the NGTL system, but also has access to natural gas from other supply basins at Emerson, Dawn, Parkway and Niagara.

Despite the significant resource base in the WCSB and its potential increase in total production levels, TransCanada PipeLines noted there is considerable uncertainty in whether these volumes will be required by eastern markets traditionally served by the WCSB. The Mainline could also end up competing for WCSB gas with the emerging Pacific Coast LNG market. TransCanada PipeLines noted that increased short-haul throughputs on the eastern portion of the Mainline compete with long-haul volumes from Spectra Empress. Accordingly, TransCanada PipeLines stated that competitive pressures faced by the Mainline support a collection period of 25 years.

Finally, TransCanada PipeLines noted that domestic markets in Saskatchewan, Manitoba, Ontario, and Québec are expected to continue to rely on natural gas with a flat outlook and potential new bypass pipelines present competitive threats. Meanwhile, northeast U.S. markets have access to competing supply basins and exports to the U.S. have seen significant reductions.

TransCanada PipeLines proposed that Mainline abandonment costs be collected through a surcharge applied to all Mainline transportation services on an equal dollar per gigajoule basis. The surcharge would be calculated each year by dividing the annual contribution amount by the total forecast of energy billing determinants for the applicable year. The annual contribution amount used in the surcharge calculation would include the Mainline annual contribution and the Mainline's share of the annual contribution of Trans Québec & Maritimes Pipeline Inc. (TQM) (as determined by TQM) the annual return true-up and any deferral account balance from the previous period.

TransCanada PipeLines and its affiliated Group 1 companies said that they would, at the end of each year, compare the cumulative amount earned on invested funds against the amount expected, and amortize any difference over the following five-year period. TransCanada PipeLines stated that it would apply to the Board to change its assumptions if the cumulative difference between the actual and the expected return being amortized increased over time. The amortization of a significant difference, all other things held equal, would be considered as evidence of the need to reconsider the appropriateness of the assumption. TransCanada PipeLines and several of its affiliated Group 1 companies also sought to establish deferral accounts to manage any other annual variances and to include those variances in the following year's surcharge.

For services contracted on a demand basis, such as Firm Transportation (FT) and Short Term Firm Transportation (STFT), TransCanada PipeLines stated that the surcharge would be applied to contracted gigajoules, regardless of use. For commodity-based services, such as Interruptible Transportation (IT), the surcharge would be applied to each gigajoule scheduled for transportation. TransCanada PipeLines proposed that pipeline abandonment costs not be collected from Mainline non-transportation services such as Short Notice Balancing (SNB), Park and Loans (PALS), Energy Deficient Gas Allowance (EDGA), Enhanced Capacity Release (ECR), Delivery Pressure and Union Dawn Receipt Surcharge because in order for a shipper to effectively utilize these services, the shipper must also utilize a separate transportation service for which pipeline abandonment costs would already be included through the surcharge.

It was TransCanada PipeLines' view that abandonment costs are unique and different from other cost of service items. According to TransCanada PipeLines, abandonment costs vary across the system and are largely determined by the relative physical characteristics of the various facilities on the system. In this regard, TransCanada PipeLines suggested that the major cost drivers include the land-use category, which represents where pipe and facilities are located, the size and type of facilities being abandoned, and the method of abandonment and associated abandonment activities. As an example, TransCanada PipeLines observed that a short section of the pipeline that runs through agricultural land may require the total length of the pipe to be removed, resulting in significantly higher abandonment costs. A longer section of the pipeline that traverses a variety of different terrain which requires a small portion or none of the total length of the pipe to be removed may result in significantly lower abandonment costs.

TransCanada PipeLines argued that, from a practical perspective, abandonment costs fundamentally differ from construction costs based on the scope of the work. While it acknowledged that pipeline construction costs on the Mainline can vary from one portion of the system to another, TransCanada PipeLines submitted that it is the degree to which construction costs vary relative to abandonment costs that is the important distinguishing factor. In TransCanada PipeLines' view, abandonment costs vary to a far greater degree.

TransCanada Pipelines asserted that its proposed surcharge approach is transparent for all stakeholders, is easy to implement and recognizes that shippers pay for service and not for particular assets. The proposed surcharge methodology is just and reasonable, in TransCanada PipeLines' view, because the cost drivers behind the annual contribution amount, and in particular the ACE, are not driven by the current or future usage characteristics of the system such as service type, path or distance of haul.

TransCanada PipeLines contended that there are large differences in estimated abandonment costs for one portion of a pipeline system versus another, and that these differences are primarily a function of the method of pipeline abandonment and other factors such as the size, number and type of facilities as opposed to the distance over which a shipper's gas is transported. The proposed surcharge methodology recognizes the abandonment cost drivers are not based on distance of haul, and ensures that all shippers are responsible for an equal share of pipeline abandonment costs based on their contracted capacity, regardless of their particular transportation service or its path.

TransCanada PipeLines noted that it had considered structuring the surcharge methodology under the same cost allocation methodology between energy and energy-distance as other costs within TransCanada PipeLines' revenue requirement, approved by the Board in the RH-003-2011 Reasons for Decision. TransCanada PipeLines stated that it did not propose any of the three alternative cost allocation methodologies because all of them allocate a significant portion of the annual contribution amount to energy-distance, and would thus incorporate a distance of haul element to the surcharge.

Concentric Energy Advisors provided evidence for TransCanada PipeLines. Concentric Energy Advisors explained that, for the purpose of deriving Mainline tolls, TransCanada PipeLines allocates its costs between energy and energy-distance utilizing three factors: (i) capital-related costs are allocated based on a ratio of rate base attributed to transmission (energy-distance determinants) versus metering (energy determinants); (ii) operations-related costs are allocated 50 per cent on the basis of energy determinants and 50 per cent on the basis of energy-distance determinants; and (iii) other costs and revenues not deemed operations or capital-related are allocated based on the ratio of the overall revenue requirement resulting from the first two approaches.

TransCanada PipeLines indicated that if the ratio of rate base methodology were used, approximately 98 per cent of the total abandonment costs would be allocated on an energy-distance basis. This would result in a relatively higher surcharge for longer haul transportation and a relatively lower surcharge for shorter haul transportation compared to the surcharge proposed by TransCanada PipeLines. Concentric Energy Advisors asserted that, in this instance, pipeline abandonment costs are not predominantly a function of distance of haul and, therefore, it would not be reasonable to reflect distance of haul as the primary basis on which to recover abandonment costs.

As the Mainline contracts for service on the TQM pipeline, TransCanada PipeLines submitted that the Mainline would be required to pay its share of the associated abandonment costs that TQM will be required to collect through its surcharge. As a result, TransCanada PipeLines proposed that it add the associated TQM annual contribution to the Mainline's annual contribution amount and recover the total amount through the surcharge applied to all applicable Mainline services.

In response to requests for further information on the effect an abandonment surcharge would have on its tolls, TransCanada PipeLines stated that there would be no impact to its tolls if an abandonment surcharge was used to collect abandonment costs.

TransCanada PipeLines contended that the RH-003-2011 Reasons for Decision did not provide for recovering costs associated with abandonment in tolls, and did not establish that abandonment costs are to be collected through its fixed competitive tolls. It noted that:

- the $50 million amount for abandonment costs was used as a placeholder, and was provided for illustrative revenue requirement and toll calculation purposes only. TransCanada PipeLines stated that the $50 million dollar placeholder would influence the Long Term Adjustment Account (LTAA) because the LTAA amount was initially determined such that it would result in a zero Toll Stabilization Account (TSA) balance at the end of the multi-year toll period. The $50 million placeholder does not affect the tolls *per se*, according to TransCanada PipeLines, because the tolls are fixed, but it would affect the TSA balance;
- the tolls established by the Board require the recovery of some costs to be postponed through the LTAA. It was TransCanada PipeLines' view that the tolls established in the RH-003-2011 Reasons for Decision are below a level that would allow for the recovery of abandonment costs, and therefore TransCanada PipeLines' proposal to collect abandonment costs as a surcharge, separate and apart from its fixed toll, would provide for the recovery of these costs. As a result, it contended that these costs would be excluded from TransCanada PipeLines' revenue requirement when determining the deferred amounts that accumulate in the TSA during the fixed-toll period; and
- TransCanada asserted that the Board did not finalize the collection mechanism for abandonment cost recovery within the tolls approved in the RH-003-2011 Reasons for Decision.

TransCanada PipeLines asserted that there would be no double counting or double recovery of abandonment costs if it were to recover those costs through a surcharge.

4.1.12 TQM

TQM proposed a collection period of 25 years. TQM stated that the competitive position of its system and its ability to attract and retain supply suggest it would be appropriate to select a shorter collection period than 40 years. Given the dependence of the TQM system on the Mainline, it is reasonable that the collection period for TQM aligns with that of the Mainline. The Mainline, and by extension TQM, accesses natural gas supply at Empress, Emerson, Dawn, Parkway and Niagara. TQM stated that it faces supply competition for WCSB gas, similar to that of the Mainline. TQM noted that it supplies Québec and the U.S. Northeast with gas for residential, commercial, industrial, and power generation sectors. In the U.S. Northeast market, TQM faces supply competition from competing pipelines that deliver Marcellus supply; therefore, future flow levels through East Hereford remain uncertain.

TQM proposed that pipeline abandonment costs be collected through a surcharge applied to TQM transportation services on an equal dollar per thousand cubic metre (10^3m^3) basis. The surcharge would be calculated each year by dividing the annual contribution amount by the total forecast of billing determinants for the applicable year. TQM stated that for services contracted on a demand basis, such as T-1 Firm Service (T-1), the surcharge would be applied to each unit of contracted quantity, regardless of use. For commodity-based services such as Storage Gas Transportation (SGT) and Biogas Transportation (BGT), TQM proposed the surcharge be applied to each 10^3m^3 invoiced for transportation. TQM submitted that its rationale for proposing the use of a surcharge is that a surcharge is transparent for all stakeholders, is easy to implement and recognizes that shippers pay for service and not for particular assets.

TQM stated that it will be collecting its annual contribution amount from all of its shippers, with TransCanada being its largest shipper and thus the shipper to which the vast majority of costs will be allocated based on current TQM contracts.

4.1.13 Westcoast

Westcoast proposed a collection period of 80 years and argued that its collection period should be based on the gas reserves available for its system. Westcoast noted that its system is situated on top of vast unconventional gas resources, which places it in a unique position compared to other pipeline systems in Canada.

Westcoast considered various factors, including market demand, competition and government policy that could potentially limit the future demand for service on its pipeline system and result in a need to abandon before the end of the life of the gas reserves. Westcoast considered all factors associated with determining when abandonment would occur but determined there was no factor other than supply that could be relied upon. If there were changes in any of these factors, Westcoast then stated it would re-examine the collection period and make adjustments at that time.

Westcoast noted that collecting based on a 40-year period would unnecessarily penalize the shippers who are on the system today because they believe it should be collected over 80 years.

It was Westcoast's proposal to add the annual contribution amount for its transmission facilities in Zones 3 and 4 as a new line item in the cost of service for those zones. Therefore, the annual contribution amount would be recovered in the tolls charged by Westcoast to its mainline transmission shippers. Westcoast provided information to its toll and tariff task force regarding the potential toll impacts from the collection of abandonment funds for Zones 3 and 4. Westcoast submitted that no concerns have been raised by shippers regarding the potential toll impacts.

Westcoast stated that unlike its transmission facilities in Zones 3 and 4, Westcoast's facilities in Zones 1 and 2 are not regulated on a cost of service basis. Rather, the tolls charged by Westcoast for gathering and processing services are determined through negotiations with individual shippers. The tolls that result from these negotiations represent the price that Westcoast is able to charge for gathering and processing services, and Westcoast must manage its business to ensure that its toll revenue is sufficient to cover its capital and operating costs. According to Westcoast, it must compete for gathering and processing business and it cannot pass its costs of abandonment on to its shippers through increased tolls.

A portion of Westcoast's gathering and processing facilities are not located on lands owned by Westcoast. For these facilities, Westcoast proposed to begin setting aside abandonment funds commencing 1 January 2015. The remainder of Westcoast's gathering and processing facilities in Zones 1 and 2 are located on Westcoast's own fee simple lands, and Westcoast asserted that there are no landowners who would be potentially liable for the cost of abandoning these facilities. Westcoast suggested that it begin setting aside funds in respect of facilities located on its own lands when it recognizes the future liability to abandon these facilities for accounting purposes under applicable accounting rules and standards. Once that occurs, Westcoast submitted that the amount to be set aside by Westcoast for these facilities would be determined on the same basis as the methodology and assumptions used by Westcoast for its other facilities in Zones 1 and 2.

Westcoast proposed to review variances between actual and expected funds set aside every five years and adjust the underlying assumptions, adding that any adjustments to the annual contribution amount would be made prospectively and would not require the use of a deferral account or other true-up mechanism.

4.2 Views of Group 2 Companies

4.2.1 2193914 Canada Limited

2193914 Canada Limited proposed a collection period of 40 years. It noted that the shipper on its pipeline is an affiliated company that has exclusive rights to operate in its franchise area and provides natural gas distribution service to two million customers. Given the abundant supply of natural gas and cost advantage of natural gas over alternative sources of energy, 2193914 Canada Limited stated its affiliate will continue to operate for at least 40 years.

2193914 Canada Limited proposed to introduce an abandonment surcharge to be supplemental and charged in addition to the tolling structure contained in its transportation service agreement. In 2193914 Canada Limited's view, an abandonment surcharge is the most appropriate mechanism because it would enable the toll derived under the transportation service agreement to be calculated separately from the charges necessary to collect the costs of abandonment. The toll surcharge would be collected on a monthly basis.

4.2.2 Champion

Champion proposed a 30 year collection period. Champion stated that it uses the same supply sources as the TransCanada Mainline system and now competes for supply with increased demand in Western Canada and potential LNG exports. Markets served by Champion are situated in Québec, in the Abitibi region, and Champion expected its pipeline to be used in Abitibi for residential, commercial, institutional and industrial applications as long as it is economical and technologically sound to do so.

Champion suggested that, each year, Champion's invoice to its shipper, Gaz Métro, will include a new line for abandonment costs. This expense would be presented separately from the transportation costs billed to Gaz Métro. Champion is a wholly-owned subsidiary of Gaz Métro.

4.2.3 CTHI

CTHI proposed to collect abandonment funds over a 40 year period. It did not believe abandonment is likely in the short-run given the markets served by the pipeline system and the nature of the system. CTHI suggested that it would establish a separate and single purpose abandonment toll which would be applied to each shipper's contract demand. The abandonment toll would be similar to CTHI's existing FT demand tolls. The abandonment toll would be calculated by dividing the annual contribution amount by annual billing determinants, where annual billing determinants are determined by multiplying the year's total contract maximum delivery quantity by the 12 months in a year.

CTHI has discussed its proposed abandonment toll with its shippers.

4.2.4 Emera

Emera initially proposed to collect abandonment costs over 20.5 years. This time period assumed that Emera would start collecting funds for abandonment in January 2014 and was based on the length of its contract with its only shipper, Repsol Energy Canada Ltd. (Repsol). Emera later amended the length of its collection period to 35.5 years. It chose this period of time based on the Board's 40 year base case and the Brunswick Pipeline's in-service date of July 2009. If Repsol does not renew its agreement at the end of the remaining 20.5 year term and there are not sufficient other firm shippers on the system, Emera proposed that Repsol pay a lump sum at that time to ensure costs for abandonment are fully collected. Emera noted that it would adjust its collection period to 34.5 years in a final compliance filing to reflect the collection of funds beginning in 2015 rather than 2014.

Emera proposed to collect the annual contribution amount through a monthly toll surcharge. Emera indicated that it had been working with Repsol on an amendment to the negotiated toll agreement to reflect the collection of abandonment costs; however, Repsol had since advised that it no longer believes it should be responsible for abandonment costs.

Emera noted that the current tolls being paid by Repsol do not include any component for abandonment costs, and Emera has not historically collected abandonment costs in its tolls. Emera contended that while the negotiated toll agreement can inform the Board's decisions, it does not supplant the Board's jurisdiction to set just and reasonable tolls. It further contended that the negotiated toll agreement recognizes that the setting of tolls for the Brunswick Pipeline is subject to the approval of, and potential modification by, the Board.

4.2.5 Enbridge Bakken

Enbridge Bakken considered remaining oil reserves, forecasts for Bakken production, and competition to ship Bakken volumes to determine that a 25-year collection period was appropriate. It noted that recoverable crude oil located in the Bakken formation is estimated to be 11.8 billion barrels. While production forecasts for the Bakken formation are optimistic, Enbridge Bakken noted it faces growing competition from rail and other pipelines in attracting and shipping crude oil out of the region. This increased competition created uncertainty about collection periods longer than 25 years.

Enbridge Bakken proposed to introduce a per barrel abandonment surcharge in its tariff. The surcharge would be supplemental to the existing tolling structure. Enbridge Bakken contended that the abandonment surcharge would be the most appropriate collection mechanism because it would enable the tolls derived under its transportation service agreements to be calculated separately from the charges for abandonment.

Enbridge Bakken proposed to determine the abandonment surcharge by dividing the annual contribution amount by the higher of committed volumes or forecast throughput volumes. It noted that a six per cent adjustment will be added to determine the uncommitted abandonment surcharge. Enbridge Bakken asserted that the six per cent premium for uncommitted shippers is consistent with the toll design in the transportation service agreement and the toll principles approved by the Board the OH-1-2011 Reasons for Decision. The six per cent premium reflects the fact that unlike committed shippers, uncommitted shippers did not provide a commitment to underpin the construction, operation and eventual abandonment of the pipeline.

Shippers have been consulted on the key assumptions of the filing, including the proposed toll design. Enbridge Bakken stated that shippers did not have any comments regarding the proposed toll design.

4.2.6 Westspur

Westspur stated that remaining oil reserves, production forecasts and competition for transportation in southeast Saskatchewan suggested that a 25-year collection period was appropriate. Westspur expected production to decline at approximately 2 per cent per year in the first 10 years following commencement of collection of abandonment funds. Westspur stated that growing Saskatchewan Bakken production could sustain volumes on the system but also noted that Westspur faced competition for volumes from rail loading facilities.

Westspur proposed to collect abandonment costs by introducing a per barrel surcharge on its tariff that is supplemental to the tolling structure set out in Westspur's settlement. Westspur submitted that the surcharge was the most appropriate mechanism because it provides transparency and could readily be applied to other commercial agreements, or subsequent tolling arrangements that may exist in the future.

Westspur proposed to allocate its annual contribution amount 100 per cent to transmission function, which would result in the collection of abandonment costs on a distance basis, consistent with Westspur's existing toll design. To determine the abandonment surcharge, the annual contribution amount would be divided by the sum of total volumes and then multiplied by distance.

Shippers were consulted by Westspur and did not have any comments.

4.2.7 Enbridge SL

Enbridge SL noted that it imports condensate from the Chicago area, which is connected through third party infrastructure to the U.S. Gulf Coast. It noted that bitumen production is the main driver for condensate demand in Alberta. Given the long life of oil sands projects and the associated condensate demand to facilitate bitumen delivery to market Enbridge SL contended that a 40-year collection period is appropriate.

Enbridge SL proposed that abandonment costs be included as a line item in its revenue requirement, similar to any other cost of providing service. Enbridge SL asserted that this would be consistent with the toll principles approved by the Board in the OH-3-2007 Reasons for Decision. The supporting documentation for any Enbridge SL toll filing for 2015 and beyond would include a separate line item clearly identifying the annual amount to be collected, which Enbridge SL submitted would meet the Board's requirement for transparency. According to Enbridge SL, all cost of service amounts are subject to an annual true-up and any under or over-collection of revenue is either invoiced or refunded to all shippers in proportion to the tolls paid or the volumes transported for that year.

Enbridge SL indicated that it met with all of its shippers, both committed and uncommitted, and these shippers supported the proposed abandonment collection methodology.

4.2.8 Express

Express noted that there is significant supply available to its pipeline in the form of crude oil reserves in Alberta. It noted that its pipeline moves crude from Alberta to PADD II, where there is over 3.8 million b/d of refining capacity. Given the large consuming market, the vast supply and the long-term nature of oil sands projects, Express submitted that a 40-year collection period was appropriate.

Express proposed to collect its annual contribution amount from shippers through a toll surcharge. The toll surcharge would be determined by dividing the annual contribution amount by the total of committed and uncommitted volumes. Discussions with shippers and other interested parties with respect to the surcharge have not yet occurred.

4.2.9 Genesis

Genesis proposed a 40 year collection period. Genesis indicated that its pipeline system forms part of the pipeline infrastructure that interconnects NCCL's Corunna site with NCCL's polyethylene facilities and with NCCL's merchant customers in Ontario and Michigan. Genesis noted that the Sarnia area sites are competitive and efficient and are key elements of NCCL's ongoing and longer term business operations.

Genesis submitted that it will provide the annual funding amount to the trust through its annual operating budget process. Genesis indicated that it only charges tolls in respect of service on one pipeline segment, and the principal shipper is its parent company, NOVA Chemicals Corporation. As such, Genesis suggested that self-funding abandonment costs in respect of this segment is appropriate.

4.2.10 MPLL

MPLL proposed a collection period of 40 years. MPLL noted that it is interconnected to a vast North American pipeline network and has access to global markets to source crude, petroleum products and natural gas supplies. It indicated that global supplies and proven reserves of these commodities exceed the 40 year collection period proposed by MPLL. MPLL expected its assets to provide transportation value and services for the foreseeable future.

MPLL proposed that pipeline abandonment costs be recovered through a toll surcharge calculated by dividing the annual contribution amount by expected annual throughput. The annual contribution would be allocated among the transportation, tankage, and terminalling services based on the abandonment costs associated with each group of assets.

MPLL submitted that the shipping community has been fully engaged in the LMCI process and that more detailed discussions with shippers regarding the proposed toll surcharge will be planned following the Board hearings.

4.2.11 Niagara Gas

Niagara Gas proposed a 40 year collection period. Niagara Gas noted that its pipelines serve local distribution companies that have exclusive rights to franchises in their area. Given the abundant supply of natural gas in North America and its cost advantages relative to other sources of energy, Niagara Gas expected that its pipelines will continue to operate for at least the next 40 years.

Niagara Gas proposed to introduce an abandonment surcharge, which would be supplemental and charged in addition to the tolling structures contained in the transportation service agreements for each of the Cornwall, Ottawa River and Link Pipelines. Niagara Gas stated that it believes an abandonment surcharge is the most appropriate mechanism because it would enable the tolls derived under the transportation service agreements to be calculated separately from the charges for abandonment.

For each of the Cornwall and Ottawa River Pipelines, the abandonment surcharge would be equal to the annual contribution amount, because there is only a single shipper on each pipeline.

For the Link Pipeline, the abandonment surcharge would be determined by dividing the annual contribution amount by the annual forecasted capacity to determine a per gigajoule surcharge. If the Link Pipeline is forecasted to be underutilized in a given year as a result of volatile market conditions, Niagara Gas did not propose to add the abandonment surcharge to the toll, but rather set aside the annual contribution amount from funds from operations or from financing mechanisms. The Link Pipeline would be anticipated to be underutilized if the revenues based on forecast volumes result in a forecasted operating loss for the pipeline.

Firm shippers, which are affiliated companies, have been notified of the set-aside and collection mechanism filings. Shippers did not express any opposition or raise any concerns on issues regarding the collection of abandonment surcharges.

4.2.12 NCCL

NCCL proposed a collection period of 40 years. NCCL stated that its pipeline connects the Enbridge crude oil pipeline system to NCCL's storage and terminal facilities located at Corunna, Ontario. These facilities connect traditional oil supply with consuming markets in Eastern Canada and the U.S. NCCL stated that Line 31 and the storage and terminal facilities are valuable assets which are used, and will continue to be useful, over the long-term.

NCCL submitted that it will provide the required funds to the trust through its annual operating budget process. According to NCCL, the annual fund contribution is not material relative to NCCL's annual operations. For this reason, NCCL asserted that there is no need for the Board to assess its ability to make annual contributions.

4.2.13 Pembina

Pembina proposed a collection period of 15 years. Pembina stated that it operates the Taylor to Boundary Lake Pipeline which runs from the Taylor Gas Plant in Taylor, BC, to Boundary Lake, AB. The Taylor to Boundary Lake Pipeline delivers sweet high vapour pressure hydrocarbon products.

Pembina indicated that it would enter into an agreement with Pembina Pipeline Corporation to fund amounts to be deposited into the proposed abandonment trust. Pembina stated that this obligation would be met from corporate revenues, and Pembina Pipeline Corporation would make monthly payments towards any annual contribution amount. The Taylor to Boundary Lake Pipeline has no third party shippers, and the sole shipper, Pembina Infrastructure and Logistics LP, is a wholly owned subsidiary of Pembina Pipeline Corporation.

Pembina did not file a collection mechanism application because it does not charge tolls.

4.2.14 PMC

PMC noted the large resource supply and market demand available to its pipelines and storage facility, and considered a 40-year collection period to be appropriate.

For its common carrier pipelines, PMC proposed to collect abandonment funds through an abandonment surcharge calculated by dividing the annual contribution amount for each pipeline system by the expected volumes on each pipeline system. The surcharge would be charged on a postage stamp $/m^3 basis and would not vary by product.

PMC noted that many, but not all, of its NEB-regulated pipelines have tolls based on a postage stamp methodology. The postage stamp methodology was proposed because it is consistent with other surcharges applicable to these pipelines, such as the Heavy Oil Surcharge and the Excess Basic Sediment and Water Surcharge.

For its proprietary pipelines, PMC stated that the required annual contribution would be placed directly into the abandonment fund by PMC and its joint venture partners. PMC stated that the Board could use publically available financial information of its parent company, Plains All American Pipeline, L.P., and of PMC's joint venture partners, to determine the on-going ability to make annual contributions.

For the Windsor Storage Facility, PMC proposed to collect abandonment funds through an abandonment surcharge calculated by dividing the annual contribution amount by the total available storage capacity of the caverns under the Board's jurisdiction. The surcharge would be charged on a postage stamp $/m^3/month basis and would not vary by product.

PMC submitted that it has not yet notified its shippers and other interested parties of the proposed abandonment surcharges; however, PMC indicated that it plans to have detailed discussions with shippers following the MH-001-2013 proceeding.

4.2.15 Pouce Coupé

Pouce Coupé stated that the 15 year collection period for its Northern System and the Pouce Coupé System is based on the supply outlook for natural gas liquids (NGLs) produced in Northeast B.C. and the outlook for those systems' markets. Pouce Coupé stated that the collection period of 5 years for its Northwest System was based on commercial arrangements, which are short-term.

Pouce Coupé proposed to collect abandonment funds through a surcharge. The abandonment surcharge would be charged on a $/m^3 basis and would be calculated by dividing each pipeline system's monthly collection amount, which is the annual contribution divided by 12 months, by each system's forecasted monthly year end volume. The proposed abandonment surcharge is similar to the existing tariff structure.

Pouce Coupé undertook to notify and update its shippers before the end of 2013 about the MH-001-2013 Proceeding.

4.2.16 Souris Valley

Souris Valley submitted that it would transfer the full present value of its ACE into its proposed trust upon the establishment of the trust, rather than collecting an annual contribution over a collection period. If at any point in time the funds held in the proposed trust fall below the then-present value of the ACE, for example due to an increase in the ACE or a shortfall in investment income, Souris Valley indicated that it would contribute funds as necessary such that the trust would hold, at a minimum, the then-present value of the ACE.

4.2.17 Spectra Empress

Spectra Empress proposed a 40 year collection period. Spectra Empress noted it has a diversified source of NGL supply from the U.S. Bakken, as well as from producers in Alberta, Saskatchewan, and British Columbia. Products shipped through its pipeline are able to reach markets throughout the prairies and Eastern Canada, and the U.S. Given the large supply resource and consuming markets available to the pipeline, Spectra Empress considered a 40 year collection period to be appropriate.

Spectra Empress submitted that it intends to self-fund the annual contribution amount required to be set aside for abandonment. Spectra Empress explained that it earns revenue through the marketing of NGL's and not by charging tolls for transportation service.

4.2.18 Spectra Midstream

Spectra Midstream proposed a 40 year collection period. Spectra Midstream stated that two of its three NEB-regulated pipelines are in the Pesh Creek area, where they have access to Horn River Basin natural gas supply. The other pipeline is in the West Doe area, where it has access to Montney natural gas supply. All of the pipelines access markets served by the NGTL system.

Spectra Midstream submitted that its annual contribution amount will be an additional cost to Spectra Midstream, which will be recovered from the revenue allocated to it from Spectra Energy Midstream Corporation (SEMC). Spectra Midstream is a wholly owned subsidiary of SEMC, and Spectra Midstream does not provide transportation service directly to the shippers whose gas flows on its pipelines. Rather, these shippers hold contracts for service for gathering, processing and transportation service with SEMC, which in turn holds capacity on the Spectra Midstream pipelines. A portion of the revenue collected under these contracts is allocated by SEMC to Spectra Midstream to cover its costs.

4.2.19 St. Clair

St. Clair noted that it contracts much of its capacity to Union Gas Limited. St. Clair's pipelines are important to Ontario natural gas markets as they enhance security and reliability of supply, provide flexibility to interconnecting pipeline systems and contribute to the liquidity of the Dawn Hub. St. Clair noted that its pipelines provide Dawn access to supply from a variety of production basins through interconnecting pipelines and access to Michigan and other Great Lakes storage. Given the large supply resource and markets available to these pipelines, St. Clair considered a 40 year collection period to be appropriate.

St. Clair proposed to collect the annual contribution amount from its shipper(s) through separate monthly demand surcharges for the Bluewater Pipeline and the St. Clair River Crossing. The monthly demand surcharge would be calculated by dividing the annual contribution amount by 12 months, since there is only one shipper.

St. Clair noted that the sole shipper on the system at this time, Union, has been notified, is participating in the proceeding and is supportive of St. Clair's position.

4.2.20 Union

Union proposed to transfer the full estimated costs for pipeline abandonment to a trust fund by no later than January 2015, given the relatively low estimated value for future abandonment. Union explained that it would provide the Board with periodic updates for its ACE and the accumulated amount of its abandonment fund compared to the future amount required at least every five years.

4.2.21 Vector

Vector proposed a 40 year collection period based upon the pipeline system's age, access to a diversified supply basin mix in Canada and the U.S., steady market demand from Ontario LDCs, access to both Michigan and Ontario storage, and newly converted gas-fired electric power plants in Ontario.

Vector proposed to introduce a per gigajoule non-discountable commodity surcharge, which would be supplemental and charged in addition to its existing transportation tolls. The abandonment surcharge would be calculated by dividing the annual contribution amount by the annual capacity contained in Vector's most recent interim or final tolls.

Vector indicated that an abandonment surcharge is the most appropriate collection mechanism because it would allow its transportation tolls to be derived separately. Vector was of the view that a single non-discountable commodity surcharge is appropriate as it does not differentiate or grant a discount or advantage to any particular class or vintage of transportation service. It would be applied equally to all four classes of transportation shippers, under existing and future service agreements.

Consultations have been conducted with shippers with respect to the ACE and set-aside and collection mechanism filings. Vector stated that there was no shipper feedback regarding the collection of abandonment surcharges.

4.3 Views of the Intervenors

4.3.1 Alberta Northeast Gas (ANE)

ANE indicated that it supports the evidence of Enbridge Gas Distribution Inc. and Union (the Ontario LDC's) with respect to basing TransCanada PipeLines' abandonment surcharge on the ratio of rate base allocation methodology as opposed to TransCanada PipeLines' proposed approach.

ANE argued that there was no evidence on the record to support TransCanada PipeLines' assertion that Mainline abandonment costs should be differentiated from construction costs on the basis of a greater degree of variability in abandonment costs.

4.3.2 CAPP

CAPP indicated that it considers the TransCanada PipeLines approach for the reasons given by TransCanada PipeLines to be reasonable in the circumstances of the Mainline.

4.3.3 Centra Gas Manitoba Inc.

Centra Gas Manitoba Inc. emphasized its support of TransCanada PipeLines' proposal that pipeline abandonment costs be collected through a surcharge applied to all Mainline transportation services on an equal dollar per gigajoule basis.

4.3.4 Ontario LDCs

The Ontario LDCs, stated that they have no alternatives to the TransCanada PipeLines Mainline for the transportation of natural gas to certain distribution areas. The Ontario LDCs viewed themselves as captive to transportation on the Mainline and, because of this, the methodologies ultimately approved by the Board in respect of recovery and collection of future abandonment funds for the Mainline will have a significant impact on transportation costs incurred by the Ontario LDCs.

The Ontario LDCs did not agree with TransCanada PipeLines' proposed collection methodology and the rationale provided by TransCanada PipeLines in support of it. Although the Ontario LDCs agreed that the abandonment costs are a cost of providing service, they did not agree with a methodology that is based solely on energy allocation. Such a methodology, the Ontario LDCs asserted, is effectively a postage stamp surcharge for all Mainline shippers.

The Ontario LDCs argued that the use of a postage stamp surcharge for the recovery of future abandonment costs is inconsistent with the established rate making principles of cost causation and user pay. By implementing a postage stamp surcharge, in the form of 100 per cent energy allocation, TransCanada PipeLines would discriminate between short-haul FT and long-haul FT shippers. Under the postage stamp surcharge, tolls for short-haul services would increase significantly more, on a proportional basis, than long-haul services to the same delivery point. Further, notwithstanding that short-haul shippers would be utilizing proportionately less Mainline facilities than long-haul shippers, short-haul shippers would be required to pay a proportionally greater share of abandonment costs.

The Ontario LDCs were of the view that abandonment costs should be collected in a manner most consistent with the methods already employed by particular pipelines to achieve the Board's goals of efficient and reasonable tolls. Abandonment costs are, in the view of the Ontario LDCs, no different than any other cost incurred in the provision of pipeline transportation service, and all charges for transportation service on the Mainline should allocate the full lifecycle cost of service to shippers in accordance with the service for which they contract.

The Ontario LDCs submitted that TransCanada PipeLines has chosen to introduce a new methodology to be incorporated into its toll design, in the form of a postage stamp surcharge to collect abandonment costs from shippers on the Mainline. From a principled basis, the Ontario LDCs were of the view that any of the three cost allocation methodologies employed by TransCanada PipeLines in its current toll design would be preferable to a postage stamp surcharge methodology. Each of these three methodologies is generally consistent with the principles of cost causation and user pay. However, the Ontario LDCs stated that the ratio of rate base allocation methodology currently employed by TransCanada PipeLines as part of its distance based toll design is the best methodology for recovering the annual contribution from shippers on the Mainline.

Dr. Makholm, witness for the Ontario LDCs from National Economic Research Associates, Inc., stated that, as is the case with pipeline construction, pipeline "de-construction," or abandonment, is manifestly a function of distance and geography; the longer the pipeline, the higher the costs. Given that pipeline construction and abandonment involve distances in the same way, Dr. Makholm contended that there is no reason to depart from the manner in which the Board has consistently applied the cost causation principle for tolling, particularly on the TransCanada PipeLines system. For costs that are obviously related to distance, and with a distance-based allocation in the existing TransCanada PipeLines tolling methodology, the more appropriate method would use one of the existing allocation methods currently in place.

Dr. Makholm submitted that the ratio of rate base approach is reasonable and appropriate, as it would better reflect the distance-related nature of the abandonment costs than TransCanada PipeLines' proposal to exclude any measure of distance in the toll-related allocation of those costs. Dr. Makholm also noted that cost allocation is not an exact science, but rather a method for using objective measures to differentiate tolls among different pipeline shippers in a reasonable and workable fashion. The Ontario LDCs contended that the ratio of rate base methodology is currently used in allocating Mainline capital-related costs, which are the costs most closely aligned with facility abandonment.

The other two allocation approaches approved in the RH-003-2011 Reasons for Decision relate to operations activities and other miscellaneous activities. As both approaches allocate costs on a distance basis, the Ontario LDCs asserted that these approaches are preferable to TransCanada PipeLines' proposed pure energy based postage stamp toll methodology. However, the Ontario LDCs noted that neither approach truly reflects the nature of virtually all the expected abandonment cost activities. The Ontario LDCs stated that this is why the ratio of rate base approach continues to be the fairest and most reasonable of the three approaches approved in the RH-003-2011 Reasons for Decision for both construction and "deconstruction" cost recovery.

The Ontario LDCs agreed that the full lifecycle Mainline cost of service approved in the RH-003-2011 Reasons for Decision included $150 million of abandonment costs, and that the $150 million was not intended to limit the quantum of abandonment costs which might subsequently be approved in this proceeding.

However, the Ontario LDCs argued that the effect of the TransCanada PipeLines surcharge proposal would be to allow it to double recover $150 million of its abandonment costs; once in its tolls approved in the RH-003-2011 Reasons for Decision, and again in its surcharge if the Board permitted TransCanada PipeLines to recover the full approved annual contribution amount in that surcharge. It was the view of the Ontario LDCs that the Board would need to adjust the surcharge to recover only the net amount of the annual contribution amount after accounting for the $50 million recovered each year in the fixed tolls approved in the RH-003-2011 Reasons for Decision.

In their supplemental reply argument, the Ontario LDCs requested that the Board, in making its decision in this proceeding, clearly address the issue of double recovery of Mainline abandonment costs.

4.3.5 Repsol

Repsol asserted in its application to participate that Emera is not entitled to increase the tolls prescribed under the negotiated toll agreement to recover abandonment costs if the negotiated toll agreement does not already recover such costs. Repsol explained that the negotiated toll agreement was freely negotiated between two sophisticated parties.

4.3.6 Resolute Forest Products Inc., Boise White Paper, L.L.C. and Minnesota Energy Resources Corporation (the Centra Shippers)

The Centra Shippers submitted that the amount to be collected by CTHI is high in large part due to factors such as CTHI's assumptions regarding the proportion of the pipeline that would be removed, the inclusion of 25 per cent contingencies, and CTHI's refusal to consider a longer collection period than 40 years. The Centra Shippers asserted that reviews must provide for the opportunity to revisit the assumptions underlying the calculations of the abandonment costs and the abandonment toll.

The Centra Shippers argued that CTHI's proposed collection period of 40 years could be extended because CTHI's submissions indicate its LDC customers will remain viable and provide natural gas service to their respective franchise territories for the long-term. Further, the Centra Shippers stated that the Board has not prohibited longer collection periods than the base case and at least one other pipeline company has a collection period of longer than 40 years.

4.3.7 York Energy Centre LP (York Energy)

York Energy stated that it shared the concerns of the Ontario LDCs regarding the allocation of TransCanada PipeLines' abandonment costs using an equal dollar per gigajoule surcharge. It was York Energy's view that the proposed postage stamp surcharge is inconsistent with cost causation and user pay rate-making principles. York Energy also stated that there would be discrimination between short-haul FT and long-haul FT shippers because short-haul shippers would bear a significantly higher and proportionally greater toll burden than long-haul shippers.

York Energy supported the recommendation made by the Ontario LDCs for the adoption and use of a ratio of rate base allocation, on a distance basis, for the collection of TransCanada PipeLines' abandonment costs. York Energy stated that although this approach was predominantly weighted towards distance-based, it would recognize that there is some component that is energy-based.

4.4 Views of the Board

Unless otherwise noted in this chapter, the Board approves each company's collection period as proposed. The Board reviewed the evidence relating to each company's supply and market risk, and, unless otherwise noted, found each company's proposed collection period reasonable.

Pipeline companies proposed two approaches for collecting abandonment funds: (i) using a toll surcharge and (ii) inserting a new line item in their revenue requirement. Some companies proposed to self-fund contributions to the trust. The Board finds each of these approaches reasonable. The Board is of the view that each of these approaches allows abandonment costs to be collected in a transparent manner, particularly when viewed in the context of the reporting requirements set out in Chapter 6. While abandonment costs will be transparent to shippers, the Board reminds pipeline companies and shippers that the amount that is collected and set aside for pipeline abandonment is not subject to negotiation as part of a settlement agreement.

Companies that proposed to collect abandonment funds from shippers also proposed methodologies to allocate abandonment costs among shippers. Unless otherwise noted in this chapter, the Board approves the allocation methodology applied for by each pipeline company. The Board notes that it has received few complaints about how abandonment costs are proposed to be allocated among shippers, and that pipeline companies have, in general, proposed to allocate abandonment costs in a manner that is reasonably consistent with how other costs are recovered on their pipeline systems. Where a company has proposed a different allocation methodology, (unless otherwise noted) it is the Board's view that the pipeline company's methodology appears to be reasonable when viewed in the context of the specific characteristics of the pipeline system in question.

The Board recognizes that variances may arise between actual amounts collected and set aside, and the expected amounts collected and set aside. Group 1 and Group 2 companies that propose to create a deferral account or other true-up mechanism for managing variances must apply to the Board for approval of this mechanism.

4.4.1 M&NP

The Board finds that a 40 year collection period for M&NP's pipeline system is unreasonable. It is the Board's opinion that there is a considerable risk for M&NP to under-collect the cost of abandoning its system because the current supply available to the M&NP system is limited. Production from the Nova Scotia Offshore is in decline and M&NP's evidence indicates that, at most, there is approximately 20 years of supply available from that basin. The future potential of onshore production in Nova Scotia and New Brunswick is, in the Board's view, uncertain because of the limited drilling success in those areas.

The Board recognizes that M&NP's pipeline system could change from a supply-driven system to a market-driven system. However, the Board is not persuaded that such a change is certain or highly likely to occur. New sources of supply would need to be accessed, and upstream infrastructure would need to be approved and constructed for the M&NP system to become market-driven. The Board understands that such infrastructure developments could take a significant amount of time to occur.

It is the Board's view that a 19.5 year collection period more appropriately aligns with current forecasts of the supply available to the M&NP system. M&NP can apply to the Board to vary its collection period if significant supply developments were to occur, such as:

- Regulatory approval of pipeline infrastructure that allows new sources of supply to access the M&NP system; or
- Significant growth of domestic gas production in the Maritime Provinces.

4.4.2 TransCanada PipeLines

The allocation of Mainline abandonment costs

The Board has decided to allocate abandonment costs on the Mainline by using the ratio of rate base methodology. This methodology would allocate approximately 98 per cent of Mainline abandonment costs on an energy-distance basis and 2 per cent on an energy basis, which is not distance sensitive. The Board directs TransCanada PipeLines to file an application for Board approval of its abandonment surcharge using the ratio of rate base methodology.

The Board agrees with Dr. Makholm that cost allocation is not an exact science, but rather a method for using objective measures to allocate costs in a just and reasonable manner. Judgment is often required to determine how best to allocate costs among pipeline shippers. The Board recognizes that distance is not a perfect allocator of pipeline abandonment costs because there is path specific variability that is dependent on the method of abandonment and the size, number and type of facilities to be abandoned. However, no allocator perfectly reflects cost causation. While directly assigning or charging costs does so, it is difficult or impossible to achieve when costs are not clearly and easily attributable to a specific customer or group of customers. Therefore, the question in selecting an allocator is whether the allocator reasonably reflects how the underlying cost is incurred by the pipeline company.

It is the Board's view that the ratio of rate base methodology is a reasonable allocator of pipeline abandonment costs because it reflects that: (i) shippers whose receipt and delivery points are greater distances apart generally require more of the Mainline to transport their gas and should therefore pay more to abandon it; (ii) abandonment costs are a function of distance, and that each method of abandonment increases in cost with distance; and (iii) pipeline abandonment costs reasonably resemble Mainline construction costs and other Mainline capital related costs, which are allocated based on the ratio of rate base.

The Board is of the view that TransCanada PipeLines' proposal, which would have shippers pay for abandonment costs based on the volume of gas they ship, is flawed. It does not recognize that a shipper with a greater distance of haul, in general, requires a greater portion of the Mainline, and therefore should pay more to abandon it.

In the Board's view, TransCanada PipeLines' proposal would not result in just and reasonable tolls because it ignores that abandonment costs are a function of distance. TransCanada PipeLines admitted that distance plays some role in driving abandonment costs, and that the costs associated with each method of abandonment increase with the length of the pipe being abandoned. To justify ignoring distance as a driver of abandonment costs, TransCanada PipeLines relies on, among other things, the degree that costs vary among each method of abandonment.

It is the Board's view that the degree to which costs vary among the methods of pipeline abandonment does not support TransCanada PipeLines' proposal. If anything, TransCanada PipeLines' evidence and submissions support directly assigning or directly charging abandonment costs to specific paths because of the degree of variability among each method of abandonment. TransCanada PipeLines did not propose this approach. This approach would likely be difficult to achieve on the Mainline where the contractual flow of gas does not match how gas physically flows on the system.

In reaching this conclusion, the Board notes that other costs on the Mainline vary. The Ontario LDCs noted that Mainline construction costs are allocated using the ratio of rate base even though those costs vary depending on the method of construction. While TransCanada PipeLines addressed this evidence by suggesting that construction costs do not vary to the same degree as abandonment costs, it is the Board's view that TransCanada PipeLines' evidence was weak and therefore not persuasive. TransCanada PipeLines did not provide a witness that was able to speak to the variability in construction costs. Nor did TransCanada PipeLines perform any analysis on the variation of construction costs although the Ontario LDCs clearly and forcefully drew a link between construction costs and pipeline abandonment costs in their direct written evidence.

Finally, with respect to TransCanada PipeLines' proposal to add to its annual contribution amount its share of TQM's annual contribution amount, the Board finds such an approach reasonable. TransCanada PipeLines is TQM's largest shipper, and the party to which the vast majority of TQM's abandonment costs will be allocated based on current contracts.

The potential for TransCanada PipeLines to double-recover Mainline abandonment costs

The Ontario LDCs suggested that TransCanada PipeLines could double recover pipeline abandonment costs if TransCanada PipeLines' proposed surcharge were approved. They noted that TransCanada PipeLines' revenue requirement forecasts, relied on by the Board in the RH-003-2011 Reasons for Decision, included a $50 million placeholder for pipeline abandonment costs in 2015, 2016 and 2017, or $150 million total.

The Board notes that the RH-003-2011 Reasons for Decision fixed Mainline firm transportation tolls at a constant level for four and a half years, from July 2013 through to the end of 2017, provided that certain "off-ramps" were not achieved. The RH-003-2011 Reasons for Decision also deferred the recovery of a fixed amount of costs beyond the four and a half year fixed toll period by using the long-term adjustment account (LTAA). The fixed annual addition to the LTAA was calculated as the constant annual amount that causes the toll stabilization adjustment account (TSA) balance to be zero at the end of the 2017 toll year, based on TransCanada PipeLines' throughput and revenue requirement forecast. Any variances between costs and revenues occurring within the four and a half year fixed toll period are captured in the TSA.

The Board is not persuaded that TransCanada PipeLines would double recover abandonment costs if its proposed abandonment surcharge were approved because TransCanada PipeLines has hit an offramp from the RH-003-2011 tolls. Those tolls were to come to an end either in 2017, or earlier if, among other things, the negative TSA balance was expected to be eliminated. The Board takes notice of the fact that TransCanada PipeLines has filed an application with the Board indicating that the TSA balance would be positive at the end of 2013[34] largely due to increased firm transportation service contracting on the Mainline resulting from the Board's RH-003-2011 Reasons for Decision. The Board recognized this possibility in the RH-001-2013 Reasons for Decision.[35]

The Board recognizes that the amount of the annual LTAA contribution has been affected by including the $150 million placeholder for abandonment costs in TransCanada's multi-year revenue requirement. However, there will be no more LTAA contributions because the TSA is expected to have a positive balance at the end of 2013.[36] The LTAA contribution for 2013 may only be the smallest amount that would eliminate the negative TSA balance. Therefore, it is the Board's view that the actual impact of the $150 million abandonment placeholder on the amount of the LTAA, if any, has been minimal.

Based on the foregoing, the Board is of the view that no adjustment to the fixed multi-year firm transportation service toll is required to avoid double recovery of Mainline abandonment costs.

4.4.3 Westcoast

The Board is not persuaded by Westcoast's evidence that 80 years is an appropriate collection period for its pipeline system. In reaching this conclusion, the Board rejects Westcoast's proposed reserve-life based approach to determining its collection period. The availability of adequate reserves is only one factor that affects whether a pipeline will be used for transporting a commodity. A pipeline requires access to a consuming market(s) for its commodity, and must be able to deliver the commodity to its market(s) at a level that adequately competes with other alternatives. An approach that relies solely on reserve-life paints an incomplete picture of whether the pipeline will be used to transport a commodity in the future and, therefore, be able to collect or contribute abandonment costs to a trust set-aside mechanism.

It is the Board's view that a time horizon of 80 years is too long to accurately forecast risks associated with whether a pipeline will remain in service and be able to collect or contribute funds to a trust. The longer the time horizon, the less accurate a forecast becomes. In the context of energy forecasts, this is best evidenced by the significant changes in the North American supply of natural gas that the Board has witnessed over the past five years.

The Board recognizes that periodic five-year reviews would reduce some of the risk associated with an 80 year collection period. However, if at one of those reviews, an 80 year collection period were

34 TransCanada PipeLines Limited, Application for Approval of Mainline 2013 – 2030 Settlement, p. 1, December 2013 (Settlement Application).

35 National Energy Board, RH-001-2013, Reasons for Decision, TransCanada PipeLines Limited, Tariff, page 10, November 2013.

36 Settlement Application, p. 1; National Energy Board, RH-003-2011, Reasons for Decision, TransCanada PipeLines Limited, NOVA Gas Transmission Ltd., Foothills Pipe Lines Ltd., Tolls and Tariff, March 2013, page 237.

found too long and necessitated shortening, the toll impact associated with recovering abandonment costs over that shorter period of time would be amplified.

The Board prefers an approach that establishes a collection period that recognizes limitations associated with forecasting far into the future. In the Board's view, 40 years is the upper limit on the ability of a company to forecast demand for transportation services on a pipeline. The length of a collection period can be maintained at each five year review, if it is appropriate to do so. The Board recognizes that a shorter collection period may cause some intergenerational inequity if the useful life of a pipeline exceeds its collection period. However, the Board is of the opinion that this is outweighed by the benefits associated with the security of having funds collected and set aside in trust.

For gathering and processing facilities that are not located on lands owned by Westcoast, the Board finds that Westcoast's proposal to self-fund its annual contribution amount starting 1 January 2015 is reasonable, subject to the 40-year collection period set out in these Reasons for Decision.

The Board does not accept Westcoast's proposal to defer setting aside abandonment funds for the gathering and processing facilities located on its fee simple land until it recognizes an ARO for those facilities. The Board is not persuaded that the character of a pipeline company's land rights should lead to a different approach to setting aside funds to pay for pipeline abandonment. It is noteworthy that the Board, in its RH-2-2008 Reasons for Decision, found that it is in the public interest that all pipelines regulated by the NEB be abandoned safely and effectively. For that to happen, adequate funds must be available.

The Board rejects Westcoast's assertion that there are no landowners who are potentially liable for the cost of abandonment because it owns lands in fee simple. Westcoast's submission fails to consider a long-term view of the land on which its facilities are located, which may include transfer of ownership. Moreover, even if the land ownership is not transferred, the Board does not see a reason why those facilities should be at greater risk of not having funds available to abandon them safely and effectively.

The Board is of the view that all facilities within Zones 1 and 2 should be treated consistently, regardless of the character of Westcoast's land rights. Therefore, the Board directs Westcoast to begin setting aside funds for gathering and processing facilities located on its own lands at the same time and using the same methodology and assumptions that it has proposed for the gathering and processing facilities that are not located on its fee simple lands.

4.4.4 CTHI

The Board is not persuaded by the Centra Shippers submission that CTHI's annual contribution amount is large due to CTHI's refusal to consider a collection period beyond 40 years. CTHI's collection period was based on the supply and markets available to its pipeline system. As the Board noted with respect to Westcoast, it is the Board's opinion that the longer the time horizon used in a forecast, the less accurate the forecast becomes. Accordingly, it becomes less certain whether a pipeline company will be able to collect or contribute sufficient funds for pipeline abandonment. The Board finds CTHI's proposal to be reasonable.

The Centra Shippers also expressed concern that the amount to be collected by CTHI was large due to, among other things, underlying assumptions related to the ACE. The Board notes that CTHI's ACE was approved by the Board and that it is subject to periodic review as set out in Chapter 6.

4.4.5 Emera

The Board does not find Emera's proposed plan reasonable. The remaining length of the transportation agreement on Emera's system is approximately 19.5 years from the start of collection in January 2015. It is the Board's opinion that this 19.5 year period better reflects the supply and market risks facing Emera's pipeline system. The Board directs Emera to use 19.5 years as its collection period. In the Board's view, it is not reasonable to base Emera's collection period or amortization period on the assumption that the contracts on Emera's system will be renewed if other market factors were not used to support that assumption. Based on the foregoing, the Board does not find the lump sum payment proposal reasonable because this leaves too great a risk of a substantial portion of the ACE being unfunded.

Repsol raised concerns about Emera's proposed set-aside and collection mechanism when it applied to participate in this proceeding. However, Repsol did not pursue those concerns through the hearing process. It is the Board's view that pipeline companies are ultimately responsible for the full cost of abandoning their pipelines and they are able to recover those costs from the users of their system, subject to the provisions of the pipeline company's tariff. Emera's annual contribution amount will be set aside irrespective of any dispute between Emera and Repsol.

4.4.6 Additional comments regarding certain pipeline companies' collection proposals

While the Board has approved the collection proposals of Alliance, Enbridge Pipelines, Cochin, NGTL and Niagara Gas it has additional comments to make about each of these companies.

Alliance is developing a new suite of services and associated tolling structures. It plans to file an application with the Board to address the new toll and tariff model, including the continued collection of abandonment funds, in the first half of 2014. The Board will examine how Alliance proposes to collect costs for pipeline abandonment when an application is filed.

The Board finds reasonable Enbridge's suggestion that it establish its abandonment surcharge on a calendar year basis, as opposed to following the toll year under its Competitive Toll Settlement. Shippers were consulted on Enbridge's proposed abandonment surcharge methodology, and did not raise concerns with the Board.

The Board also finds reasonable Cochin's proposal to collect abandonment funds for the segment of its pipeline located in Ontario from its shippers on the reversed pipeline from Saskatchewan to Alberta. The Board accepts Cochin's submission that the provision of service on the reversed Cochin Pipeline is the reason the Ontario segment will not have its own shippers. Moreover, it is the Board's view that the degree of potential cross-subsidization associated with abandoning the Ontario segment of the Cochin system is immaterial.

The Board is of the view that NGTL's proposal to add a portion of Foothills' annual contribution amount to its own annual contribution calculation is reasonable on the basis that NGTL fully contracts for the capacity on the Foothills Pipe Line System's Zones 6 and 7.

Niagara Gas, in respect of the Link Pipeline, proposed that it would not add an abandonment surcharge to its toll if the Link Pipeline is forecast to be underutilized. Niagara Gas indicated that it would instead set aside the annual contribution amount from funds from operations or from financing mechanisms. The Board accepts this approach, and reminds Niagara Gas of its reporting responsibilities, explained in Chapter 6, regardless of the source of funds.

Chapter 5

Alternative set-aside mechanisms

This chapter discusses the alternative set-aside mechanisms (that is, mechanisms other than a trust) that were proposed during the course of this proceeding. Fifty-eight companies proposed to use an alternative set-aside mechanism. A list setting out these companies and the mechanisms that they proposed can be found in Appendix IX. While some of these companies have third-party shippers, all propose to pay for future abandonment costs themselves.

Enerplus Corporation and Glencoe Resources Ltd. filed applications under section 74 of the NEB Act to immediately abandon their NEB-regulated pipelines. As a result, the question of whether there are sufficient funds available to abandon these pipelines is being dealt with by the Board in the abandonment proceedings concerning these pipelines.

5.1 Views of the Parties

5.1.1 Letter of Credit

A list of companies that proposed fully funded letters of credit is set out in Appendix IX. Some companies proposed a letter of credit as an alternative mechanism to their primary proposal in the event that the Board did not approve their primary proposal.

A number of pipeline companies indicated that their letter of credit would be issued by a financial institution, a separate entity from their pipeline company. Many indicated that they will obtain a letter of credit from a Schedule 1 Canadian chartered bank and that the Board, or Her Majesty the Queen in Right of Canada as represented by the National Energy Board, would be the beneficiary of the letter of credit. Most companies indicated that their proposed letter of credit will be irrevocable, non-transferable and not assignable.

Some pipeline companies noted that the Board would hold the original letter of credit, which would ensure that its consent was required for any amendments. In the event of a sale, or a change in the ownership of the pipeline, many companies noted that the Board could retain the letter of credit until it receives an adequate set-side mechanism from the purchaser.

Encana Corporation (Encana) and Minell Pipelines Ltd. (Minell) submitted that a letter of credit is a more cost effective alternative to a trust fund. Encana indicated that maintaining a trust is burdensome because a pipeline company would incur external financial reporting costs, trust administration fees and an opportunity cost associated with the funds. Moreover, Encana noted that a trust would impose an internal burden on Encana because Encana staff would have the burden to prepare financial statements, review investments and administer income tax.

Several pipeline companies noted that letters of credit are not intended to fund abandonment directly. They noted that abandonment work would be funded by the pipeline company and that the letter of credit would act as a form of backstop or guarantee for a pipeline company's abandonment obligations. According to ConocoPhillips Canada Operations Ltd. (ConocoPhillips) and Pengrowth Energy Corporation (Pengrowth), the posting of a letter of credit would not absolve a pipeline company from the responsibility to conduct abandonment activities.

Several pipeline companies submitted that their proposed letter of credit meets all of the attributes set out by the Board in its RH-2-2008 decision, as set out in further detail in the paragraphs that follow.

Funds must be maintained in a segregated account and not commingled

Pipeline companies proposing a letter of credit submitted that the amount guaranteed by a letter of credit will not be commingled with any corporate funds. They indicated that a letter of credit was a security provided by a third party and that funds are committed against a company's credit facility and are separate from any funds of the company.

Funds must be protected from creditors

Several pipeline companies indicated that a letter of credit will be protected from a pipeline company's creditors. Canadian Natural Resources Limited (CNRL) indicated that a letter of credit is an independent contract between the issuing institution and the Board funded by the pipeline company. According to Murphy Oil Company Ltd. (Murphy), once issued, a letter of credit draws upon the pipeline company's credit facility guaranteeing that funds are available for any possible drawdown request by the beneficiary. Murphy stated that no other creditor has access to these funds, nor can the pipeline company use this portion of its credit facility with the financial institution to satisfy any debts it might have with any of its creditors. Murphy further submitted that the financial institution will be required to pay the Board when requested even if the pipeline company has become insolvent.

A number of pipeline companies stated that their proposed letter of credit would automatically renew on an annual basis without notice or amendment and without a maximum number of renewals. Further, many of the applicants proposed a letter of credit which would notify the beneficiary before the cancellation or expiry of the letter of credit, and upon such notification allow the beneficiary to draw the entire amount of the letter of credit. Many pipeline companies contended that this feature protects funds from creditors, as well as from misuse or use for a purpose other than abandonment.

AltaGas Holdings Inc. (AltaGas) further noted that the Board's jurisdiction would continue until compliance with all conditions was achieved. Until then, the letter of credit would remain outstanding with the Board as the beneficiary. Many applicants also indicated that, because the Board is the sole beneficiary and in possession of the letter of credit, only the Board has the means to draw upon it.

Regular reviews of the amount of funds set aside and reporting to stakeholders

Many of the applicants noted that they will review the amount of their abandonment cost estimate and adjust their letter of credit every five years. Some applicants indicated that reviews will be made public. ConocoPhillips noted that it will inform stakeholders after its five year review process. Encana indicated that it expects the abandonment costs and any adjustments through reviews would be accessible on the NEB’s website.

Funds must be segregated by pipeline

Many of the applicants stated they will provide the Board with a separate letter of credit for each of their regulated pipelines. Other applicants indicated that they would provide the Board with one letter of credit for all of their regulated pipelines. Of these companies, CNRL noted that it would be administratively simpler to issue a single letter of credit, as opposed to a letter of credit for each of the company’s regulated pipelines. According to CNRL, there is a cost for each additional letter of credit issued by the bank, so it would be cost effective to have only one letter of credit to cover all of its pipelines.

Funds must be subject to Board audit

A number of applicants indicated that letter of credit will be auditable as the Board is in possession of the original letter of credit. Further, the Board may contact the issuing financial institution to confirm the terms of the letter of credit and its current value.

Investment policy

Many of the applicants indicated that a sound investment policy is not applicable for a letter of credit. Encana noted that the letter of credit is not an investment account, but rather a form of security, provided by a pipeline company, that could be drawn upon if it failed to perform its abandonment obligations. A number of other applicants indicated that the letter of credit would only be used as a backstop, and that they intend to utilize internal funding for abandonment. The letter of credit would only be used in the event the pipeline company defaults on its abandonment obligations and thus an investment policy is not required.

Accessing funds

Pipeline companies gave different descriptions about how funds would be accessed. ConocoPhillips indicated that access to the letter of credit would be negotiated during the drafting of the letter of credit between the beneficiary and the third party financial institution. Pengrowth indicated that the letter of credit would allow funds to be accessed only if the pipeline company defaulted on its abandonment obligation. AltaGas and Vantage Pipeline Canada ULC (Vantage) indicated that the Board could draw down the letter of credit by presenting the letter of credit along with a certificate confirming the requirement for payment. Some pipeline companies indicated that their letter of credit will permit same day draws, and others stated that their letter of credit will permit partial or multiple draws. Even though the pipeline companies provided different descriptions about how funds would be accessed, most made clear that the letter of credit would set out how funds would be accessed.

Views of the Joint Applicants

The Joint Applicants considered a letter of credit, but noted several issues which prevented them from proposing it as a viable set-aside mechanism. The Joint Applicants submitted, among other things, that: (i) the term of a letter of credit is typically quite short and requiring the letter to be continually renewed to provide ongoing coverage for abandonment costs; (ii) the letter of credit model would be considerably less tax-efficient than other options; and (iii) the availability of a letter of credit to a company at each renewal would be based on the credit worthiness of the company. Therefore, if a company were ever to be at risk of insolvency it would lose its ability to obtain a letter of credit to fund abandonment costs at precisely the time that such coverage would be most important.

5.1.2 Growing Letter of Credit

Encana, AltaGas, ARC Resources Ltd., CNRL, Vantage, Veresen Energy Infrastructure Inc. (Veresen) and Lone Pine Resources Canada Ltd. (Lone Pine) all proposed growing letters.

Encana

Encana proposed to issue two letters of credit, one each for the Tupper-Hythe and Mid-Tupper pipelines, with a combined abandonment cost estimate of approximately $2.5 million. The pipelines are in the middle of Encana's Montney development project in northeast British Columbia. Encana noted the large size of the natural gas resource in the area could underpin the operation of the pipelines in the Tupper area over 40 years. Encana stated that the amount of credit under each letter of credit would increase each year for 40 years by $125,107 and $15,713 respectively. Encana determined the amount of annual increase by estimating the future value of its abandonment obligation, assuming two per cent annual inflation of its abandonment cost estimate and a zero per cent annual return.

AltaGas

AltaGas has an abandonment cost estimate of $40.8 million. It indicated its proposed letter of credit would have to grow $2.44 million per year, using a 40 year collection period and the future value of its abandonment cost estimate. AltaGas indicated that its 40 year collection period was a Base Case assumption. AltaGas was of the view that its pipelines can be operated safely indefinitely if the appropriate preventative maintenance is undertaken and replacement of worn infrastructure occurs as required.

ARC Resources Ltd. (ARC)

ARC has an abandonment cost estimate of $586,000 and proposed to increase its letter of credit coverage over a 20 year period. ARC stated that with its methodology, 20 per cent of its abandonment cost estimate will be covered between 2014 and 2018, 40 per cent between 2019 and 2023, 60 per cent between 2024 and 2028, and then 80 per cent between 2029 and 2032. The proposed letter of credit will reach 100 per cent coverage in 2033.

ARC indicated that it did not currently have plans to abandon its NEB regulated pipelines. According to ARC, pipeline life cycles are difficult to anticipate, and therefore the earliest anticipated date to commence pipeline abandonment was conservatively estimated. Two of ARC's pipelines are main lines that transport gas from an ARC gas plant to a Spectra gas plant and are expected to be in service for a minimum of 40 years. ARC noted its pipeline's importance in connecting infrastructure in Northeast BC.

CNRL

CNRL proposed a growing letter of credit as an alternative set-aside mechanism to its preferred proposals of a corporate guarantee and a licensee liability rating program. CNRL proposed to submit one letter of credit for the sum of all its pipelines at annual increments of five per cent of the then current estimated abandonment cost. The abandonment cost estimate would be updated every five years and the letter of credit would provide 100 per cent coverage of the abandonment cost estimate in 20 years.

Vantage

Vantage proposed to increase its letter of credit coverage by $125,000 each year throughout its proposed 40 year collection period. In its application, Vantage stated that it has an abandonment cost estimate of approximately $4.8 million. Vantage stated that its assets have yet to go into service and do not have a defined end of life date. Vantage also noted that its pipelines can be operated safely indefinitely if appropriate preventative maintenance is undertaken.

Veresen

Veresen proposed a growing letter of credit as an alternative to its preferred trust account proposal. The abandonment cost estimate for its Tupper pipelines is $2,240,089. The Tupper pipelines feed into Alliance's pipeline system and the NGTL system. Veresen noted that the information filed by Alliance provided a description of the supply and markets for the Tupper pipelines. Veresen noted the Tupper pipelines were located in growing natural gas supply areas and linked to stable markets.

Veresen calculated the average annualized cost over 40 years of a letter of credit that fully funded its abandonment cost estimate as $41,082 compared to $26,327 for a growing letter of credit compared to approximately $10,000 per year for its proposed trust account. Veresen further stated that a letter of credit would be economic only if the coverage were increased annually. In its application,Veresen proposed to increase the letter of credit annually by the amount of its annual contribution amount, adjusted for inflation.

Lone Pine

Lone Pine proposed a growing letter of credit which would increase by $27,130 annually until its abandonment cost estimate of $786,663 is reached in 40 years. Lone Pine's calculation assumed two per cent inflation, however it also assumed an after tax return on funds collected of 2.63 per cent (3.5 per cent pre-tax rate of return with a company specific tax rate of 25 per cent on investment income).

5.1.3 Surety Bond

Talisman Energy Inc. (Talisman) and Kaiser Exploration Ltd. (Kaiser) proposed to use a surety bond as a set-aside mechanism, if required. Both companies made clear that their primary submission was that they should be exempt from providing a set-aside mechanism.

Under a surety bond, a person (the surety) guarantees to another person, (the obligee) an obligation of a third party (the principal). The draft surety bond provided by Talisman designated the Board as the obligee to the bond, with Talisman as the principal, and ACE INA Insurance Company as the surety. Under the draft bond, ACE INA Insurance Company guaranteed the abandonment obligations of Talisman up to the amount set out on the bond. The duration of the bond would last as long as Talisman had the obligation to abandon the Compass Gas Pipeline although the draft bond was terminable on notice. For the proposed bond to be enforceable, the bond, and any endorsements thereto, must be signed, sealed, and delivered to the obligee.

Depending on the type of surety bond used, a surety bond can be triggered when the principal defaults on the obligation guaranteed by the bond, and the obligee provides notice of that default to the surety. Under Talisman's proposed bond, the Board as obligee would have discretion to determine whether Talisman was in default. Talisman noted that insolvency, bankruptcy, a refusal to abandon its pipeline or a bankruptcy midway through the abandonment process could trigger a default. Talisman indicated that its bond would be set up such that it was an "on demand instrument" whereby declaration of default is de facto default.

If the Board determined that Talisman were in default of its abandonment obligation, the Board would be required to provide a registered letter to the surety, calling on the surety to fulfil Talisman's obligation. Talisman noted that as much information as possible should be provided to the surety in this letter, and that under the terms of its proposed bond, no investigation would be undertaken by the surety to confirm default.

Under the draft surety bond provided by Talisman, whenever the principal is in default, and declared by the obligee to be in default, the surety has the option of (i) remedying the default; (ii) holding a tendering process to remedy the default; or (iii) putting an end to the suretyship, and paying the full amount of the bond to the Board if adequate security (security acceptable to the Board) is not posted. During the oral portion of the hearing, Talisman indicated that the Board, as opposed to the surety, could have the discretion to choose among these options. Talisman emphasized that its proposed form of surety bond was a draft and that the terms of the bond could be changed, for example, if the Board did not wish a surety to hold a tendering process on the Board's behalf or, if the Board preferred, to insert a clause allowing the surety to pay out the amount under the bond.

Talisman indicated that enabling the bond to be terminated on notice by the surety was required. It noted that the surety's appetite for risk may change or the principal may find a more suitable surety arrangement with cheaper premiums. Talisman indicated that if notice was given, and no substitute security suitable to the Board was provided, the Board has the right to forfeit the surety bond and demand payment. Talisman indicated that the NEB, as obligee, is the only party that is required to approve the cancellation of the bond. Talisman added that the surety has no ability to cancel this bond for non-payment of premium.

Talisman noted that sureties are subject to regulation by the Office of the Superintendent of Financial Institutions (OSFI). They noted that surety companies are assessed through a rigorous process with various requirements and solvency tests that must be met.

Talisman pointed out that surety bonds have been used to meet regulatory obligations in some jurisdictions. Talisman provided the form of surety bonds used under environmental legislation in

Ontario and Alberta. It submitted that a surety bond is a suitable set-aside mechanism that meets the attributes of the RH-2-2008 Reasons for Decision.

Talisman noted that the surety bond would be preferable to a letter of credit for several reasons. Surety bonds are set up for the entire amount of the obligation, thereby avoiding expensive periodic renewals. Additionally, and more importantly in Talisman's view, surety bonds do not impact a company's financing facilities. Talisman submitted that surety bonds could provide the Board with particular benefits, including the possibility that the surety company will step in, arrange and pay to have the abandonment and remediation of the pipeline completed if a default occurs. Talisman added that one benefit of surety bonds is they would be less cumbersome than other mechanisms, as the original surety bond on file with the Board would remain in place and in effect. Endorsements, such as increases in the bond amount arising from a five-year review, could be added as required.

Kaiser indicated that a surety bond had some preferred qualities compared to a letter of credit. One appealing feature, for Kaiser, was that a letter of credit would reduce its credit availability by the amount the letter of credit provided. Posting a surety bond would not have that effect on its credit availability. Further, Kaiser indicated that posting the surety bond would allow Kaiser to bill its partners using its operating agreements for their respective shares of the bond premium, and provide abandonment coverage for all of its partners.

5.1.4 Materiality and Exemptions

Many Group 2 companies requested that the Board consider the materiality of their ACE in determining an appropriate set-aside mechanism. Domtar Inc. (Domtar) was of the view that there was minimal and perhaps no risk that the funds would not be available for abandonment. In Domtar's view, the remote instance that funds may not be available does not justify the administrative costs, time and effort to set up a special mechanism. Tundra Oil & Gas Limited (Tundra) and Minell expressed similar opinions.

Some companies suggested that the Board establish an absolute threshold, below which a company would be exempt from setting aside funds for abandonment. Shiha Energy Transmission Ltd. (Shiha) indicated that a material abandonment may be defined as an ACE in excess of two million dollars. Yoho Resources Inc. submitted that the Board should set a minimum threshold that is significantly higher than $50,000.

Other parties argued that the Board should set out a relative materiality threshold, whereby a company would be required to maintain certain ratios, and if it maintained those ratios, it would not set aside funds for abandonment. For example, Crescent Point Energy Corp. (Crescent Point) suggested that if a company's debt to cash flow was greater than 1.5:1, the company should then be required to provide the Board with an abandonment security deposit. Minell, Domtar and Tundra proposed a threshold whereby a company would be required to set aside funds for abandonment if its ACE exceeded $250,000 and one per cent of the company's annual capital budget. CNRL and Delphi Energy Corp. (Delphi) suggested companies with an ACE of above five per cent of the value of a company (that is, the company's market capitalization, where market capitalization is estimated as the 52 week low stock price multiplied by the outstanding shares (undiluted) at year end) would be required to backstop abandonment.

Talisman, Veresen, Encana and AltaGas provided submissions on the cost of implementation and annual administration fee associated with a letter of credit. These submissions indicated that the annual fee would be between 0.85 to 1.5 per cent. Talisman noted that the cost of implementation and annual administration fee applicable to a surety bond would be approximately 1.2 per cent of the face value of the bond.

CNRL submitted that while the attributes described in the RH-2-2008 Reasons for Decision are valid and appropriate for Group 1 companies, they are not appropriate for BC, Alberta, and Saskatchewan producers. Delphi also supported a different approach for producers as opposed to transporters. These companies submitted that the different business model of a producer results in the producer's ACE being less material relative to the financial strength of the company. CNRL also noted that pipelines owned by producers are generally for their own use (and therefore would be abandoned by the company).

5.1.5 Proposals made by Encana (Deep Panuke Pipeline), ExxonMobil, Many Islands Pipe Lines (Canada) Limited (Many Islands), Minnel, County of Vermilion River No. 24 Gas Utility

County of Vermilion River No. 24 Gas Utility (Vermilion River)

Vermilion River submitted that the only Board-regulated pipeline it operates is a small diameter low pressure natural gas line which provides service from Alberta to one residential customer and a bible camp in Saskatchewan. Vermilion River proposed to fund its ACE through its operational reserve. Vermilion River also noted that on 20 August 2013, the council of the County of Vermilion River passed a motion whereby the county would earmark $10,000 of its gas system replacement reserve for future abandonment and reclamation of county gas lines located in the province of Saskatchewan. According to Vermilion River, $10,000 would be enough to cover the abandonment of this pipeline.

Encana

For the Deep Panuke project, Encana proposed to rely on a $30 million letter of credit and insurance, both of which are in place with the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB) for the Deep Panuke project. Encana indicated that the purpose of these instruments is to fulfill financial responsibility obligations for both the production operations and abandonment phases of the facility. Encana was the view that the instruments currently provided to the CNSOPB cover and meet the intent of the RH-2-2008 Reasons for Decision; providing an additional letter of credit to the Board would essentially provide overlapping coverage. Encana provided the instruments on file with the CNSOPB for the Board's review.

ExxonMobil Canada Properties, as operator and on behalf of the Sable Offshore Energy Project (SOEP) joint venture parties (ExxonMobil Canada Properties, Shell Canada Energy, Imperial Oil Resources, Pengrowth and Mosbacher Operation Ltd.) (collectively, ExxonMobil)

ExxonMobil stated that the SOEP includes an offshore gathering pipeline and an onshore gas processing plant. With respect to offshore gathering pipeline, ExxonMobil submitted that financial instruments have been provided to the CNSOPB for, among other things, any cost or expenses incurred by or on behalf of the CNSOPB in properly terminating the work or activity and leaving the site in a condition satisfactory to the CNSOPB. These financial instruments include irrevocable letters of credit in the amount of $50 million and demand promissory notes or insurance in the amount of $70 million.

ExxonMobil noted that the memorandum of understanding between the NEB and the CNSOPB indicates that the CNSOPB is the lead agency in monitoring compliance during the construction, operation, decommissioning and abandonment or removal of offshore pipelines that are under the jurisdiction of both the NEB and the CNSOPB.

With respect to the onshore gas plant portion of the SOEP, ExxonMobil was of the view that the SOEP joint venture agreement fully addresses the abandonment responsibilities of each individual joint venture owner. In ExxonMobil's view, the joint venture agreement therefore provides the financial assurances of each of the owner-shippers for the abandonment of all SOEP facilities.

Many Islands

Many Islands indicated that it is a wholly-owned subsidiary of SaskEnergy Incorporated, a Saskatchewan provincially-owned crown corporation. By virtue of Many Islands being owned by SaskEnergy Incorporated, Many Islands was of the view that it is an agent of the crown (that is, the province of Saskatchewan). Many Islands submitted that its property thereby is owned by the province of Saskatchewan, and that the province has ultimate responsibility for the abandonment of any portion of Many Islands' pipeline. Accordingly, Many Islands proposed that SaskEnergy Incorporated file a parental guarantee to satisfy Many Islands' abandonment cost obligations.

Minell

Minell indicated that it is a wholly owned subsidiary of Manitoba Hydro. Minell stated that Manitoba Hydro is a Manitoba crown corporation with over $14 billion in assets, annual revenues typically in excess of $1.5 billion and with the vast majority of its debt guaranteed by the province of Manitoba.

5.1.6 Related Company Guarantee

Sunoco Pipeline LP (Sunoco) and TAQA North Ltd. (TAQA) proposed a letter of guarantee from their parent company. Domtar and Tundra first proposed a guarantee but subsequently requested that they be exempt from setting aside funds on the basis of materiality.

Sunoco and TAQA recognized that a parental guarantee is not a mechanism to collect or accumulate funds for abandonment; these companies would intend to complete abandonment using funds from ongoing operations.

According to Sunoco and TAQA, a letter of guarantee would provide assurance that abandonment obligations will be met. Sunoco stated that a guarantee is a contractual document which ties the applicant's abandonment obligation to its guarantor. Therefore, if the applicant failed to meet its abandonment obligations, the Board could request sufficient funding from its guarantor to meet the obligation. The liability of the parent company would be absolute and unconditional, and the guarantee would last for so long as the applicant was regulated by the NEB (and as long as the guarantee is required by the Board).

Sunoco and TAQA were of the view that their proposed parental guarantees were consistent with the Board's direction in the RH-2-2008 Reasons for Decision to allow regulated companies to submit different proposals based on the facts and circumstances of their particular facilities.

Sunoco submitted that a separate legal structure is required for funds to be managed by an independent third party and protected from misuse. In Sunoco's view, the initial and ongoing administrative costs for a separate structure would be unreasonably burdensome, given the immateriality of Sunoco's ACE. Further, Sunoco indicated that its financial strength and creditworthiness would provide assurance that the funds are at a low risk from creditors.

TAQA and Sunoco each provided a form of guarantee for the Board's consideration. These companies were also willing to provide information so that the Board could monitor the financial strength of their parent companies as well as the appropriateness of their parental guarantees. TAQA stated that its parental guarantee would be subject to regular internal reviews.

5.1.7 Licensee Liability Rating Proposals

CNRL, Delphi and Imperial Oil Resources proposed that the Board accept a license liability rating (LLR) mechanism for pipeline abandonment, similar to those in place in BC, Alberta and Saskatchewan. However, CNRL, Dephi, and Imperial Oil Resources later clarified that an LLR mechanism should only be required if the ACE is material.

According to Delphi and Imperial Oil Resources, there would be definite synergies and efficiencies in a proposed NEB plan that aligns with and builds upon existing provincial programs. Delphi and Imperial Oil Resources recommended that a ratio of one be used for a NEB LLR program.[37]

In CNRL's view, the companies that participate in provincial LLR programs should be provided the option to manage their NEB assets in an expanded parallel process. CNRL proposed that as long as a company's ratio stayed above two, no deposits should be required. If a company's ratio fell below two, it would be required to post a letter of credit for its ACE. Imperial Oil Resources and Delphi did not directly address the manner in which a NEB LLR program would include an orphan program. CNRL noted that under its proposal, the cost to abandon NEB-regulated pipelines would not be part of the provincial orphan programs. However, CNRL indicated that a ratio of two would be an appropriate threshold for a program, even if it is not backstopped by an orphan program.

With respect to protection from creditors, CNRL submitted that producers operating above a ratio of two would have enough assets to cover their liabilities. Moreover, even if these companies came under the care of a receiver, they are very likely to be sold as a going concern. If a company's ratio dropped below two, then the letter of credit would be protected from creditors. In CNRL's view, the process to access funds through a letter of credit is very simple and secure.

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[37] For example, under the Alberta LLR program, companies are required to maintain a ratio (referred to as the liability management rating, or LMR) of deemed assets to deemed liabilities at a level greater than one. Should the ratio fall below one, the company is required to post a deposit in the form of a letter of credit or cash. Any company that becomes defunct and cannot clean up its liability is deemed to be an orphan, and the industry-funded orphan well program does the clean-up. The orphan well fund is administered by the Alberta Oil and Gas Orphan Abandonment and Reclamation Association (OWA), a non-profit society incorporated under the *Societies Act* (Alberta). All companies within the LLR and OWA programs are invoiced based on their proportion of the total industry liability under the LMR program and the budget requirements of the OWA.

5.1.8 Trust Account

Veresen proposed to establish a segregated trust account administered by a trust company to set aside funds for abandonment. Veresen could not confirm whether the proposed trust account would result in the trust company taking legal title of the assets. Veresen added that its proposal was largely conceptual, but its understanding is that in the event that Veresen is insolvent, creditors would not have access to it.

Veresen was of the view that the trust account would ensure that funds would be protected from creditors because the funds would be held by the trust company and not commingled with Veresen's general corporate funds. Veresen proposed to be the beneficiary of the fund, except in the event of its insolvency, when the Board would become the beneficiary.

Veresen stated that under paragraph 67(1)(a) of the *Bankruptcy and Insolvency Act*, the property of a bankrupt company that is divisible among its creditors does not include funds contributed by the bankrupt and held in trust for the benefit of the trust's beneficiaries. Veresen submitted that this means that the trust funds will be protected from its creditors.

Veresen stated that in the event that the Board does not approve its proposal for a trust account, its alternative preference would be a letter of credit. However, with an ACE of approximately two million dollars, Veresen was of the view that a letter of credit would be economic only if it was not fully funded up front, but the coverage value escalated annually until it reached the ACE.

5.1.9 Other Mechanisms

Bonavista Energy Corporation (Bonavista)

Bonavista proposed an interest-bearing account. Bonavista stated that it will deposit into this account an amount of $5,300 per year for the next 40 years. Bonavista indicated that in the event that the Board is not satisfied with its proposal, it would be prepared to adopt the letter of credit mechanism as proposed by several other Group 2 companies.

Canadian-Montana Pipeline Co., Ltd. (Canadian-Montana)

Canadian-Montana indicated that funds are available via blanket capital and maintenance accounts, renewed each year. It stated that its annual blanket account funding is U.S. $1.25 million.

Crescent Point

Crescent Point proposed to set aside funds for abandonment through the use of its ARO fund. Crescent Point submitted that this fund is maintained in a separate bank account and is not commingled with its general corporate funds. Quarterly, Crescent Point contributes $0.40 per flowing barrel to the account. A formal authorization for expenditure process, which incorporates a series of review and approval stages, is required to access the funds. As an alternative, Crescent Point indicated that it would provide the Board with a letter of credit, if the Board was not satisfied with its proposal.

FortisBC Huntingdon Inc. (FortisBC)

FortisBC proposed to set up a trust bank account with its bank, where it would deposit monies collected for abandonment. The advantage of this approach, according to FortisBC, is that a trust bank account minimizes administrative costs, which FortisBC noted is critical given its small cost of service and the relatively small amount that it will cost to remove the pipeline. FortisBC indicated that the funds in the trust bank account would not be held in trust or by a third party. Further, FortisBC stated that the proposed trust account with a bank would not protect abandonment funds from creditors.

Keyera Energy Ltd. (Keyera)

Keyera submitted that its only NEB-regulated pipeline has been deactivated. Keyera indicated that it has plans to either sell or abandon the pipeline in the near future. However, it confirmed that it has not filed an abandonment application pursuant to section 74 of the NEB Act. Keyera initially proposed, given the relatively small amount and the current state of the pipeline, to fund abandonment internally. Keyera subsequently indicated that it is prepared to use a letter of credit based on its ACE to backstop its abandonment costs.

OMIMEX Canada Ltd. (Omimex)

Omimex proposed to open a segregated Canadian bank account to be used solely for the collection of abandonment funds. Omimex stated it will make yearly contributions over the operating life of the pipeline. Further, Omimex stated it will conduct regular reviews at least every five years in order to assess the amount of funds collected, and will regularly report to the NEB and its stakeholders regarding the abandonment funds as required.

ONEOK Rockies Processing Company (Canada) Ltd. (ONEOK)

ONEOK proposed to deposit funds into an escrow account with a reputable bank in the U.S. ONEOK was of the view that the escrow account meets most of the attributes suggested by the Board. The funds will only be disbursed pursuant to certain authorizations, thereby protecting them from misuse or use for a purpose other than abandonment. The funds will be subject to audit by the Board, and ONEOK will review the amount set aside at least every five years and report to the Board. ONEOK acknowledged that its proposed escrow account may not guarantee the creditor protection desired by the Board.

Penn West Petroleum Ltd. (Penn West)

Penn West was of the view that setting up a separate reclamation fund is not required because it can access cash, if needed, and it has a significant annual abandonment budget. Penn West indicated that its abandonment liabilities are settled through internally generated cash flows or through borrowings on its unsecured revolving credit facility. Penn West clarified that its revolving credit facility is unsecured with a four-year term ending 30 June 2016. Penn West has had this facility for a number of years and has continually been able to renew the facility.

Shell Canada Products Limited (Shell)

Shell stated that the normal process to ensure that funds are set aside for abandonment is the ARO process. Shell indicated that funding for the eventual abandonment of its Board-regulated pipelines will follow the same process. In the alternative, Shell stated that would provide a letter of credit should the Board deem it necessary.

Shiha

Shiha stated that its pipeline has been purged, but that it could be reactivated. Shiha submitted that after purging work is completed, the remaining balance of its ACE would be roughly $170,000. Shiha proposed that the funds required to complete the abandonment of the pipeline would come from the Shiha partnership through the normal course of business.

5.1.10 Missed Filings

Six companies failed to file a set-aside mechanism with the Board. These companies are Abitibi-Consolidated Company of Canada (Abitibi), Mid-Continent Pipelines Limited (Mid-Continent), DR Four Beat Energy Corp. (DR Four Beat), NuVista Energy Ltd. (NuVista),[38] Canada Border Services Agency (CBSA) and Portal Municipal Gas Company Canada Inc. (Portal). On 4 December 2013, the Board issued a letter to these companies indicating that the Board may impose a set-aside and collection mechanism on them as part of the MH-001-2013 Reasons for Decision. This letter can be found at Appendix X.

5.2 Views of the Board

5.2.1 Overview

In the Board’s view, a letter of credit and a surety bond can be appropriate set-aside mechanisms that meet the attributes of the RH-2-2008 Reasons for Decision. The question of whether any particular instrument is suitable depends on the terms of a particular letter of credit or surety bond proposed. To assist companies, the Board has set out a model letter of credit and model surety bond in Appendix XI and Appendix XII, respectively.

The Board does not approve any other set-aside mechanisms. Other mechanisms do not provide the Board with adequate assurance that the funds will be available in the future to pay for the safe and effective abandonment of a pipeline. All other proposals do not rely on an independent third party, whose financial strength is easily verifiable on a continuous basis, to provide security to pay for pipeline abandonment.

The Board has decided to exempt Many Islands, Minell and Vermilion River from the requirement to provide a set-aside mechanism because each of these entities is publicly owned.

The Board has decided to exempt Encana with respect to the Deep Panuke pipeline, and ExxonMobil with respect to the SOEP offshore pipeline only, from the requirement to provide a set-aside mechanism. The securities posted by these companies with the CNSOPB satisfy the Board that funds will be available to abandon these pipelines.

[38] On 9 May 2014, the Board approved the transfer of the Hayter-Eyehill pipeline (one of the two NEB-regulated pipelines currently owned by NuVista Energy Ltd.) from NuVista Energy Ltd. to Bow River Energy Limited.

The Board has decided to exempt Chief Mountain Gas Co-op Ltd. (Chief Mountain) and Twin Rivers Paper Company Inc. (Twin Rivers) from the requirement to provide a set-aside mechanism. Given the amount of these companies' ACE, the Board's view is that the risk of insufficient funds being available for the abandonment of these pipelines is very low. The Board has decided not to exempt any other companies on the basis of materiality.

The Board directs all Group 2 companies referred to in this chapter, other than the companies that are exempt, to file with the Board a letter of credit or a surety bond that is consistent with this decision by 31 December 2014.

All Group 2 companies referred to in this chapter, including the companies set out above, are required to make annual reports to the Board, as set out in Chapter 6. All Group 2 companies referred to in this chapter must also provide information about their set-aside mechanism on the company's website and to any interested landowners. This must include, at a minimum, the information set out in companies' annual reporting to the Board, as set out in Appendix XV. Landowner communications are further discussed in Chapter 6.

5.2.2 Letter of Credit

The Board is satisfied that a letter of credit can be a suitable set-aside mechanism that meets the attributes set out in the Board's RH-2-2008 Reasons for Decision, provided that the letter of credit is consistent with the follow terms:

- Beneficiary: The beneficiary must be identified as "Her Majesty the Queen in Right of Canada as represented by the National Energy Board";
- Duration: The letter of credit must automatically renew on an annual basis (on 1 January each year) without notice or amendment, and without a maximum number of renewals;
- Issuer: The issuer of the letter of credit must be a Canadian chartered bank set out on Schedule 1 to the *Bank Act*;
- Access to funds: The full amount of the letter of credit must be payable to the beneficiary on demand upon presentation of the letter of credit at the bank's main Calgary branch;
- Notification: The beneficiary must be notified by fax and registered mail (to the attention of the Secretary of the Board) at least 60 days before the letter of credit may be cancelled or not renewed. Upon notification the beneficiary must be entitled to draw the entire amount of the letter of credit; and
- Additional terms: The letter of credit must be irrevocable, non-transferable and non- assignable, and must be subject to the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits (2007 revision).

It is the Board's opinion that a letter of credit, consistent with these terms, provides a suitable backstop for a pipeline company's obligation to pay for the cost to abandon its pipelines safely and effectively. Appendix XI sets out a model letter of credit.

Having a Schedule 1 Canadian chartered bank as the issuer provides the Board with adequate assurance of counterparty strength. The Board understands that OSFI regulates the financial integrity of Schedule 1 Canadian chartered banks such that the risk that these financial institutions would be unable to meet their obligations under a letter of credit is reduced. Moreover, because a Canadian chartered bank is at arm's length or independent from the pipeline company, the risk associated with both the bank and pipeline company having financial difficultly at the same time is mitigated.

The Board understands that it could contact the issuing financial institution to confirm the terms and current value of the letter of credit because it would be the beneficiary of the letter of credit. It would also have physical possession of the document.

It is necessary for a letter of credit to automatically renew without notice or amendment, and without a maximum number of renewals. Further, it is the Board's view that a letter of credit must be conditioned to require the issuing bank to notify the Board at least 60 days in advance if it does not intend to renew a pipeline company's letter of credit. It is the Board's view that the concerns raised by the Joint Applicants are mitigated by these provisions. If an issuing bank notifies the Board that it will not renew the letter of credit, then the Board can draw it down.

The Board is satisfied that it is appropriate for a pipeline company with multiple pipeline systems, such as AltaGas and CNRL, to provide a single letter of credit in an amount that is equal to, or exceeds, the total value of that pipeline company's abandonment cost estimate for all of its NEB-regulated pipelines. The Board is satisfied that a single letter of credit will adequately provide a backstop to abandonment obligations and would be administratively simpler and more cost efficient than having the same applicant issuing multiple letter of credits.

5.2.3 Growing letters of credit

The Board has not been persuaded that a growing letter of credit is an appropriate set-aside mechanism at this time. The Board is of the view that growing letters of credit put abandonment funding at greater risk than fully-funded letters of credit because they leave a larger portion of the ACE unfunded during the coverage period. For pipeline companies with growing letters of credit, it may be difficult to cover the remaining balance of the ACE if they were to run into financial difficulty.

The Board acknowledges that the collection plans for most of the trusts approved in this proceeding provide growing coverage. Growing letter of credit coverage may appear similar; however, there are differences. Funds held in trust are assets, dedicated to be used for abandonment, while a letter of credit is an extension of credit from a third party. The backstop value of the letter of credit is significantly diminished if it is not fully funded because it may require a further extension of credit at a time when a pipeline company may be in financial difficulty.

The extra cost of a fully funded letter of credit compared to a growing letter of credit is not material for companies in good financial standing. The Board is willing to consider the question of partial coverage at the next review.

5.2.4 Surety Bond

Talisman and Kaiser have persuaded the Board that a surety bond can be an appropriate set-aside mechanism that meets the attributes of the RH-2-2008 Reasons for Decision provided that the surety bond has terms consistent with the following:

- The surety must be regulated by OSFI;
- The obligee must be the "Her Majesty the Queen in Right of Canada as represented by the National Energy Board";
- The term of the bond must be indefinite. The bond may have a form of evergreen provision that automatically renews the bond unless notice of termination is given;
- The bond must be terminable by the surety providing 60 days' notice, with the obligee then having a further 60 day period to make a written demand of the surety;
- The bond must be structured as an on demand instrument. This may be accomplished by requiring the surety to pay the bond amount upon receiving a written demand of the obligee consistent with the form of bond provided to the Ontario Minister of the Environment under Part XII of the *Environmental Protection Act* (Ontario);
- The bond must reference the underlying regulatory obligations of the principal. For pipeline abandonment, the bond should reference the NEB Act, RH-2-2008 Reasons for Decision, the Board document approving the pipeline company's cost estimate, and the MH-001-2013 Reasons for Decision; and
- The surety may fulfill its obligations under the bond by: (i) remedying the default, (ii) completing the pipeline company's abandonment obligations, or (iii) paying the bond balance to the Board. If these options are set out in the bond, then the Board must have the discretion to choose among them.

The Board notes that the form of bond required by the Ontario Minister of the Environment is consistent with most of these terms. Appendix XII sets out a model surety bond.

It is the Board's view that having a surety company regulated by OSFI provides the Board with adequate assurance of counterparty strength such that the risk that a surety company would be unable to meet its obligations under a surety bond is reduced. Moreover, because a surety company is at arm's length or independent from a pipeline company, the risk associated with both the surety and pipeline company having financial difficultly at the same time is mitigated.

The Board is cognizant of the differences between surety bonds and letters of credit. The Board recognizes that a surety bond may not be as cash-like in nature as a letter of credit. However, the Board has mitigated this risk by requiring the surety bond to be an on demand instrument and by requiring pipeline companies to file their proposed form of surety bond for Board review.

5.2.5 Materiality and Requests for Exemptions

Materiality

With two exceptions, the Board has decided not to exempt companies on the basis of materiality.

Many pipeline companies asking for an exemption argued that the cost of abandonment was immaterial to them, suggesting that funds to pay to abandon a pipeline would be available when needed. The Board recognizes that this submission may, for the majority of pipeline companies, turn out to be correct. However, the Board cannot predict whether any particular company will have sufficient funds to abandon its pipeline. The question of whether a particular expense is material to a company has the potential to change over time.

The Board has considered the submissions on materiality and determined that it is necessary for companies to have appropriate mechanisms in place for abandonment funding, recognizing that this may result in additional cost. Safe and effective pipeline abandonment can only be accomplished if money is available to pay for abandonment activities.

It is the Board's opinion that the additional cost imposed on pipeline companies for providing a set-aside mechanism does not outweigh the public interest in having funds available to safely and effectively abandon a pipeline. Many pipeline companies argued that the entire cost to abandon a pipeline is immaterial. It follows that the cost of providing a set-aside mechanism to pay for abandonment must also be immaterial for these companies. Considering the immaterial nature of the cost of a set-aside mechanism, and the significant public interest in having funds available, the Board has decided not to exempt companies from providing a set-aside mechanism on the basis of materiality.

The Board is open to the alternatives to a surety bond or letter of credit. In the RH-2-2008 Reasons for Decision, the Board stated that pooling, as a general method of setting aside the full costs of abandonment, would not be prudent at that time, given the tasks to be accomplished under the Action Plan. However, the Board recommended not foreclosing on the possibility of implementing pooling mechanisms or contingency planning. In the Board's view, there is merit in considering such mechanisms. The Board has not dismissed the possibility of other industry-lead solutions, particularly for companies with smaller to mid-sized ACEs. Companies may wish to develop and propose an alternative method for setting aside or backstopping the costs of pipeline abandonment in time for the next review of their set-aside mechanisms in about five years, or earlier if warranted.

Exemptions

The Board has decided to exempt Chief Mountain and Twin Rivers from the requirement to provide a set-aside mechanism. The ACEs of these companies are $450 and zero dollars, respectively. It is the Board's view that the risk of insufficient funds being available for the abandonment of these pipelines is very low and, if that risk materialized, the cost to the public of incurring these abandonment costs is also very low.

In deciding to exempt these companies, the Board reiterates what it has stated in the past, that it does not subscribe to the concept of elimination of risk. As the Board stated in the RH-2-2008 Reasons for Decision, at some point on the continuum of possible risks, a point of diminishing returns is reached, where the cost of trying to eliminate all risk is out of proportion to the incremental benefits that might result.

The Board notes that, if Chief Mountain's or Twin Rivers' circumstances change, for example, if the value of their ACE increases as a result of acquiring additional NEB-regulated facilities, they may be required to set aside funds in the future.

The Board has decided that Many Islands, Minell and Vermilion River are not required to set aside funds for pipeline abandonment. Minell and Many Islands are wholly-owned subsidiaries of crown corporations of the Provinces of Manitoba and Saskatchewan, respectively. Vermilion River is owned by the County of Vermilion River. Each of these entities is publicly owned such that the risk that funds will not be available to safely and effectively abandon their pipelines is low.

The Board will not require ExxonMobil, in respect of the SOEP offshore pipeline, and Encana, in respect of the Deep Panuke pipeline, to set aside funds for pipeline abandonment. The security currently in place with the CNSOPB for these facilities provides assurance that the abandonment obligations related to these facilities will be adequately funded.

The Board will require ExxonMobil to set aside funds for the SOEP onshore plant. In the Board's view, the SOEP joint venture agreement does not provide adequate assurance that abandonment funds will be available for the onshore gas plant at the time of decommissioning or abandonment. The Board also approves Encana's proposal to file a letter of credit for the Tupper-Hythe and Mid-Tupper pipelines, as discussed above.

Although these companies are exempt from providing a set-aside mechanism, they must comply with the reporting requirements set out in Chapter 6 of this Decision.

5.2.6 Related company guarantee

The Board finds that a guarantee from a company related to a pipeline company is not an appropriate set-aside mechanism. A related company guarantee does not provide the Board with adequate assurance of counterparty strength. The Board recognizes that the financial capability of the related company may be acceptable at this time, but there is no way to ensure that this will be the case in the future when the funds are required. Safeguards proposed such as internal monitoring and reporting to the Board on the parent's creditworthiness are insufficient to protect against a sudden downturn in the related company's financial capability. Nor does a related company guarantee reduce the risk that the financial integrity of the related company and the pipeline company could be in jeopardy at the same time. Unlike a Schedule 1 Canadian chartered bank or a surety company, a related company is not independent of the pipeline company and not regulated by OSFI.

The Board is not persuaded by the argument that establishing a set-aside mechanism that is controlled by an independent third party would be unreasonably burdensome. Many companies in this proceeding noted that the costs associated with these instruments were relatively low. It is the Board's view that the public's interest in having funds available to abandon a pipeline outweighs the cost of providing a set-aside mechanism and therefore it is reasonable to require all companies to provide an appropriate set-aside mechanism.

5.2.7 Licensee Liability Rating Proposals

The Board has not approved companies' proposals to use LLR-type program to fund pipeline abandonment. An LLR-type program does not adequately provide assurance that funds will be available. Unlike the provincial LLR programs for oil and gas wells which are backstopped by orphan well funding, the proposed LLR-type program does not, at this time, have any backstop. The proposed LLR-type programs would rely on the company having the financial capability to post security if the company's rating fell below a certain level. This arrangement requires a company to provide funds or to post security at precisely a time when it would be difficult to do so – when its financial condition is deteriorating. With no orphan pipeline fund to backstop abandonment costs, the Board is of the view that this proposal increases the risk that funds will not be available to safely abandon a pipeline.

If an orphan pipeline fund or an equivalent industry fund did exist, the Board is of the view that a LLR-type program could be an appropriate way to ensure that funds are available for pipeline abandonment, particularly for upstream companies with significant assets. The Board encourages companies or their trade associations to pursue the necessary legislative changes to create such a fund.

5.2.8 Trust Account

The Board is not persuaded that the trust account mechanism proposed by Veresen will protect pipeline abandonment funds from creditors. Veresen's submissions relied on paragraph 67(1)(a) of the *Bankruptcy and Insolvency Act.* Paragraph 67(1)(a) of the *Bankruptcy and Insolvency Act* does not protect funds contributed by Veresen to a trust from Veresen's creditors. That paragraph protects Veresen's funds from the trust company's creditors if the trust company were insolvent. Veresen failed to explain how its proposed trust account would result in a trust relationship between Veresen and the trust company such that the funds would be protected from Veresen's creditors.

5.2.9 Other Mechanisms

Other mechanisms proposed in this proceeding do not provide adequate assurance that funds will be available at the time of abandonment. Proposals made by Penn West, Keyera, Shiha and Shell rely on future cash flows from operations to finance abandonment. Because funds will not be set aside in a separate, segregated account, that is protected from the pipeline company's creditors or from misuse, the Board was not persuaded funds will be available.

Mechanisms proposed by Bonavista, Canadian-Montana, Omimex, ONEOK, Crescent Point and FortisBC fail for similar reasons. Although these mechanisms give funds to third parties, the funds are not protected from creditors of the company. If funds are not adequately protected from creditors there is no assurance that they will be available to fund pipeline abandonment in the future.

5.2.10 Missed Filings

Abitibi, Mid-Continent, DR Four Beat, NuVista, CBSA and Portal did not file set-aside mechanisms. Many other companies filed their proposed set-aside mechanisms well past the deadline for doing so.

Companies must comply with Board decisions by the deadline set by the Board. Compliance with Board orders is not optional. The Board will consider taking further enforcement action as necessary to obtain compliance.

Abitibi, Mid-Continent, DR Four Beat, NuVista, CBSA and Portal must file a letter of credit or surety bond that is consistent with this decision in the amount of their respective ACE. These pipeline companies must file their letter of credit or surety bond with the Board by 31 December 2014.

Chapter 6

Next Steps

With the issuance of these Reasons for Decision, the Board's Action Plan has been completed. This chapter deals with the next steps resulting from these Reasons. As stated in its 4 March 2010 letter, the Board expects the abandonment funding process will continue to evolve beyond the time frame for the Action Plan.

Most companies will be required to make several filings to comply with this decision. In many cases, toll filings will also be necessary. These filings are summarized in Appendix XIII. Other filings will be required in time for the next review of companies' set-aside and collection mechanisms. Finally, companies will be required to regularly report on the funds being set aside for pipeline abandonment or on the status of their set-aside mechanism. Companies should review the relevant chapters and appendices of this decision for a full understanding of the Board's decision as it relates to them.

6.1 Compliance Filings (in accordance with this decision)

6.1.1 Companies Using a Trust

Companies using a trust to set aside funds for pipeline abandonment must file, for approval, a trust agreement consistent with this decision. They will also be required to file a SIPP and any other related investment documents. Certain companies, such as M&NP, Emera, Union and St. Clair, must also file an updated investment strategy, if they use a trust to set aside funds. For clarity, if Group 2 companies that proposed to use a trust to set aside funds for pipeline abandonment decide to use a letter of credit or surety bond, they must notify the Board by 2 September 2014.

The Board has approved most companies' collection proposals, and has made specific directions or determinations for companies whose collection proposals have been denied. Many of the assumptions used in the calculation of the annual contribution amount, and any associated toll impacts, have yet to be finalized. The Board will require companies, whether they are collecting abandonment funds from shippers, or self-funding these costs, to provide information regarding their annual contribution amount to the Board.

Companies Self-Funding

Companies that are self-funding will be required to provide to the Board their annual contribution amount, and the assumptions used in the calculation of this amount. Companies' annual contribution amounts must be calculated in accordance with the form set out in Appendix XIV. The Board directs these companies to submit this form to the Board by 31 December 2014. Companies are further directed to re-submit this form whenever they revise their annual contribution amount. In addition, companies that are self-funding are directed to contribute to their trusts on an annual basis, such that the contributions will be captured in regular annual reporting (as discussed below).

Companies Collecting Abandonment Funds from Shippers

Group 1 and Group 2 companies collecting abandonment funds from shippers are directed to make revised tariff applications or filings, which incorporate their annual contribution amount and any toll impacts, starting 17 November 2014 and no later than 5 December 2014. The Board further directs these companies to:

1) Notify all interested persons of their tariff application or filing, and include the following in their notification to interested persons: "By way of the MH-001-2013 Reasons for Decision, the Board directed companies to advise that any interested persons may file comments with the Board about this filing within 14 calendar days of the date of this filing";
2) Include the form in Appendix XIV in the tariff application or filing;
3) Make transparent in the tariff application or filing how the toll or surcharge allowing for the recovery of abandonment costs is calculated and how variances are addressed; and
4) Confirm in the tariff application or filing that shippers have been notified, and indicate whether any concerns were raised.

Companies must comply with the above direction in all future tariff applications or tariff filings which have the effect of adjusting the annual contribution amount or altering the toll impacts resulting from the collection of abandonment costs. Any such application or filing must be made 30 days before the implementation date of a new tariff. The tariff application or filing must account for variances between forecast and actual amounts collected or the return on amounts invested (for example, through a deferral account). It must also include and explain the assumptions used to determine the new annual contribution amount.

For clarity, Group 1 companies require Board approval of their revised tariff, which sets out their revised tolls, or toll surcharge, and any true-up mechanism that they are proposing. Group 2 companies are regulated on a complaint basis and therefore do not require approval of their revised tariffs. However, to the extent that a Group 2 company proposes a true-up mechanism for managing variances (for example, a deferral account), they are required to obtain Board approval pursuant to paragraph 60(1)(a) of the NEB Act.

Group 1 and Group 2 companies collecting funds from shippers are directed to put funds in their trusts at the same frequency with which those funds are collected from shippers. For example, if a pipeline company collects abandonment funds from shippers on a monthly basis, the pipeline company is required to contribute those funds to their trust on a monthly basis.

6.1.2 Companies Using Mechanisms that are not Trusts (Letter of Credit, Surety Bond) or other exceptions approved by the Board

Unless otherwise exempt, all companies that are not using a trust to set aside abandonment funds are required to file, for the Board's approval, a letter of credit or a surety bond consistent with this decision by 31 December 2014. This includes companies such as Union, NCCL and Genesis, which initially proposed a trust mechanism, but are now of the view that either a letter of credit or surety bond would be more appropriate.

Minell, Many Islands, Vermilion River, Chief Mountain and Twin Rivers are not required to set aside funds for their NEB-regulated pipelines. Encana is not required to set aside funds for the Deep Panuke Pipeline and ExxonMobil need not set aside funds for the offshore SOEP facilities.

6.2 Filings for the Future Board Reviews

In the RH-2-2008 Reasons for Decision, the Board indicated that the process and mechanism for setting aside funds for abandonment should have regular reviews. The Board has already directed companies using trusts to update their SIPP to include a de-risked phase for the next review. As set out below, the Board also requires companies to, in time for the next review, submit a preliminary abandonment funding plan and to review their collection mechanism assumptions, annual contribution amounts and variances in collection.

The Board indicated in the RH-2-2008 Reasons for Decision that regular reviews would occur at least every five years. However, the Board anticipates that reviews could occur more often, if warranted. For example, the Board may review the amounts collected by a company, and the assumptions underlying the amounts collected more frequently if the company's pipeline is nearing the end of its useful life.

The Board further notes that a company's ACE and set-aside and collection mechanisms may not be reviewed all at once. For example, reviews of certain aspects of a company's mechanism may occur at different times. The Board will consider and announce the preliminary framework on the timing of the review process after compliance with this decision has concluded.

6.2.1 Governance and Planning

In this proceeding, parties indicated that they plan to institute governance practices relating to deposits into trusts. The Board expects companies to carry through on their plans to document governance practices. The Board will adapt the scope of NEB audit practices to include a NEB-regulated company's policies and practices related to their trust funds.

Governance practices are one component of a systematic approach to pipeline abandonment required by the National Energy Board *Onshore Pipeline Regulations*, which all pipeline companies are required to follow. Those regulations require all NEB-regulated pipeline companies to establish, implement and maintain a management system that, among other things, integrates a pipeline company's operational activities with its management of financial resources to meet its obligation to abandon its pipeline system. A systematic approach requires a pipeline company to have a documented organizational structure that sets out accountabilities, roles and responsibilities in relation to pipeline abandonment.

Companies' management of financial resources includes the proactive management of their obligations relating to the set aside and collection of abandonment funds. The *Onshore Pipeline Regulations* require pipeline companies to, as part of their management system, establish and implement a process for, among other things:

- Regular review of objectives and targets required to meet companies' obligations to abandon a pipeline (assumptions would be refined as more detailed plans and assessments are developed);
- Identifying and managing any change that could affect pipeline abandonment, including financial aspects of pipeline abandonment (for example, changes to the assumptions underlying pipeline abandonment such as various pipeline segments or sets of facilities that may be abandoned on different timelines);
- Evaluating and managing the risks associated with, among other things, the financial aspects of pipeline abandonment;
- The internal and external communication of information relating to pipeline abandonment; and
- Identifying the documents required for the pipeline company to meet its obligation to abandon a pipeline.

The Board recognizes that companies may be in the early stages of managing the setting aside and collection of funds to pay for pipeline abandonment. Further guidance from the Board may be provided to assist companies with respect to the above-noted processes.

6.2.2 Landowner Communication

Chapters 2 and 3 discussed the role of landowners and other stakeholders in companies' set-aside mechanisms. As stated in these chapters, the Board finds companies' approaches to landowner communication to be inadequate.

The Board expects companies to create specific landowner communication tools regarding their collection and set-aside mechanisms. Such tools will allow for greater transparency in respect of companies' set-aside mechanisms, and will also further facilitate consultation with landowners. At a minimum, any communication to landowners would include the information set out in section 6.3 of this chapter. This information should be regularly available, in a timely manner, to landowners (for example, on the company's website). The Board strongly encourages companies to consult with landowners in the design of any communication tools that are developed with respect to abandonment funding.

In the MH-001-2012 Reasons for Decision, the Board reiterated that consultation is required throughout all phases of a pipeline's life cycle, including abandonment. Consistent with that decision, as well as the systematic approach referred to above, the Board suggests that companies develop a comprehensive plan for communication and consultation with landowners for abandonment and abandonment funding.

6.2.3 Abandonment Funding Plans

The evidence in this proceeding suggests that, for a significant number of pipeline systems, abandonment activities for different components may be undertaken on different timelines. Many companies confirmed that it is a reasonable assumption that they will not be retiring their entire systems at one time.

The Board is of the view that companies should actively be managing risks such as the potential for set-aside mechanisms to be under-funded when cash-flow needs arise. The collection of funds on a straight-line basis may not be suitable in many cases, as pipeline systems face a number of variables which may influence the timing and cost of abandonment activities. The Board recognizes the inherent uncertainty in determining abandonment timelines for different components of a system. However, this uncertainty does not absolve companies of their responsibility to identify and manage risk.

It is the Board's view that risks of this nature can be partially mitigated through the development of an abandonment funding plan. An abandonment funding plan would estimate abandonment timelines as well as the company's cash needs for abandonment activities. The Board directs Group 1 pipeline companies to file preliminary abandonment funding plans in time for the next Board review. A company's preliminary funding plan must include:

(a) Preliminary timelines for abandonment activities;

(b) Preliminary plans for drawing on the funds, including cash needs;

(c) A preliminary forecast of the annual balance of funds to be set aside each year; and

(d) In circumstances where abandonment activities are not anticipated prior to the end of the collection period, adequate market information to justify the use of the same collection period for all components of the system.

The Board recognizes that for some Group 1 companies, such as Keystone, an abandonment funding plan may be based on abandonment occurring as a one-time event. The Board also recognizes that for more complex pipeline systems, preliminary abandonment funding plans may not necessarily reflect how abandonment ultimately occurs. The abandonment funding plans will be refined through the Board's review process. However, if a company's circumstances change, the Board expects that the company would revise its funding plan.

The Board also expects Group 2 companies to plan for the timing of abandonment activities for any sections of their facilities that could cease service on separate timelines. Therefore, the Board directs Group 2 companies to file their preliminary abandonment funding plans the next time the Board holds a review. The level of detail in the funding plan should be commensurate with the complexity of the Group 2 pipeline and the size of its ACE.

6.2.4 Reviews of Annual Amount Set aside

The Board intends to review, periodically, the annual amount that is being set aside by companies. This includes companies' annual contribution amounts, and variances in collection and/or collection mechanism assumptions. As part of these reviews, the Board will be assessing each company's calculations supporting their annual contribution amounts, including assumptions underlying their

ACE, collection period, and the net after-tax real return on the funds collected. Companies' analysis in respect of this information should be set out in the filings made the next time the Board holds a review.

The Board also expects companies to provide an explanation of the basic role the pipeline plays within energy markets, as well as relevant and current supply and demand information explaining how the pipeline's operation would be economically underpinned over a proposed collection period. This information should also include any current or plausibly foreseeable risks that could reduce demand for transportation services on the pipeline. This information should be commensurate with the size and amount of economic risk associated with the pipeline.

Pipeline companies are ultimately responsible for the costs of abandonment and for ensuring that appropriate funds are estimated, collected and set aside for such purposes. If there is a change in circumstances between Board-mandated reviews that materially affects the amount required to be collected, then the company must revise their annual contribution amount. The company must not wait until the Board's next review. If there is significant risk that adequate funds will not be set aside, the Board may, on its own initiative, require further coverage of any unfunded future costs through a secondary mechanism (for example, a letter of credit for the unfunded balance).

If a change occurs that materially affects the amount of funds being collected or how they are collected, shippers or other interested persons may complain. This includes significant changes to the pipeline company's tolling methodology as suggested by the Ontario LDCs. The person complaining must justify their complaint and support it with evidence.

6.3 Regular Reporting

6.3.1 Companies using Trusts to Set aside Funds

The Board requires pipeline companies to file annual audited financial statements of the trust as proposed by the Joint Applicants. Trust financial statements must include, at a minimum, the information contained in the illustrative schedules shown at Appendix G to the Joint Application. The trust financial statements must also include an Independent Auditors Report. In addition, the Board is of the view that pipeline companies must explain variances between actual and forecast contributions to the trust and return on funds invested.

The Board has provided a form set out in Appendix XV that companies must use to provide this information to the Board on an annual basis, by 31 January each year. This information must also be communicated to relevant external stakeholders, including shippers, and interested landowners and municipalities.

6.3.2 Other Companies

All other companies are required to file the form set out in Appendix XVI. This includes companies that the Board did not require to file a set-aside mechanism for abandonment funding. The Board expects this filing to be made annually, by 31 January each year.

Appendix I

List of Issues

List of Issues

The Board has identified but does not limit itself to the following issues for discussion in this proceeding.

Set-aside mechanisms

The Board will consider the reasonableness of the proposed set-aside mechanisms for all phases of the abandonment process, in light of the principles and attributes set out in the RH-2-2008 Reasons for Decision and the Board's 4 March 2010 letter. This includes:

1. **The characteristics of the proposed set-aside mechanisms, including:**
   a) How funds are accessed;
   b) The way in which funds are segregated (asset-specific);
   c) What roles and responsibilities are assumed by stakeholders;
   d) What is the appropriate investment policy for the funds, including factors such as:
      i) The risk and return objective of the policy; and
      ii) The cash flow needs required to fund the costs of abandonment.
   e) What accounting treatment should be used for the funds, and what are the implications for the facility owner;
   f) How the proposed mechanisms are administered (including how administration expenses are paid for); and
   g) The implications of the proposed mechanism's tax treatment.
2. **How funds are separated from the facility owner's general corporate funds, including:**
   a) How the funds are protected from being used for purposes other than abandonment; and
3. **How the funds are protected from creditors. How the proposed mechanisms provide for regulatory oversight, including:**
   a) The reporting guidelines for the proposed mechanisms;
   b) The manner in which the proposed mechanisms will be subject to audit; and
   c) The manner in which proposed mechanisms provide for the involvement of stakeholders.
4. **The suitability of the proposed set-aside mechanisms, considering the total abandonment cost estimate and the financial capacity of the facility owner.**

Collection Mechanisms

The Board will consider the reasonableness of the proposed collection mechanisms, in light of the principles set out in the RH-2-2008 Reasons for Decision and the Board's 4 March 2010 letter. This includes, but is not limited to:

1. **The reasonableness of the collection period, given:**
   a) the future utilization of the pipeline (supply, demand, service interruptions, etc.); and
   b) the timing of abandonment (i.e. some components may come out of service before others).
2. **The reasonableness of the assumptions made for determining the rate of accumulation of funds for abandonment, including return on funds collected and the proposed management of taxes.**
3. **For pipeline companies charging tolls, reasonableness of the proposed collection, given:**
   a) the source of funds (i.e. whether shipper sourced or pipeline company sourced); and
   b) the allocation of costs among shippers and toll design, if applicable.
4. **The reporting required, including:**
   a) form and process (public reporting, disclosure to stakeholders, etc.);
   b) content (earnings, taxes, administrative fees, accumulated balance, etc.); and
   c) when and how exemptions from reporting might be given.
5. **The circumstances where the collection mechanisms will require updating.**

Appendix II

List of Participants

Group 1 Companies

Alliance Pipeline Ltd.
Enbridge Pipelines Inc.
Enbridge Pipelines (NW) Inc.
Foothills Pipe Lines Ltd.
Kinder Morgan Cochin ULC
Maritimes & Northeast Pipeline Management Ltd.
NOVA Gas Transmission Ltd.
Trans Mountain Pipeline ULC
TransCanada Keystone Pipelines GP Ltd.
TransCanada PipeLines Limited
Trans Québec & Maritimes Pipeline Inc.
Trans-Northern Pipelines Inc.
Westcoast Energy Inc., carrying on business as Spectra Energy Transmission

Group 2 Companies

1057533 Alberta Ltd.
2193914 Canada Limited
6720471 Canada Ltd. (an ATCO Energy Solutions Company)
Abitibi-Consolidated Company of Canada
AltaGas Holdings Inc. for and behalf of AltaGas Pipeline Partnership
Apache Canada Ltd.
ARC Resources Ltd.
Bellatrix Exploration Ltd.
Bonavista Energy Corporation
Canadian Border Services Agency
Canadian-Montana Pipeline Company, Ltd.
Canadian Natural Resources Limited
Centra Transmission Holdings Inc.
Corporation Champion Pipe Line Limitée
Chief Mountain Gas Co-Op Ltd.
ConocoPhillips Canada Limited
County of Vermilion River No. 24 Gas Utility
Crescent Point Energy Corp.
Delphi Energy Corp.
Devon Canada Corporation
Domtar Inc.

DR Four Beat Energy Corp.
Emera Brunswick Pipeline Company Ltd.
Enbridge Bakken Pipeline Company Inc. on behalf of Enbridge Bakken Limited Partnership
Enbridge Pipelines (Westspur) Inc.
Enbridge Southern Lights GP Inc. on behalf of Enbridge Southern Lights LP
Encana Corporation
Enerplus Corporation acting on behalf of the Enerplus Partnership
Express Pipeline Ltd.
ExxonMobil Canada Properties
FortisBC Huntingdon Inc.
Genesis Pipeline (Canada) Ltd.
Glencoe Resources Ltd.
Husky Oil Operations Limited
Imperial Oil Resources
ISH Energy Ltd.
Kaiser Exploration Ltd.
Keyera Corp.
Lone Pine Resources Canada Ltd.
Many Islands Pipe Lines (Canada) Limited
Mid-Continent Pipelines Limited
Minell Pipelines Ltd.
Montreal Pipe Line Limited
Murphy Oil Company Ltd.
Niagara Gas Transmission Limited
Northern Blizzard Resources Inc.
NOVA Chemicals (Canada) Ltd.
NuVista Energy Ltd.
Omimex Canada Ltd.
ONEOK Rockies Processing Company (Canada) Ltd.
Pembina Energy Services Inc.
Pengrowth Energy Corporation
Penn West Petroleum Ltd.
Pine Cliff Energy Ltd.
Plains Midstream Canada ULC
Portal Municipal Gas Company Inc.
Pouce Coupé Pipe Line Ltd.
Ruger Energy Inc.
Shell Canada Products Limited
Shiha Energy Transmission Ltd.
Souris Valley Pipeline Limited
Spectra Energy Empress Management Inc.
Spectra Energy Midstream Canada L.P.
Spyglass Resources Corp.
St. Clair Pipelines Management Inc.
Strategic Transmission Ltd.
Sunoco Logistics Partners Operations GP LLC obo Sunoco Pipeline LP

Sun-Canadian Pipe Line Company Limited
Talisman Energy Inc.
Tamarack Valley Energy Ltd.
TAQA North Ltd.
Terra Energy Corporation
Tundra Oil & Gas Limited
Twin Rivers Paper Company Inc.
Union Gas Limited
Vantage Pipeline Canada ULC
Vector Pipelines Limited Partnership
Veresen Energy Infrastructure Inc.
Yoho Resources Inc.

Intervenors

Association of Power Producers of Ontario
Canadian Association of Petroleum Producers
Kiskatinaw Pipeline Landowner Association
Manitoba Pipeline Landowners Association
Union des producteurs agricoles

Alberta Northeast Gas Limited
AltaGas Holdings Inc.
Boise White Paper, L.L.C.
BP Canada Energy Group ULC
Canadian Natural Resources Limited
Cenovus Energy Inc.
Centra Gas Manitoba Inc.
Enbridge Gas Distribution Inc.
Encana Corporation
Goreway Station Partnership
Minnesota Energy Resources Corporation
Repsol Energy Canada Ltd.
Resolute Forest Products Inc.
Talisman Energy Inc.
Tenaska Marketing Canada, a division of TMV Corp.
Union Gas Limited
York Energy Centre LP

Alberta Department of Energy

Commentors

ISH Energy Limited

Appendix III

Procedural Directive No. 7

File OF-AF-SAC 01
24 January 2014

To: All parties to MH-001-2013 Hearing Order

Hearing Order MH-001-2013
Procedural Directive No. 7
Set-aside and collection mechanism Filings
Final Argument

This letter provides guidance for final argument to the persons identified in this letter.

Previous guidance
In previous procedural directives, the Board has set out issues which certain Group 2 Applicants should address.[1] Group 2 Applicants should refer to the relevant procedural directives to determine what issues should be addressed in their final argument.

Related company guarantee
Group 2 Applicants proposing that a related company provide a guarantee, or parties opposing such a guarantee, should address cancellation and renewal of the guarantee in their final argument.

Joint Applicants'[2] trust set-aside mechanism
The Joint Applicants, or any person relying on the record as it relates to the trust set-aside mechanism proposed by the Joint Applicants, including parties opposing such a mechanism, should address the following issues in their argument:

1. The role, if any, of landowners in the proposed trust, including mechanisms to assist them in staying informed with respect to funding of the trust.

[1] See National Energy Board, Procedural Directive No. 2, issued 28 November 2013 (A55572); Procedural Directive No. 3, issued 9 December 2013 (A55800); Procedural Directive No. 4, issued 17 December 2013 (A56035); Procedural Directive No. 6, issued 10 January 2014 (A56333).

[2] The Joint Applicants are Alliance Pipeline Ltd., Enbridge Pipelines Inc., Enbridge Pipelines (NW) Inc., Foothills Pipe Lines Ltd., Kinder Morgan Cochin ULC, Maritimes & Northeast Pipeline LP, NOVA Gas Transmission Ltd., Trans Mountain Pipeline ULC for Trans Mountain Pipeline L.P., Trans Québec & Maritimes Pipeline Inc., TransCanada Keystone Pipeline GP Ltd., TransCanada PipeLines Limited, Trans-Northern Pipelines Inc., and Westcoast Energy Inc., carrying on business as Spectra Energy Transmission.

2. The degree of involvement the Board or other stakeholders should have regarding the Statement of Investment Policy and Procedure (SIPP), including whether the Board should review, approve, or otherwise impose constraints on the SIPP, allowable investments, asset classes, or investment objectives.

3. The degree of involvement the Board or other stakeholders should have regarding the trust documents, including whether the Board should review or approve the trust documents, or any amendments to them, and what, if any constraints should be imposed by the Board.

4. Whether the Board should be a party to the trust agreements and reasons describing why or why not.

5. The extent to which allowing the beneficiary to control investments is appropriate in light of the RH-2-2008 Reasons for Decision and any other legal principles, or whether the Board should require pipeline companies to adopt a different approach.

6. Whether the Board should accept an arrangement where the beneficiary has sole discretion to remove and appoint the trustee. Provide detailed reasons.

7. Whether the Board should accept an arrangement where the beneficiary and the trustee have wide discretion to amend the trust documents. Provide detailed reasons.

8. A position, based on the record of this proceeding, identifying the person or entity to which surplus funds would revert once post-abandonment activities have been completed or are fully funded, and the legal basis for this position. If the position is taken that, at this time, it is not necessary for the Board to determine where surplus funds should revert, an explanation as to whether or not designating a person or entity is legally required.

9. An explanation as to whether companies are able to choose the law applicable to the trust. As part of their explanation, parties should compare and comment upon statements about choice of law in evidence, with any legal authorities referenced.

10. If the position is taken that companies are able to choose the law applicable to their trust, an explanation as to whether the Board should allow companies to choose the law of a jurisdiction that has not abolished the rule against perpetuities. Parties should indicate whether the law applicable to the trust must be the law of the jurisdiction where the trust is resident for taxation purposes.

11 If the position is taken that companies must choose the law of a jurisdiction that has not abolished the rule against perpetuities, a description, based on the record of this proceeding, as to what mechanism will be used to ensure that:

   a. The rule against perpetuities is not violated; and

   b. The abandonment funds continue to be held in a set-aside mechanism that is protected from creditors of the pipeline company.

12. An explanation as to why the proposed trust is protected from creditors of the beneficiary, including specific references to the common law, and, if applicable, provisions of the *Bankruptcy and Insolvency Act* and/or the *Companies' Creditors Arrangement Act*. As part of

their explanation, parties should compare and comment upon statements about creditor protection made in the evidence with the legal authorities referenced.

13. A detailed explanation as to whether the Joint Applicants' proposal results in:
    a. A valid qualifying environmental trust under the relevant provisions of the *Income Tax Act* (particularly, with regard to ability for the trust to borrow, and disburse funds to the pipeline for administrative, tax and other expenses other than abandonment); and
    b. A trust that is adequately protected from creditors of the beneficiary.

    The above explanation should address any of the relevant characteristics the Joint Applicants' proposed trust mechanism, and in particular:

    a. The ability of the trustee and beneficiary to amend the trust documents without Board approval;
    b. The ability of the beneficiary to terminate the appointment of a trustee and replace the trustee without Board approval; and
    c. The ability of the beneficiary to access the trust funds, including, but not limited to, access for reasonable expenses.

14. If the Board were to determine that the trust structure filed by Souris Valley Pipeline Limited was a reasonable set-aside mechanism, an explanation, based on the record of this proceeding, indicating which clauses would require modification if it were to apply to other pipeline companies. It is insufficient to simply claim that the pipeline company's requirements are different from Souris Valley Pipeline Limited without specifying how those differences affect the trust documentation.

15. If the Board were to determine that a trust is a reasonable set-aside mechanism, a description of what process steps are appropriate after the issuance of the Reasons for Decision in respect of this hearing.

In addition, Enbridge Pipelines Inc. and Enbridge Pipelines (NW) Inc. should provide a detailed description of how a fiduciary duty would be imposed on the Board, including to whom the Board would owe such a duty, if the Board were to require approval of SIPPs, or amendments to them.

Other trust set-aside mechanisms[3]

Parties, such as Souris Valley, have proposed a trust set-aside mechanism that does not rely on or that differs from the Joint Application. These parties, as well as any parties opposing them, may wish to address the above points only insofar as they have not been dealt with in their evidence. These parties should, in brief, focus their argument on any specific issues that arise out of their proposal.

Deadline for argument and the order for reply

The Board will hear final direct argument from all parties in writing. Direct argument must be submitted electronically to the Board by **4:30 p.m. (Calgary time) on 5 February 2014**. Parties are reminded that hardcopies of their final argument should be provided to the Board immediately after electronic filing.

Reply argument will take place orally in the Board's hearing room commencing at **9:00 a.m., Calgary time, on 19 February 2014**. The Board requires the Joint Applicants to attend oral reply argument irrespective of whether a party opposes their application. Intervenors that wish to provide reply argument may participate in person or electronically, by telephone or webex. To participate electronically, contact Carrie Randall at 403-299-3714 or toll-free at 1-800-899-1265 by **12 February 2014**.

The order and format for oral reply argument will be determined and communicated by the Board before 19 February 2014. Parties should be mindful that reply argument is not intended to supplement, repeat or reframe a party's written direct argument. The Board will read all written direct argument in advance. Parties need not repeat arguments that have already been presented to the Board by another party; they should indicate that they agree with and adopt those prior arguments. In this regard, the Board notes that it has reserved only one day for reply argument.

Should you have questions about this letter, please contact Parvez Khan, Board Counsel at 403-299-3933 (Parvez.Khan@neb-one.gc.ca) or Helen Gitersos, Board Counsel at 403-299-3145 (Helen.Gitersos@neb-one.gc.ca) or toll-free at 1-800-899-1265.

Yours truly,

for
Sheri Young
Secretary of the Board

[3] This does not include parties which have proposed trust accounts.

Appendix IV

Principles and Attributes – RH-2-2008

Principles

1. It is in the public interest that all pipelines regulated by the NEB be abandoned safely and effectively.

2. Pipeline companies are ultimately responsible for the full costs of constructing, operating and abandoning their pipelines, and the Board will hold the regulated company responsible for these costs.

3. The Board regulates using a goal-oriented, risk-based lifecycle approach; it does not subscribe to the concept of elimination of risk.

4. Landowners will not be liable for costs of pipeline abandonment.

5. At this time, the use of pooling as a general mechanism for setting aside funds to cover the costs of abandonment is not efficient from a regulatory or economic perspective.

6. Timing of abandonment of a pipeline for the purpose of estimating future abandonment costs should be the shorter of anticipated economic life or physical life.

7. The removal of all large-diameter abandoned pipe from agricultural land is not a prudent or effective approach for the purpose of establishing preliminary abandonment cost estimates.

8. Abandonment costs are a legitimate cost of providing service and are recoverable upon Board approval from users of the system.

9. Funds for abandonment costs should be collected and set aside in a transparent manner.

10. Funds for abandonment costs should not be collected as part of depreciation and should be a separate element of cost of service.

11. Any funds set aside for abandonment must be held in such a manner that they can only be used for the purposes of abandonment and abandonment planning.

12. The Board, as an independent and quasi-judicial tribunal, does not promote the development of tax policies or initiatives.

Attributes

1. Funds must be maintained in a segregated account and not be commingled with a company's general corporate funds;
2. Funds must be managed by an independent, third party;
3. Funds collected must be protected from creditors;
4. Funds must be protected from misuse or use for a purpose other than abandonment;
5. Regular reviews (at least every five years) of the amount of funds set aside and disbursed from the segregated account must be incorporated, and regular reporting to the Board and stakeholders must be built in;
6. Funds must be segregated by pipeline;
7. Funds must be subject to Board audit, as appropriate;
8. Companies must develop a sound investment policy for abandonment funds as ultimately, accountability for the collection and governance of the funds rests with each pipeline company; and
9. The process for accessing the funds must be clearly set out in the mechanism.

Appendix V

List of Group 2 Companies Proposing a Trust Set-aside mechanism

2193914 Canada Limited
Centra Transmission Holdings Inc.
Corporation Champion Pipe Line Limitée
Emera Brunswick Pipeline Company Ltd.
Enbridge Bakken Pipeline Company Inc. on behalf of Enbridge Bakken Limited Partnership
Enbridge Pipelines (Westspur) Inc.
Enbridge Southern Lights GP Inc. on behalf of Enbridge Southern Lights LP
Express Pipeline Ltd.
Genesis Pipeline (Canada) Ltd.
Montreal Pipe Line Limited
Niagara Gas Transmission Ltd.
NOVA Chemicals (Canada) Ltd.
Pembina Energy Services Inc.
Plains Midstream Canada ULC[39]
Pouce Coupé Pipe Line Ltd.
Souris Valley Pipeline Limited
Spectra Energy Empress Management Inc. as GP and agent for Specta Energy Empress LP
Spectra Energy Midstream Canada Partner Corporation
St. Clair Pipelines Management Inc.
Union Gas Limited
Vector Pipeline Limited Partnership

39 Plains submission includes the Aurora Pipeline System, which is owned by Aurora Pipeline Company.

Appendix VI

Indicative Terms

Indicative Terms for Companies proposing Qualifying Environmental Trusts to Set aside Pipeline Abandonment Funds

1. <u>Legal Characteristics of the Trust</u>

The trust must be irrevocable. All contributions made by the pipeline company (Company) are irrevocable and cannot revert to the Company unless otherwise set out in these Indicative Terms.

The trust agreement (Agreement) must require the Company to make contributions which on an annual basis are equivalent to: (i) the Annual Contribution Amount (if using a surcharge); (ii) the dollar amount of the line item in the pipeline company's revenue requirement (if collecting funds through the revenue requirement); (iii) the annual amount determined pursuant to Appendix XIV of the MH-001-2013 Reasons for Decision (if self-funding on an annual basis); or (iv) the entire present value of the ACE (if self-funding upfront).

2. <u>Qualifying Environmental Trust</u>

The Agreement must expressly set out that the parties' intentions are for the Agreement to constitute a qualifying environmental trust as defined in subsection 211.6(1) of the *Income Tax Act*, as amended. The Agreement must also state that the parties will ensure that no actions are taken which would jeopardize the status of the trust as a qualifying environmental trust.

The money contributed to the trust and all interest and returns from investing this money (the Fund) must be invested in qualified investments, as defined in the *Income Tax Act* (Qualified Investments). The Agreement must also include a Schedule which sets out the list of qualified investments under the *Income Tax Act* that are permissible for the trust at that time.

3. <u>Parties</u>

The Board, individual members of the public (including Aboriginal groups) and associations are not parties to the Agreement.

The settlor/contributor is the Company holding the NEB certificate or order allowing it to operate the pipeline system required to be abandoned in the future.

The trustee must be a trust company regulated under the *Trust and Loan Companies Act* (Trustee). A listing of companies regulated under the *Trust and Loan Companies Act* can be found on the website of the Office of the Superintendent of Financial Institutions.

The Agreement should define the beneficiary or beneficiaries as the person or persons, including the Company, having reclamation obligations in respect of the NEB-regulated pipeline system (Beneficiary or Beneficiaries).

4. Change of Parties: Trustee

Upon execution of the Agreement, a Trustee must be appointed by the Company. The Company must obtain approval of the Board prior to this appointment. If the Trustee subsequently resigns or is removed, the subsequent trustee must be appointed by the Company, and the Company must obtain Board approval prior to the appointment.

The appointed Trustee may resign by written notice to the Company. Alternatively, if the Trustee is convicted of an offence involving dishonest conduct, becomes insolvent with the appointment of a receiver or is in bankruptcy proceedings, or is dissolved or in liquidation, the Company, with the approval of the Board, can appoint an interim Trustee.

The process for appointment of a new trustee must clearly be set out in the Agreement. For example, the Agreement could include a clause stating that following the termination of the initial Trustee's appointment, the initial Trustee will continue to hold the Fund (and all documents, information, and books and records created, received or maintained relating to the performance of the Trustee under the Agreement) in trust. The initial Trustee is then required by the Agreement to provide the Fund and all associated documents to the new Trustee once the new Trustee is appointed by the Company, with the approval of the Board.

5. Amendments

The Trustee and the Beneficiary may agree to amendments of the Agreement, including all schedules. However, all amendments to the Agreement, including schedules, must be approved by the Board before they are effective.

6. Control over Investments

The Trustee is responsible for receiving, holding, investing and releasing the Fund. The Trustee must control and hold the Funds and have complete control of the Fund's investment management. The Trustee has full discretion to invest the Fund in Qualified Investments.

The Trustee may appoint agents and employ or retain legal counsel, accountants, appraisers or other experts or advisors that are reasonably required. This includes appointing and retaining any of the Trustee's affiliates or subsidiaries to assist in the investment of the Fund. The Trustee has the ability, at its absolute discretion (subject to the Agreement), to act or rely upon any opinion or advice given by these agents, experts and advisors.

Any investment manager that is appointed to manage the Fund's assets must be appointed by the Trustee, not the Company. However, the Trustee may consult with the Company on the investment of the Fund. The Agreement should contain any additional powers required for the Trustee to carry out this role.

7. **Access**

a) Circumstances for Access

Subject to Section 8, the Fund is to be used for the sole purpose of satisfying the reclamation obligations of a Beneficiary. Reclamation obligations must be defined as:

i. the duty to carry out the physical abandonment, decommissioning or deactivation of the pipeline, including costs incurred to satisfy any conditions imposed by the Board in any order or direction approving the decommissioning or deactivation of the pipeline or granting leave to abandon the pipeline;

ii. the duty to develop an abandonment plan, and to prepare an application for leave to abandon or for approval of the deactivation or decommissioning of the pipeline; and

iii. the duty to carry out post-abandonment monitoring and remediation of the pipeline where post-abandonment refers to the period of time after a Company has satisfied the conditions of an order or direction issued by the National Energy Board granting leave to abandon;

and all costs incurred and consequent thereon.

(Reclamation Obligations)

The terms “abandon”, “abandonment”, “decommission”, “decommissioning”, “deactivate” and “deactivation” must be defined in the Agreement by adopting the relevant definitions contained in the *Onshore Pipeline Regulations*, as amended.

b) Mechanics of Access

Access to the Fund for the Reclamation Obligations of a Beneficiary, including the precise amount of the Fund to be released, is subject to the Board’s determination on the facts of the particular case before it. Money in the Fund can be released, upon Board approval, either to a Beneficiary or to a third party designated by the Board, as set out below.

(i) Release of Money to Beneficiary

Money must be released by the Trustee to a Beneficiary for the Reclamation Obligations referred to under “Circumstances for Access”, above, upon presentation of:

(a) a written direction or order from the Board which confirms the amount to be disbursed and the timing of the disbursement; and

(b) a certificate of an officer of the Beneficiary referred to above confirming that it is not in default and that, to the officer’s knowledge, the Beneficiary will not suffer default within a year following the date of the certificate of the officer.[1]

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[1]. “Default” must be defined as: an event where the Beneficiary (1) ceases to carry on business; (2) becomes insolvent or commits any act of bankruptcy; (3) files or suffers a petition for bankruptcy being filed by or against the Beneficiary; (4) makes any proposal to or seeks arrangement with the Beneficiary’s creditors; (5) makes an assignment for the benefit of creditors; (6) appoints or suffers the appointment of a receiver in respect of its property and/or assets; or (7) has or suffers proceedings being commenced (voluntarily or involuntarily) for the liquidation, dissolution or winding up of itself.

(ii) Release of Money to Third Party

Money must be released to a third party designated by the Board for the purposes of funding the discharge of a Beneficiary's Reclamation Obligations upon presentation of a written direction or order from the Board which confirms the amount to be disbursed and the timing of the disbursement.

8. Trustee Remuneration and Administrative Expenses

If permitted by the *Income Tax Act*, as amended, the Fund may be accessed by the Trustee, without approval of the Board, for remuneration of the Trustee, expenses incurred by the Trustee and payment of taxes owing by the trust. However, the Company must ensure that the Agreement allows for contributions to be made which cover the costs associated with such a reimbursement.

The Fund cannot be accessed, by the Company, or any Beneficiary, or the Trustee, for any expense incurred by the Company or a Beneficiary that is related to the administration of the trust. This includes, but is not limited to, investment management, regulatory, audit, accounting and legal expenses. In addition, the trust cannot make distributions to the Company or Beneficiary to pay for taxes owed by the Company or any other person (other than the Trustee).

While all expenses and taxes incurred by the Company in relation to the administration of the trust may be legitimate costs of providing service (and potentially can be recovered through the Company's revenue requirement or abandonment surcharge), they may not be recovered out of the trust.

9. Surplus

The Trustee has the discretion to distribute any surplus, or any part of the surplus, existing after all Reclamation Obligations are discharged among the class of beneficiaries or to an orphan pipeline fund.[2]

10. Choice of Law, Term and Termination of the Trust

The law governing the trust will be the law of a jurisdiction to which the trust has a real and substantial connection. If the trust has a real and substantial connection to more than one jurisdiction, and included is a jurisdiction that has abolished the rule against perpetuities (in both its common law and modified form), the Company must select the jurisdiction that has abolished the rule. In this case, there will be no specific term for the trust and the approval of the Board is required to terminate the trust. For example, if the trust has a real and substantial connection to Québec and Ontario, the choice of law must be Québec, and there will be no specific term for the trust.

Companies with trusts that have a real and substantial connection to either New Brunswick or British Columbia must, pursuant to the those provinces' *Conflict of Laws Rules for Trusts Act*,[3]

[2] An "orphan pipeline fund" is defined as a not-for-profit organization to be established pursuant to a statute of the Parliament of Canada whose purpose includes paying for the cost to Abandon a pipeline constructed or operated under a statute of the Parliament of Canada.

[3] 2012 R.S.N.B, c. 102 and 1996 R.S.B.C. 1996, c. 65, respectively.

respectively, select the law of one of Saskatchewan, Manitoba, Québec or Nova Scotia to govern the trust.

Companies with trusts whose governing law is either Alberta or Ontario must ensure that their trusts do not violate the modified rule against perpetuities in effect in those jurisdictions. The trust agreement must require that, no earlier than five years prior to the expiration of the perpetuity period:

(a) The trustee, with the approval of the Board, pay the funds held in trust to the company (provided that the Company is not in default);[4] and

(b) The Company covenants, upon receipt of the funds, to immediately establish and contribute the funds to a new trust, which would have the same purpose and terms and conditions as the original trust.

11. <u>Sale</u>

The Agreement must allow for the Trustee to release monies from the Fund if the Board approves the sale, transfer or other disposition of the Pipeline or a portion of it from the Company to another person.

12. <u>Review of the Agreement</u>

The Agreement must be reviewed at least every five years or earlier if directed by the Board.

[4] "Default" must be defined as described in footnote 1.

Appendix VII

Model Trust Agreement

THIS TRUST AGREEMENT made as of the _____ day of ___________________, 2014.

BETWEEN:

[NAME OF TRUST COMPANY], a licensed trust company with an office located in the City of XX in the Province of [*enter city and Province where Trustee is located*],

[*abbreviated name of trust company*]

AND:

[NAME OF NEB-REGULATED PIPELINE COMPANY SETTLING AND CONTRIBUTING TO THE TRUST], a corporation incorporated under [*specify what laws the company is incorporated* under],

[*abbreviated name of pipeline company*]

WHEREAS [*abbreviated name of pipeline company*] holds the regulatory authorization allowing it to operate the pipeline described in Schedule “A” to this trust agreement;

AND WHEREAS [*abbreviated name of pipeline company*] is subject to regulation by the National Energy Board under the *National Energy Board Act* (Canada) [*or the Canada Oil and Gas Operations Act, if applicable*];

AND WHEREAS on 26 May 2009 the National Energy Board issued the RH-2-2008 Reasons for Decision, which required each person holding an authorization to operate a pipeline under the *National Energy Board Act* (Canada) or the *Canada Oil and Gas Operations Act* (Canada) to file a proposed process and mechanism to set aside funds to pay for the reclamation obligations in respect of the sites in Canada used for the operation of a pipeline;

AND WHEREAS on 12 March 2013, the National Energy Board issued the MH-001-2013 Hearing Order, establishing how it would consider each set-aside mechanism proposed;

AND WHEREAS on XX, the National Energy Board ordered [*insert abbreviated name of the pipeline company*] to set aside funds using a trust structure to pay for the reclamation obligations in respect of the sites in Canada used by [*abbreviated name of the pipeline company*] for the operation of the pipeline described on Schedule “A” to this trust agreement;

AND WHEREAS in satisfaction of the requirements imposed by the National Energy Board, [*abbreviated name of the pipeline company*] has created a trust the fund of which will be used to accumulate funds to meet the discharge of its reclamation obligations for the sites in Canada used by [*abbreviated name of the pipeline company*] for the operation of the pipeline described on Schedule "A" to this agreement;

AND WHEREAS [*abbreviated name of the trust company*] has agreed to hold the reclamation funds in accordance with the terms and conditions of this trust agreement;

NOW, THEREFORE, THIS TRUST AGREEMENT WITNESSETH that in consideration of the promises and of the mutual covenants herein contained, it is hereby mutually covenanted, agreed and acknowledged by and between the parties hereto that any property contributed by [*abbreviated name of the pipeline company*] to [*abbreviated name of the trust company*] under this trust agreement shall be held by [*abbreviated name of the trust company*] in trust on the terms set out herein.

ARTICLE 1: DEFINITIONS

1.01 In this trust agreement, the following words or phrases have the following meanings:

a) "**Abandon**" and "**Abandonment"** have the meaning set out in the definition of "abandon" in the *Onshore Pipeline Regulations* (Canada), as amended from time to time;

b) "**Agreement**" means this instrument, as amended from time to time, which instrument is the vehicle for the trust here created;

c) "**Annual Contribution Amount**"

[*Insert definition if the pipeline company is collecting money through a toll surcharge.*]

means the amount collected annually to pay for the future cost to Abandon the pipeline described in Schedule "A" to this Agreement;

[*If amounts for pipeline abandonment are recovered through a line item in the pipeline company's revenue requirement, or are self-funded, then strike this definition and do not use it in section 2.02 of this Agreement.*]

d) "**Beneficiary**" and "**Beneficiaries**" mean the person or persons, including the "company" (as defined hereafter), having, while entitled to benefit from the "fund" (as defined hereafter), "reclamation obligations" (as defined hereafter), in respect of the "site" (as defined hereafter);

e) "**Business Day**" means any day except a Saturday, Sunday or a statutory holiday in the Province of [*Enter province*];

f) "**Company**" means the person holding the regulatory authorization(s) for the time being to operate the pipeline described in Schedule "A" to this Agreement;

g) "**Company's Notice of Termination**" has the meaning set out in section 3.04 of this Agreement;

h) "**Deactivate**" and "**Deactivation**" mean the same thing as the definition of "deactivate" in the *Onshore Pipeline Regulations* (Canada), as amended from time to time;

i) "**Decommission**" and "**Decommissioning**" mean the same thing as the definition of "decommission" set out in the *Onshore Pipeline Regulations* (Canada), as amended from time to time;

j) "**Default**" has the meaning set out in section 4.05 of this Agreement;

k) "**Fund**" means collectively: (i) all amounts held from time to time by the "trustee", (as defined hereafter), in accordance with this Agreement, including any amounts paid to the "trustee" (as defined hereafter) under any section of this Agreement, and (ii) any interest or return from investing such amounts;

l) "**Fund Property**" has the meaning set out in section 3.03 of this Agreement;

m) "**NEB Act**" means the *National Energy Board Act* (Canada), as amended from time to time;

n) "**New Trust Fund**" has the meaning set out in section 2.05 of this Agreement (if applicable);

[*This definition is to be removed if the law applicable to the trust is one which has abolished the rule against perpetuities.*]

o) "**Orphan Pipeline Fund**" means a not-for-profit organization to be established pursuant to a statute of the Parliament of Canada whose purpose includes paying for the cost to Abandon a pipeline constructed or operated under a statute of the Parliament of Canada;

p) "**Pipeline**" means the pipeline described in Schedule "A" to this Agreement;

q) "**Qualified Investments**" means all or any of those investments that from time to time are qualified investments for a "qualifying environmental trust" as defined in the *Income Tax Act* (Canada), and for greater certainty, such qualified investments on the date hereof include only those types of property described in paragraphs [*enter the applicable paragraph numbers from section 204 of the Income Tax Act*] of the definition of "qualified investment" in section 204 of the said Act that are not encompassed within the definition of "prohibited investment" in subsection 211.6(1) of the said Act as more particularly set out in Schedule "B";

r) "**Reclamation Obligations**" means:

   i) the duty to carry out the physical Abandonment, Decommissioning or Deactivation of the Pipeline, including costs incurred to satisfy any conditions imposed by the tribunal (as defined hereafter) in any order or direction approving the Decommissioning or Deactivation of the Pipeline or granting leave to Abandon the Pipeline;

   ii) the duty to develop an Abandonment plan, and to prepare an application for leave to Abandon or for approval of the Deactivation or Decommissioning of the Pipeline; and

   iii) the duty to carry out post-abandonment monitoring and remediation of the "site" (as defined hereafter), where post-abandonment refers to the period of time after a Company has satisfied the conditions of an order or direction issued by the tribunal (as defined hereafter) granting leave to Abandon;

and all costs incurred and consequent thereon.

s) "**Site**" means the location or locations in Canada used by a company for the operation of the Pipeline;

t) "**Tax Act**" means the *Income Tax Act* (Canada), as amended from time to time;

u) "**Tribunal**" means the National Energy Board, a board established under the NEB Act or any successor administrative body having authority to regulate the Company in respect of the operation and Abandonment of the Pipeline;

v) "**Trust**" means the relationship between a "trustee" (as defined hereafter) and a Beneficiary or Beneficiaries, including the obligations of the "trustee" (as defined hereafter) towards the Beneficiary or Beneficiaries both personal and with regard to the Fund, and the corresponding rights of a Beneficiary, whether those obligations and rights are created at law or by the terms of this Agreement;

w) "**Trustee**" means a trust company licenced under the *Trust and Loan Companies Act* (Canada) for the time being appointed under this Agreement to hold the office of trustee; and

x) "**Trust Term**" or "**Term**" shall have the meaning set out in section 2.05 of this Agreement.

[*The definition of Trust Term is to be deleted if the law applicable to the trust is the law of a jurisdiction that has abolished the rule against perpetuities.*]

ARTICLE 2: CREATION OF THE TRUST

2.01 Qualifying Environmental Trust:

It is the express intention of the parties hereto for the Trust settled under this Agreement to constitute a "qualifying environmental trust" as defined in subsection 211.6(1) of the Tax Act, as amended or replaced from time to time. This Agreement shall be read and interpreted in light of and consistently with the definition or "qualifying environment trust" in the Tax Act, and the Company, Beneficiaries and Trustee shall ensure that no actions are taken which would jeopardize the status of this Trust as a "qualifying environmental trust".

2.02 The Trust: initial transfer and contributions

The Company settles the Fund irrevocably upon the Trustee, to be administered upon the terms and subject to the conditions set out in this Agreement. In furtherance of the foregoing, the Company agrees to transfer to the Trustee, on an annual basis, an amount equivalent to

[Insert: (i) the Annual Contribution Amount (if using a surcharge); (ii) the dollar amount of the line item in the pipeline company's revenue requirement (if collecting funds through the revenue requirement); (iii) the annual amount determined pursuant to Appendix XIV of the MH-001-2013

Reasons for Decision (if self-funding on an annual basis); or (iv) the entire present value of the ACE (if self-funding upfront).

2.03 The Trust: discretionary as to two or more beneficiaries

The Fund is held by the Trustee on trust for one or several Beneficiaries, the Trustee having a power to appoint among the Beneficiaries at discretion from the Fund responding at the time of payment to the then existing Reclamation Obligations of each Beneficiary. The Trustee may make payment to or for the benefit of the appointed Beneficiary, that is, either to the Beneficiary, or to a person or persons named by the Tribunal to conduct work in the reclaiming of the Site. Before making any discretionary payment the Trustee must receive the approval of the Tribunal at discretion to the payment, which approval will cover both the reclamation need being addressed and that person or those persons that are instructed to carry out the reclamation.

2.04 The Trust: appropriation of surplus funds

If property remains in the Fund after all Reclamation Obligations of the Beneficiaries are discharged, then the Trustee, with the approval of the Tribunal, may distribute the Fund or any part thereof among any of the Beneficiaries and Orphan Pipeline Fund as the Trustee in its sole discretion sees fit.

2.05 The Trust: duration (or term) of the Trust

[*In the case where the jurisdiction selected has abolished the rule against perpetuities*]*:* This Agreement shall have no specific term but shall commence on the date first mentioned above and shall continue until terminated in writing by the Company, with the approval of the Tribunal.

OR

[*In the case where the jurisdiction selected has not abolished the rule against perpetuities*]*:* This Agreement terminates (the "**Trust Term**") no later than the expiration of 21 years after the date of death of the last surviving lineal descendent of Queen Elizabeth II who was alive on the date the Trust is created, or in the case of Ontario, Alberta, British Columbia, the Northwest Territories, the Yukon, and Nunavut, upon the expiration of the period permitted by the perpetuities or perpetuity legislation respectively of those jurisdictions. Not more than five years prior to the expiration of the Trust Term, and provided that the Company is not in Default, the Trustee shall pay the Fund to the Company, and the Company covenants upon receipt of the Funds, to establish, at once, a new irrevocable trust upon the terms and subject to the same conditions set out in this Agreement ("**the New Trust Fund**"), and to contribute to the New Trust Fund the entirety of the Fund.

ARTICLE 3: APPOINTMENT, RESIGNATION, AND REMOVAL OF A TRUSTEE

3.01 Appointment

The Company has the power to appoint a Trustee, with the approval of the Tribunal. The Trustee, and any replacement Trustee, on accepting such appointment agrees to act as Trustee of the Fund in accordance with the terms and conditions of this Agreement.

3.02 Resignation

A Trustee desiring to resign the office shall in writing notify the Company 30 days prior to the intended resignation date and during this period the Company, as provided in section 3.01, shall appoint a replacement Trustee with the approval of the Tribunal. The replacement Trustee shall take title or possession of the Fund and Fund Property without delay.

3.03 Obligation of Trustee upon termination

Following termination of the Trustee's appointment and subject to its rights hereunder, the Trustee shall continue to hold in trust:

(a) the Fund; and

(b) all documents, information, and books and records created, received or maintained by the Trustee which relate to or arise or have arisen in connection with the performance by the Trustee of its duties hereunder (collectively hereinafter referred to as the "**Fund Property**").

3.04 Removal

(a) If the Company delivers a written notice ("**Company's Notice of Termination**") to the Trustee specifying the intent to terminate the appointment of the Trustee hereunder, then in such a circumstance, such appointment shall terminate on the 30th day following the date that the Company's Notice of Termination was received (or was deemed to have been received) by the Trustee.

(b) A Trustee shall cease to hold the office of Trustee if convicted of an offence involving dishonest conduct, becomes insolvent with the appointment of a receiver or is in bankruptcy proceedings, or being a corporation that is dissolved or in liquidation. With the approval of the Tribunal the Company shall appoint an interim corporate Trustee regulated under the *Trust and Loan Companies Act* (Canada), as amended from time to time. The predecessor Trustee, upon receipt of payment for any outstanding amount for its services and expenses then unpaid, shall transfer, deliver and pay over to such successor Trustee, the Fund and all Fund Property on deposit with or in the possession of such predecessor Trustee hereunder. The interim Trustee will take title to the Trust Fund, and take possession of all assets deposited with the predecessor Trustee, and secure the same. The interim Trustee is entitled to call for and receive all Trustee contributions that are due, accounting to a permanent replacement Trustee when such is appointed.

ARTICLE 4: THE DUTIES AND POWERS OF THE TRUSTEE

4.01 Responsibilities of the Trustee

The duties and obligations of the Trustee shall be determined solely by the law and the provisions of this Agreement, and accordingly the Trustee shall be responsible only for the performance of such duties and obligations.

4.02 Trustee Receipt of Funds

(a) The Company may, from time to time, deliver or cause to be delivered to the Trustee funds constituting regular contributions, and all such funds so delivered shall be received by the Trustee and held in a trust account upon the terms and conditions herein set forth, only to be disbursed or dealt with in accordance with the terms hereof.

(b) The Trustee shall be solely responsible for all funds delivered to it.

4.03 Investment of Fund

(a) The Trustee will invest and maintain the Fund invested in authorized (or qualified) investments for qualifying environmental trusts under the terms of the Tax Act.

(b) The Trustee will have and be vested with the power to retain, invest or reinvest, any cash, funds or property constituting the whole or any part of the Fund in Qualified Investments that the Trustee will in its absolute discretion consider advisable including, without limitation, any Qualified Investments that are deposits, investment products or obligations issued or administered by the Trustee or its affiliates, or by any one of more of its affiliates or subsidiaries, notwithstanding that such investments may not be investments authorized by law for trustees or that it may be considered a delegation of its investments duties.

Optional, to be used if a delegate of trustee does investing:
The Trustee is authorized to delegate investment to a manager, and thereto the Trustee may appoint and retain [*enter name of trustee affiliate*] or any of its affiliates or subsidiaries, or any successors thereof, or any corporation with which [*name of affiliate*] has amalgamated or as a result of any reorganization has become a part thereof, to assist in the investment and reinvestment of the Fund, and to exercise any powers or functions relating to the investment and reinvestment of such assets in such manner, on such terms and conditions, and for such remuneration payable from the Trust, as the Trustee, in the Trustee's absolute discretion, considers advisable, and as the Trustee shall specify in writing, including, without limitation, the power at any time and from time to time to choose, acquire, dispose of or change any such investments or reinvestments and to sub-delegate to another any such powers or functions so conferred on it by the Trustee. Subject to section 4.10 of this Agreement, the Trustee is hereby further authorized to act on the opinion, advice or information obtained from [*name of affiliate*], or from any such affiliate, subsidiary or successor as hereinbefore described, and shall not be responsible for any loss occasioned by so acting or by not so acting as the case may be, nor shall the Trustee be responsible nor incur any liability for any loss that may be occasioned by any

investment decision or delegation of investment decisions authorized herein and made by the Trustee, by [*name of affiliate*], by any such affiliate, subsidiary or successor, or by any such sub-delegate.

Optional, to be used if affiliate of trustee does investing: In conferring on the Trustee the authority herein described, it is acknowledged that [*name of affiliate*] is affiliated with the Trustee and that such appointment may be made by the Trustee irrespective of any such relationship between them.

Optional, to be used if affiliate of trustee does investing: The Trustee is further authorized, at any time, to terminate such retainer and to appoint and retain any person or corporation, other than [*name of affiliate*], to assist in the investment and reinvestment of the Fund, including, without limiting the generality of the foregoing, any such person who is employed by, or any such corporation which is an affiliate or subsidiary of, [*name of affiliate*] or the Trustee, or a successor hereof, and so on, from time to time, and the terms hereof shall apply, with necessary modifications, to any such other person or corporation so appointed the Trustee.

(c) Interest or other investment proceeds paid on the Fund shall be credited to the Fund.

(d) At the end of each calendar year during which the Trustee has held the Fund, the Trustee shall cause to be issued to the then Company a form T-5, or other form as appropriate pursuant to the Tax Act, in respect of any interest or other income earned on the Fund.

(e) All earnings received from the investment of the Fund shall be credited to, and shall become part of, the Fund (and any losses on such investments shall be debited to the Fund). The Trustee shall have no liability for any investment losses resulting from investments made by the Trustee in accordance with the terms of this Agreement, including any losses on any investment required to be liquidated prior to maturity in order to make a payment required pursuant to the terms of this Agreement, and any losses resulting from a loss of opportunity. The Trustee shall have no liability to any person should it be unable to invest all or any portion of the Fund as aforesaid for any period of time, provided that it has made commercially reasonable efforts to do so.

4.04 Funds to be Used for Reclamation

Subject to Article 5, all funds deposited by a company with the Trustee as required hereunder and all investments, reinvestments and accretions thereto, the Trustee shall draw upon solely for the purpose of funding the discharge of the Reclamation Obligations of the Beneficiaries of the Trust.

For greater certainty, access to the Fund, including the precise amount of the Fund to be released for payment of amounts required to satisfy Reclamation Obligations of the Beneficiaries of the Trust, is subject to the Tribunal’s approval on the facts of the particular case before it.

4.05 Release of Funds to the Company

The Trustee may release funds, which are held in accordance with this Agreement, to pay for the Reclamation Obligations of a Beneficiary, on presentation by a Beneficiary of:

(a) a written direction or an order from the Tribunal confirming the amount to be disbursed from the Fund, the timing of the disbursement and the identity of the Beneficiary to receive the funds; and

(b) a certificate of an officer of the Beneficiary confirming that the Beneficiary has not (1) ceased to carry on business; (2) become insolvent or committed any act of bankruptcy; (3) filed a petition for bankruptcy, or suffered a petition for bankruptcy being filed, against it; (4) made any proposal to or sought arrangement with its creditors; (5) made an assignment for the benefit of creditors; (6) appointed or suffered the appointment of a receiver in respect of its property and/or assets; or (7) had or suffered proceedings being commenced (voluntarily or involuntarily) for the liquidation, dissolution or winding up of itself ("**Default**"), and that to the officer's knowledge, the Beneficiary will not suffer Default within a year following the date of the certificate of the officer.

On receipt of the Tribunal's written direction or order, and the certificate of an officer of the Beneficiary, the Trustee shall release the requested funds to it.

4.06 Release of Funds to a Third Party

The Trustee may release funds that are held in accordance with this Agreement to any third party for the purposes of funding the discharge of the Reclamation Obligations of a Beneficiary on presentation of a written direction or an order from the Tribunal, with such direction or order confirming the amount to be disbursed from the Trust Fund, and the timing of the disbursement. On receipt of the written direction or order, the Trustee shall release the requested funds to the third party set out in the order or direction of the Tribunal.

4.07 Duties of the Trustee Regarding Release of the Requested Funds

The funds which are to be released in accordance with sections 4.05 and 4.06 shall be obtained by the Trustee calling in or redeeming certain investments which it holds in the Trust, provided that the Trustee shall only call in or redeem those investments after consultation with the Company.

4.08 Sale of the Pipeline or a Portion Thereof

For greater certainty, monies from the Fund may be released in accordance with this Agreement upon the Tribunal's direction or order approving the sale, assignment, transfer or other disposition of the Pipeline or a portion thereof from a Beneficiary to another person pursuant to paragraphs 74(1)(a), (b) and (c) of the NEB Act.

4.09 Books, Records and Accounts

(a) The Trustee shall maintain proper and accurate books, records and accounts of all transactions affected or controlled by the Trustee hereunder including, without limitation, the receipt, investment, reinvestment and disbursement of monies from the Fund, and shall provide the Company with the following, on or before the 15th Business Day following the last day of each month:

(i) statement of account or report showing all funds transferred to the Trustee during the immediately preceding month;

(ii) statement of account or report showing all relevant information concerning the funds held by the Trustee including, without limitation, information detailing all investments made, reinvestment undertaken, investment income earned, and disbursement of funds during the immediately preceding month; and

(iii) any other report or information reasonably requested by the Tribunal or the Company.

(b) The Trustee shall, on reasonable prior notice and during normal business hours, make available to and permit the officers, employees and authorized agents of the Tribunal or the Company and/or the auditors of the Company to inspect all books, records and accounts required to be maintained by the Trustee, in connection with this Agreement or as required by law.

4.10 Standard of Care

In the exercise and discharge of its obligations and duties at law or hereunder, the Trustee shall act honestly and in good faith and shall:

(a) Exercise that degree of care, diligence and skill that a reasonably prudent person functioning in the office of Trustee would exercise in comparable circumstances;

(b) Comply with any and all applicable laws, rules and regulations in respect of the Trustee's dealing with, or handling of the Fund pursuant to the terms hereof; and

(c) Be responsible for loss occasioned by reason of the failure of the Trustee to comply with its obligations at law or duties under this Trust, or its negligence or willful misconduct on the part of itself, its employees, officers or agents.

4.11 Appointment of Agents

(a) The Trustee may appoint such agents and employ or retain such legal counsel, accountants, appraisers or other experts or advisors as may be reasonably required for the purpose of discharging its duties hereunder and shall not be responsible for any misconduct on the part of any of them except as provided in section 4.10(c). The Trustee may pay out of the Fund reasonable remuneration for all services performed for it in the discharge of its duties hereunder without taxation for costs or fees of any counsel, solicitor or attorney, including solicitor fees on a solicitor and own client basis. [*The last sentence of this paragraph should only be included if* *the pipeline company determines that these withdrawals are permitted by the QET provisions of the Income Tax Act.*]

(b) Provided the agent was properly appointed by the Trustee in accordance with section 4.10, the Trustee may act in good faith on the opinion or advice of, or information obtained from, any agent, legal counsel, accountant, appraiser or other expert of advisor retained or employed by it, in relation to any matter arising in the performance of its duties under this Agreement.

4.12 Safekeeping of Funds

So far as is allowed by law, the Trustee shall control and hold in Trust, in such form and manner as may be necessary to impress a Trust thereon as against any creditor or creditors of the Beneficiaries, all funds held pursuant to the terms hereof until such funds are disbursed or otherwise dealt with in accordance with the terms and conditions of this Agreement.

4.13 Acceptance of Obligations

The Trustee hereby accepts the covenants and obligations set out in this Agreement and agrees to discharge the same upon the terms and conditions herein set forth, and to hold and exercise the rights, privileges and benefits conferred upon it by this Agreement for the purposes of the Trust.

4.14 Decision to Act or Not Act

The Trustee shall retain the right not to act and shall not be held liable for refusing to act unless it has received clear documentation which complies with the terms of this Agreement. Such documentation must not require the exercise of any discretion or independent judgment on the part of the Trustee.

4.15 Trustee Not to Expend Own Funds

None of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

ARTICLE 5: REMUNERATION AND EXPENSES OF THE TRUSTEE

5.01 Trustee's Fees and Expenses of the Trustee

[*This section should only be included if Company determines that this withdrawal is permitted by the QET provisions of the Income Tax Act.*]

The Company and the Trustee shall, from time to time, agree to reasonable remuneration to be paid out of the Fund to the Trustee for its services hereunder and as of the date hereof. The Trustee is also entitled to be reimbursed out of the Fund for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration of its duties hereunder (including, without limitation, legal fees and expenses on a solicitor and own client basis and the reasonable compensation and disbursements of all other advisers, agents or experts employed or retained pursuant to this Agreement), provided that the Trustee shall first deliver to the Company true copies of all invoices, statements or receipts in relation thereto or in evidence thereof.

5.02 Payment of Trustee Fees

[*This section should only be included if Company determines that the following withdrawals are permitted by the QET provisions of the Income Tax Act.*]

In the event the Trust created under this Agreement becomes liable to or subject to any fees or other amounts due to the Trustee pursuant to Section 5.01 hereof, the Trustee shall be entitled to withdraw monies from the Fund to pay such fees or other expenses without prior approval or instruction of the Tribunal.

5.03 Payment by the Trustee of Taxes

[*This section should only be included if the Company determines that the following withdrawals are permitted by the QET provisions of the Income Tax Act.*]

In the event the Trust created hereunder becomes liable to or subject to any taxes under the Tax Act or otherwise, the Trustee shall be entitled to make payment of such taxes out of the Fund to the appropriate taxing authority without prior approval or instruction of the Tribunal, provided the Trustee has received notification as to the amount of taxes owing by reference to an assessment from the appropriate taxing authority or a signed copy of the Trust's annual tax return for that year from the Company. For greater certainty, subject to section 4.10, the Trustee shall have no duty or responsibility to confirm the calculation of the amount of tax owing by the Trust, and shall be entitled to rely on the calculations in any assessment or annual tax returns provided to the Trustee.

ARTICLE 6: INDEMNIFICATION OF THE TRUSTEE

6.01 Indemnity

In addition to and without limiting any other protection of the Trustee hereunder or otherwise by law, the Company shall indemnify and hold the Trustee harmless from any and all liabilities, losses, claims, damages, penalties, actions, suits, demands, levies, costs, expenses and disbursements including any and all reasonable legal and adviser fees and disbursements of whatever kind of nature including legal feels on a solicitor and own client basis which may at any time be suffered by, imposed on, incurred by or asserted against the Trustee, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee in connection with its acting as Trustee hereunder, unless the claim arising from the conduct of the Trustee fails to comply with its obligations at law or under this Agreement including, without limitation, the provisions of section 4.10 hereof, or otherwise the negligence or willful misconduct on the part of the Trustee, its employees, or officers. Notwithstanding any other provision hereof, this indemnity shall survive the removal, or resignation of the Trustee, and termination of this Agreement.

ARTICLE 7: AMENDMENT AND TERMINATION OF THE TRUST

7.01 Amendment

The Company and the Trustee may agree to amend the terms of the Trust, including the terms of this Agreement. No amendment to the terms of the Trust and the terms of this Agreement are binding or effective unless the Tribunal approves the amendment.

7.02 Trust Irrevocable

The Trust, and the schedules thereto, which are hereby incorporated into the Trust, may not be revoked by the Company or Beneficiaries acting as a whole, or the Trustee, except that the Tribunal in its total discretion may direct a termination of the Trust, and order such successive arrangements as are appropriate.

ARTICLE 8: NOTICES

8.01 Acting on Written Notice

The Trustee shall not incur liability for acting upon any written notice, request, consent, certificate, receipt, affidavit, statutory declaration or other paper or document furnished to it by or on behalf of any person authorized to do so by the terms of this Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the verity of any information therein contained, provided the Trustee is acting properly and reasonably in accepting the representations made to it.

8.02 Mode of Giving Notice

Any notice or other document required to be given or delivered hereunder will be valid and effective if given by registered letter (postage prepaid), courier, by personal delivery or by fax addressed by the party to whom such notice is to be given, and will be deemed to have been effectively delivered on:

(a) the date of actual delivery, if couriered or personally delivered during normal business hours of the party to whom such notice is delivered (and if not, on the next following Business Day); or

(b) the first Business Day following the date of the fax, if faxed; or

(c) on the fifth Business Day after effectual posting, if sent by mail.

8.03 Addresses of the Parties

The addresses of the parties for purposes of this section shall be as follows, but may be changed by any party by the delivery of notice of such change in accordance with the notice requirements hereof:

[*insert name and addresses of parties*]

or to any other address notified by any party to the other parties.

8.04 Address of the Tribunal

Any notice or other document required to be given or delivered to the Tribunal shall be addressed to:

> Secretary
> National Energy Board
> 517 – 10th Avenue S.W.
> Calgary, Alberta, T2R 0A8

ARTICLE 9: MISCELLANOUS

9.01 Assignment and Enurement

This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. No party may assign this Agreement or any benefits or obligations hereunder without the approval of the Tribunal.

9.02 Applicable Law

This Agreement (and any amendments hereto) shall be governed by the law of the Province of [*insert name of province*] and the laws of Canada applicable therein.

9.03 Severability

In the event that any provisions hereof shall be determined to be invalid or unenforceable in any respect, such determination so far as the law permits shall not affect any other provision in any other respect or any other provision hereof, all of which shall remain in full force and effect.

9.04 Entire Agreement and Amendment

For greater certainly, this Agreement represents the entire agreement amongst the parties respecting the Trust, and supersedes all prior discussions, agreements and understandings of every kind and nature amongst them.

9.05 Right to disclose

The Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of the Trustee, or its legal counsel, it is required to disclose under any applicable laws, court order or administrative directions. The Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred relating to such disclosure.

9.06 Merger, Consolidation, Amalgamation

Any company with which the Trustee may be merged, consolidated or amalgamated will become the successor Trustee hereunder without any further action on the part of the Trustee.

9.07 Review of Agreement

This Agreement shall be reviewed by the parties and the Tribunal at least every five (5) years, or earlier if directed by the Tribunal.

[This space intentionally left blank; execution page to follow.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first set forth above.

[ENTER NAME OF TRUST COMPANY]

Per: ______________________________

Per: ______________________________

[ENTER NAME OF COMPANY]

Per: ______________________________

Per: ______________________________

<u>Schedule "A"</u>

[Accurately describe the pipeline i.e. where and how far it extends, under what instruments it was authorized i.e. NEB Orders/Certificates numbers, and insert a map showing the pipeline]

Schedule "B"

The relevant paragraphs of the definition of "qualified investment" in section 204 currently read as follows:

(a) money (other than money the fair market value of which exceeds its stated value as legal tender in the country of issuance or money that is held for its numismatic value) and deposits (within the meaning assigned by the *Canada Deposit Insurance Corporation Act* or with a branch in Canada of a bank) of such money standing to the credit of the trust,

(b) debt obligations described in paragraph (a) of the definition "fully exempt interest" in subsection 212(3) [*being a bond, debenture, note, mortgage, hypothecary claim or similar debt obligation*

(i) *of, or guaranteed (otherwise than by being insured by the Canada Deposit Insurance Corporation) by, the Government of Canada,*
(ii) *of the government of a province,*
(iii) *of an agent of a province,*
(iv) *of a municipality in Canada or a municipal or public body performing a function of government in Canada,*
(v) *of a corporation, commission or association to which any of paragraphs 149(1)(d) to (d.6)*[1] *applies or*

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[1] The relevant paragraphs read as follows:

(*d*) **[corporations owned by the Crown]** – a corporation, commission or association all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;

(*d.1*) **[corporations 90% owned by the Crown] –** a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a Province;

(*d.2*) **[wholly-owned [by Crown corporation] corporations] –** a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or paragraph (*d*) applies for the period;

(*d.3*) **[90% [Crown] owned corporations] --** a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by:

(i) one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (*d*) or (*d.2*) applies for the period, or

(ii) one or more municipalities in Canada in combination with one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (*d*) or (*d.2*) applies for the period;

(*d.4*) **[combined [Crown] ownership]** -- a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or any of paragraphs (*d*) to (*d.3*) applies for the period;

(vi) *of an educational institution or a hospital if repayment of the principal amount of the obligation and payment of the interest is to be made, or is guaranteed, assured or otherwise specifically provided for or secured by the government of a province]*,

(c) debt obligations issued by

(i) a corporation, mutual fund trust or limited partnership the shares or units of which are listed on a designated stock exchange in Canada, [2]

(ii) a corporation the shares of which are listed on a designated stock exchange outside Canada,[3] or

(iii) an authorized foreign bank[4] and payable at a branch in Canada of the bank,

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(*d.5*) [**[municipally-owned corporation earning] income with boundaries of entities]** – subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90% of the capital of which was owned by one or more entities each of which is a municipality in Canada, or a municipal or public body performing a function of government in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the municipalities does not exceed 10% of its income for the period;

(*d.6*) **[subsidiaries of municipal corporations]** -- subject to subsections (1.2) and (1.3), a particular corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more entities (referred to in this paragraph as "qualifying owners") each of which is a corporation, commission or association to which paragraph (*d.5*) applies, a corporation to which this paragraph applies, a municipality in Canada, or a municipal or public body performing a function of government in Canada, if no more than 10% of the particular corporation's income for the period is from activities carried on outside

(i) if a qualifying owner is a municipality in Canada, or a municipal or public body performing a function of government in Canada, the geographical boundaries of each such qualifying owner,

(ii) if paragraph (d.5) applies to a qualifying owner, the geographical boundaries of the municipality, or municipal or public body, referred to in that paragraph in its application to each such qualifying owner, and

(iii) if this paragraph applies to a qualifying owner, the geographical boundaries of the municipality, or municipal or public body, referred to in subparagraph (i) or paragraph (d.5), as the case may be, in their respective applications to each such qualifying owner.

[2] A "designated stock exchange" is defined in subsection 248(1) of the Tax Act as a stock exchange, or that part of a stock exchange, for which a designation by the Minister of Finance under Section 262 of the Tax Act is in effect. Section 262 gives the Minister the authority to designate a stock exchange or part thereof for the purposes of the Act. Pursuant to subsection 262(4) of the Tax Act, the Minister of Finance is required to post on the internet website of the Department of Finance or by any other means considered appropriate, the names of the stock exchanges or parts thereof that are designated under Section 262. The current list can be found at http://www.fin.gc.ca/act/fim-imf/dse-bvd-eng.asp. In Canada, the designated stock exchanges include the Canadian National Stock Exchange (CNSX), the Montreal Exchange, the TSX Venture Exchange (Tiers 1 and 2) and the Toronto Stock Exchange.

[3] *Ibid*. The Department of Finance website referred to also includes the list of designated stock exchanges outside Canada.

[4] An "authorized foreign bank" is defined in subsection 248(1) of the Tax Act as having the meaning in Section 2 of the *Bank Act* (Canada), being "a foreign bank that is the subject of an order under subsection 524(1)". Subsection 524(1) states that on application by a foreign bank, the Minister may make an order permitting the foreign bank to establish a branch in Canada to carry on business in Canada under Part XII.1 of the *Bank Act* (Canada). The definition of "foreign bank" is found in Section 2 of the *Bank Act*. It reads:

(c.1) debt obligations that meet the following criteria, namely,

(i) any of

(A) the debt obligations had, at the time of acquisition by the trust, an investment grade rating with a prescribed credit rating agency,[5]

(B) the debt obligations have an investment grade rating with a prescribed credit rating agency,[6] or,

(C) the debt obligations were acquired by the trust in exchange for debt obligations that satisfied the condition in clause (A) and as part of a proposal to, or an arrangement with, the creditors of the issuer of the debt obligations that has been approved by a court under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act*, and

(ii) either

(A) the debt obligations were issued as part of a single issue of debt of at least $25 million, or,

(B) in the case of debt obligations that are issued on a continuous basis under a debt issuance program, the issuer of the debt obligations had issued and outstanding debt under the program of at least $25 million,

(d) securities (other than futures contracts or other derivative instruments in respect of which the holder's risk of loss may exceed the holder's cost) that are listed on a designated stock exchange,[7] and

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"foreign bank", subject to Section 12, means an entity incorporated or formed by or under the laws of a country other than Canada that

is a bank according to the laws of any foreign country where it carries on business, (*b*) carries on a business in any foreign country that, if carried on in Canada, would be, wholly or to a significant extent, the business of banking, (*c*) engages, directly or indirectly, in the business of providing financial services and employs, to identify or describe its business, a name that includes the word "bank", "banque", "banking" or "bancaire", either alone or in combination with other words, or any word or words in any language other than English or French corresponding generally thereto, (*d*) engages in the business of lending money and accepting deposit liabilities transferable by cheque or other instrument, (*e*) engages, directly or indirectly, in the business of providing financial services and is affiliated with another foreign bank, (*f*) controls another foreign bank, or (*g*) is a foreign institution, other than a foreign bank within the meaning of any of paragraphs (*a*) to (*f*), that controls a bank incorporated or formed under this Act,

but does not include a subsidiary of a bank named in Schedule I as that Schedule read immediately before the day section 184 of the *Financial Consumer Agency of Canada Act* comes into force, unless the Minister has specified that subsection 378(1) no longer applies to the bank.

[5] Pursuant to regulation 4900(2) of the *Income Tax Regulations* (Canada), the following are prescribed credit rating agencies for the purposes of section 204: A.M. Best Company Inc.; DBRS Limited; Fitch, Inc.; Moody's Investors Service Inc.; and Standard & Poor's Financial Services LLC.

[6] Ibid.

(e) guaranteed investment certificates issued by a trust company incorporated under the laws of Canada or of a province.

The definition of "prohibited investment" in subsection 211.6(1) reads as follows:

"prohibited investment", of a trust at any time, means a property that

(a) at the time it was acquired by the trust, was described by any of paragraphs (c), (c.1) or (d) of the definition "qualified investment" in section 204; and

(b) was issued by

(i) a person or partnership that has contributed property to, or that is a beneficiary under, the trust,

(ii) a person that is related to, or a partnership that is affiliated with, a person or partnership that has contributed property to, or that is a beneficiary under, the trust, or

(iii) a particular person or partnership if

(A) another person or partnership holds significant interest (within the meaning assigned by subsection 207.01(4) with any modifications that the circumstances require)[8] in the particular person or partnership, and

(B) the holder of that significant interest has contributed property to, or is a beneficiary under, the trust.

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[7] *Supra* note 2.

[8] Subsection 207.01(4) reads:

(4) **[Significant interest]** – An individual has a significant interest in a corporation, partnership or trust at any time if

(*a*) in the case of a corporation, the individual is a specified shareholder of the corporation at that time […];

(*b*) in the case of a partnership, the individual, or the individual together with persons and partnerships with which the individual does not deal at arm's length, holds at that time interests as a member of the partnership that have a fair market value of 10% or more of the fair market value of the interests of all members in the partnership; and

(*c*) in the case of a trust, the individual, or the individual together with persons and partnerships with which the individual does not deal at arm's length, holds at that time interests as a beneficiary (in this paragraph, as defined in subsection 108(1)) under the trust that have a fair market value of 10% or more of the fair market value of the interests of all beneficiaries under the trust.

Appendix VIII

List of Allowed Investments under the QET Provisions of the Income Tax Act

(a) money (other than money the fair market value of which exceeds its stated value as legal tender in the country of issuance or money that is held for its numismatic value) and deposits (within the meaning assigned by the *Canada Deposit Insurance Corporation Act* or with a branch in Canada of a bank) of such money standing to the credit of the trust;

(b) debt obligations described in paragraph (a) of the definition "fully exempt interest" in subsection 212(3) of the Tax Act;

(c) debt obligations issued by:

- (i) a corporation, mutual fund trust or limited partnership the shares or units of which are listed on a designated stock exchange in Canada;
- (ii) a corporation the shares of which are listed on a designated stock exchange outside Canada; or
- (iii) an authorized foreign bank and payable at a branch in Canada of the bank;

(d) debt obligations that meet the following criteria, namely,

- (i) any of:
  - (A) the debt obligations had, at the time of acquisition by the trust, an investment grade rating with a prescribed credit rating agency;
  - (B) the debt obligations have an investment grade rating with a prescribed credit rating agency; or
  - (C) the debt obligations were acquired by the trust in exchange for debt obligations that satisfied the condition in clause (A) and as part of a proposal to, or an arrangement with, the creditors of the issuer of the debt obligations that has been approved by a court under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act*; and
- (i) either:
  - (A) the debt obligations were issued as part of a single issue of debt of at least $25 million; or
  - (B) in the case of debt obligations that are issued on a continuous basis under a debt issuance program, the issuer of the debt obligations had issued and outstanding debt under the program of at least $25 million;

(e) securities (other than futures contracts or other derivative instruments in respect of which the holder's risk of loss may exceed the holder's cost) that are listed on a designated stock exchange; and

(f) guaranteed investment certificates issued by a trust company incorporated under the laws of Canada or of a province.

Unless the investment meets the definition of "prohibited investment."

Appendix IX

List of Companies Proposing an Alternative Set-aside mechanism

Company	SAM
1057533 Alberta Ltd.	Future Cash Flows
6720471 Canada Ltd. (ATCO Energy Solutions)	Refusal to set aside funds
Abitibi-Consolidated Company of Canada	SAM not filed
Altagas Holdings Inc. for and on behalf of Altagas Pipeline Partnership	Letter of Credit, growing
ARC Resources Ltd.	Letter of Credit, growing
Bellatrix Exploration Ltd	Request for Exemption
Bonavista Energy Corporation[40]	Interest Bearing Account
Canada Border Services Agency	SAM Not Filed
Canadian Natural Resources Limited	Provincial Liability Management Program
Canadian-Montana Pipeline Company, Ltd.	Annual Blanket Account Funding
Chief Mountain Gas Co-op Ltd.	No Set-aside mechanism
ConocoPhillips Canada Operations Ltd.	Letter of Credit
County of Vermilion River No. 24 Gas Utility	Self-funded Reserve
Crescent Point Energy Corporation	ARO/Bank account
Delphi Energy Corp.	Provincial Liability Management Program
Domtar Inc.	Guarantee
DR Four Beat Energy Corp.	SAM not filed
Encana Corporation	Letter of Credit, growing (Tupper) Exemption (Deep Panuke)
Enerplus Corporation	Immediate Abandon
ExxonMobil Canada Properties	Request for Exemption
FortisBC Huntingdon Inc.	Trust Account
Forty Mile Gas Co-op Ltd.	Immediate Abandon
Glencoe Resources Ltd.	Immediate Abandon
Husky Oil Operations Limited	Letter of Credit
Imperial Oil Resources Limited	Provincial Liability Management Program
ISH Energy Ltd.	Letter of Credit
Kaiser Exploration Ltd.	Surety Bond/Exemption
Keyera Energy Ltd.	Internal Funds
Lone Pine Resources Canada Ltd.	Letter of Credit

[40] On 24 April 2014, the Board approved the transfer Bonavista's assets to Glenogle Energy Inc.

Company	SAM
Many Islands Pipe Lines (Canada) Limited	Investment through a Fund Service Provider/Guarantee
Mid-Continent Pipelines Limited	SAM not filed
Minell Pipelines Ltd.	Letter of Credit
Murphy Oil Company Ltd.	Letter of Credit
Northern Blizzard Resources Inc.	Request for Exemption
NuVista Energy Ltd.	SAM not filed
Omimex Canada Ltd.	Segregated Canadian Bank Account
ONEOK Rockies Processing Company (Canada) Ltd.	Escrow Account with U.S. Bank
Pengrowth Energy Corporation	Letter of Credit
Penn West Petroleum Ltd.	Revolving Credit Facility, Internal Cash Flow
Pine Cliff Energy Ltd.[41]	Letter of Credit
Portal Municipal Gas Company Inc.	SAM not filed
Ruger Energy Inc.	Letter of Credit
Shell Canada Products Limited	ARO
Shiha Energy Transmission Ltd.	Internal Funds
Spyglass Resources Corp.	Request for Exemption
Strategic Transmission Ltd.	Letter of Credit
Sun-Canadian Pipe Line Company Limited	Guarantee
Tamarack Acquisition Corp.	Future Cash flows
TAQA North Ltd.	Guarantee
Talisman Energy Inc.	Surety bond/Exemption
Terra Energy Corp.	Future Cash Flows
Tundra Oil & Gas Limited on behalf of Tundra Oil & Gas Partnership	Guarantee
Twin Rivers Paper Company Inc.	Guarantee/Exemption
Vantage Pipeline Canada ULC	Letter of Credit, growing
Veresen Energy Infrastructure Inc.	Trust Account
Yoho Resources Inc.	Request for Exemption

[41] On 5 March 2014, the Board approved a change of ownership from Spur Border Pipelines Limited to Pine Cliff Energy Limited.

Appendix X

NEB - 4 December 2013 Letter

File OF-AF-PCE 03 and OF-AF-SAC 01
4 December 2013

To: Attached Distribution List

Group 2 Companies not filing an abandonment cost estimate (ACE), a set-aside mechanism (SAM) or a collection mechanism (COM)

Background

The National Energy Board (Board) issued its Reasons for Decision RH-2-2008 in May 2009. That decision established principles related to abandonment funding and a five-year action plan (Action Plan). One of the principles is “[p]ipeline companies are ultimately responsible for the full costs of constructing, operating and abandoning their pipelines, and the Board will hold the regulated company responsible for these costs.” This principle continues to be important to the Board.

The Action Plan had the goal of having all companies begin to set aside and report on abandonment funds no later than 5 years after that decision. The Board also stated that “all pipeline companies regulated under the *National Energy Board Act* are directed to comply with the steps set out in the Framework and Action Plan.” The RH-2-2008 decision established different timelines for Group 1 and Group 2 companies to file an ACE, SAM and COM. On 1 June 2012, the Board updated the timelines to require Group 2 to file an ACE by 30 November 2011 and SAM and COM by 31 May 2013.

There are currently eight companies who have not filed a SAM or a COM. Four of those companies have not filed an ACE either. These companies are listed in the table below:

Company	**Outstanding Filing(s)**
Abitibi-Consolidated Company of Canada	ACE, SAM, COM
Canada Border Service Agency	ACE, SAM, COM
DR Four Beat Corp.	SAM, COM
Lone Pine Resources Canada Ltd	SAM, COM
Mid-Continent Pipelines Ltd.	ACE, SAM, COM
NuVista Energy Ltd	SAM, COM
Portal Municipal Gas Company Canada Inc.	ACE, SAM, COM
Terra Energy Inc.	SAM, COM

…/2

For the SAM and COM filings, the Board issued hearing order MH-001-2013 on 4 April 2013. This, and all related information, was issued to every NEB-regulated company, including the companies set out on the table above. The Board has provided many opportunities for these companies to make the SAM and COM filings. The Board notes that NEB staff has also been contacting companies to request the filings.

The Board advises these companies that it may impose a SAM and COM on them as part of the MH-001-2013 proceeding. The Board takes compliance matters seriously and expects companies to comply with any decisions it makes by the required timeline.

For these companies who have not submitted their ACE, the Board has decided to impose the Base Case on them in the following amounts:

Company	**Base Case ACE**
Abitibi-Consolidated Company of Canada	**$39,000**
Canada Border Service Agency	**$500**
Mid-Continent Pipelines Ltd.	**$255,000**
Portal Municipal Gas Company Canada Inc.	**$200**

The Board has also referred the files to its Operations Business Unit where compliance and enforcement programs are managed. As per the NEB's Enforcement Policy, the Board will consider taking necessary enforcement action to obtain compliance.

If you have any questions about this letter, please contact Danielle Moffat, at 403-299-2786 or toll free 1-800-899-1265 or danielle.moffat@neb-one.gc.ca.

Yours truly,

for
Sheri Young
Secretary of the Board

Attachments: Appendix 1 - Distribution list

Appendix 1 - DISTRIBUTION LIST

Mr. Ryan Ellard
Abitibi-Consolidated Company of Canada c/o Resolute Forest Products Inc.
427 Mowat Avenue
Fort Frances, ON P9A 1YA Facsimile : 807-274-8272
Email : ryan.ellard@resolutefp.com

Mr. Alain Bourdages
Abitibi-Consolidated Company of Canada c/o Resolute Forest Products Inc.
1155 Metcalfe Street, Suite 800
Montreal, QC H1Y 3L2
Facsimile: 514-394-2233
Email: alain.bourdages@resolutefp.com

Ms. Rachelle Beaudry
Director, Asset Management and Control Infrastructure and Environmental Operations Canada Border Service Agency
427 Laurier Ave W, 10th Floor
Ottawa, ON K1A 0L8
Facsimile: 613 954-0503
Email: Rachelle.beaudry@cbsa-asfc.gc.ca

Mr. Michael Siemer
President
DR Four Beat Energy Corporation
17401 SE County Road 475
Summerfield, FL 34491
Email: catsiemer@aol.com

Mr. Steve Minotakis
Chief Financial Officer
DR Four Beat Energy Corporation
1717 Regal Mist Loop
Trinity, FL 34655
Facsimile 727-255-5107
Email: steveminotakis@yahoo.com

Ms. Angela Wirzba
HSE, Engineering & Operations Admin. Assistant
Lone Pine Resources Canada Ltd.
1100-640 5th Avenue SW Calgary, AB T2P 3G4
Facsimile: 403-292-800
Email: axwirzba@lonepineresources.com

Ms. Marilyn P. Wappel
Many Islands Pipe Lines (Canada) Limited
Senior Legal Counsel
1000-1777 Victoria Avenue
Regina, SK S4P 4K5
Facsimile: 306-777-9877
Email: mwapell@saskenergy.com

Mr. James W. Beckerleg
Mid-Continent Pipelines Limited
333-5th Avenue SW Suite 1700
Calgary, AB T2P 3B6

Ms. Cynthia Beaudin Mr. Brett Chapman NuVista Energy Ltd.
3500, 700 2nd Street SW Calgary, AB T2P 2W2
Fascimile: 403-538-8575
Email: cbeaudin@nvaenergy.com

Ms. Cindy Larsen
Portal Municipal Gas Company Canada Inc. PO Box 37
Portal, ND 58772
Facsimile: 701-926-3601
Email: auditor@midstatetel.com

Mr. Rick Campbell
Terra Energy Corp.
Suite 970, 333 7th Avenue SW Calgary, AB T2P 2Z1
Facsimile: 403-264-7189
Email: rcampbell@terraenergy.ca

Appendix XI

NEB - Model Letter of Credit

Sample/Template LOC

Irrevocable Letter of Credit No.:

Date Issued:

BENEFICIARY:

Her Majesty The Queen in Right of Canada,
as represented by the National Energy Board
517 – 10th Avenue S.W.
Calgary, AB T2R 0A7

Applicant:

[INSERT NAME OF NEB REGULATED COMPANY + ADDRESS]

Amount: [INSERT AMOUNT]

Pursuant to the *National Energy Board Act*, the National Energy Board's RH-2-2008 decision, [INSERT BOARD LETTER DECISION APPROVING THE COMPANY'S ACE] and MH-001-2013 decision (the Regulatory Requirements)

We hereby authorize you to draw on Bank [INSERT SCHEDULE 1 CANADIAN CHARTERED BANK], for account of [INSERT PIPELINE COMPANY], up to an aggregate amount of X Million and 00/100's Canadian Dollars (CADX,000,000.00) available on demand.

Pursuant to the request of our customer, the said [INSERT PIPELINE COMPANY], we, Bank [INSERT SCHEDULE 1 CANADIAN CHARTERED BANK + ADDRESS OF MAIN CALGARY BRANCH], hereby establish in your favor our Irrevocable Letter of Credit (the 'Letter of Credit') in the total amount of [INSERT AMOUNT OF ACE] and 00/100's Canadian Dollars (CADX,000,000.00), which may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you which demand we shall honor without enquiring whether you have a right as between yourself and our said customer to make such demand, and without recognizing any claim of our said customer.

Partial and multiple drawings are permitted.

Your demand(s) may be presented to at Bank [INSERT SCHEDULE 1 CANADIAN CHARTERED BANK + ADDRESS OF MAIN CALGARY BRANCH]. The original of this Letter of Credit must be presented for endorsement by us of the amount drawn or when the full amount of this Letter of Credit has been drawn for cancellation.

The amount of this Letter of Credit may be reduced from time to time only by amounts drawn upon it by you or by formal notice in writing given to us by you if you desire such reduction or are willing that it be made.

This Letter of Credit will continue up to [INSERT DATE] (the ‘Expiration Date’), and you may call for payment of the full amount outstanding under this Letter of Credit at any time up to the close of business on that date, unless at that time, our business is interrupted by Acts of God, riots, civil commotions, insurrections, wars or any other causes beyond our control or by any strike or lockouts, in which case this Letter of Credit will not expire until the 30th day after the first day of business following resumption of our business.

It is a condition of this Letter of Credit that it shall be deemed to be automatically extended, without amendment, for one (1) year from the above Expiration Date or any future expiration date hereof, unless at least sixty (60) days before any such date we notify you in writing by registered mail/courier and fax, that we elect not to consider this Letter of Credit renewed for any such additional period.

We hereby agree that drawings under this Letter of Credit will be duly honored upon presentation and shall state on their face that they are drawn under Bank [INSERT SCHEDULE 1 CANADIAN CHARTERED BANK + ADDRESS OF MAIN CALGARY BRANCH], Letter of Credit No. [INSERT INSTRUMENT NUMBER] dated Month Day, Year.

Except insofar as otherwise expressly stated, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007) Revision, International Chamber of Commerce, Paris, France, Publication no. 600.

BANK NAME

_________________________ _________________________

Signing Officer Authorized Signing Officer

Appendix XII

NEB - Model Surety Bond

To: **Her Majesty the Queen in Right of Canada**
As Represented by the National Energy Board (the "Board")

CERTIFICATE / ORDER NUMBER: ________________________ AMOUNT: $___________________
Bond Number:

PIPELINE: ____

Known all men by these presents that we, ______________ (the "Principal") ___________________ Company (the "Surety") are jointly and severally bound to **Her Majesty the Queen in Right of Canada as Represented by the National Energy Board** (the "Board"), in the sum of **AMOUNT ($___)**, lawful money of Canada, for the payment of which sum, well and truly to be made, the Principal and Surety bind themselves, their heirs, executioners, administrators, successors and assigns, jointly and severally, by this bond.

WHEREAS the Principal has a regulatory authorization issued under the *National Energy Board Act* to operate a pipeline.

WHEREAS the Principal, as holder of a regulatory authorization, must provide a set-aside mechanism pursuant to the *National Energy Board Act*, the National Energy Board's RH-2-2008 decision, **[INSERT BOARD LETTER DECISION APPROVING ACE]** and MH-001-2013 decision (the Regulatory Requirements).

WHEREAS the Principal and Surety acknowledge that they have read the Regulatory Requirements which relate to this bond.

The aforesaid sum shall be paid to the National Energy Board forthwith on written demand upon Surety, to be held for purposes of the *National Energy Board Act*. The demand made by the Board shall be honoured by the Surety without enquiring whether the Board has a right as between the Board and the Principal to make such demands, and without recognizing any claim of the Principal and the Principal and the Surety each consent to the Board obtaining, on written notice, summary judgements for the full amount secured hereunder if payment is not made forthwith upon demand.

The condition of the above obligation is that if the Principal shall well and truly, in all respect duly fulfill execute and observe all terms and conditions and requirements of the National Energy Board then this obligation shall be void and of no effect but otherwise shall be and remain in full force, virtue and effect.

Nevertheless if the Surety at any time gives 60 days' notice in writing to the Principal and to the Board of the Surety's intention to put an end to the Suretyship hereby entered into (the "Notice Period") then the Principal shall during the Notice Period provide to the Board replacement set-aside mechanism in the same amount and in a form acceptable to the Board to replace this terminated Suretyship. Once the replacement set-aside mechanism has been received and approved by the Board during the Notice Period, then this bond and all accruing responsibility thereunder shall cease and determine except insofar as the Principal has made default prior to the said last day of the Notice Period. Should all Principal fail to provide a replacement set-aside mechanism acceptable to the Board during the 60 day Notice Period, the Board may, within a 60 day period commencing immediately following the expiry of the Notice Period, make a written demand to the Surety for payment of the aforesaid sum to the Board and said sum shall be paid in accordance with this bond. Once the second 60 day period (the Notice Period plus 60 days) has expired then this bond and all accruing responsibility thereunder shall cease and determining except insofar as the Principal has made default prior to the said last day of the Notice Period.

Nevertheless, the obligations of the Principal or the Surety for this bond or renewal will be limited to the amount stated above.

This bond will be valid for the term from _____ day of ______________, 20___ to ______day of ______________, 20___ and shall be automatically renewed without further documentation from year to year thereunder on the same terms and conditions (including this one for renewal) unless at least 60 days' written notice, as provided for above, is given that it will not be renewed. Failure by the Principal to provide a satisfactory substitute set-aside mechanism to the Board does not constitute default under this bond.

Any notice hereunder may be given:

(a) in the case of the Board by registered mail or prepaid courier and fax to:

National Energy Board
517 10 Ave SW
Calgary, AB
T2R 0A8
Facsimile: (403) 292-5503
Attn: Secretary of the Board

(b) in the case of the Principal by prepaid mail to:

[INSERT ADDRESS]

(c) in the case of the Surety by delivery to or by prepaid mail to:

[INSERT ADDRESS]

Any notice by the Board may be signed by the Secretary of the Board.

IN WITNESS WHEREOF this bond has been duly signed, sealed and delivered.

Surety:

Per: ____

Principal

Per:____

Appendix XIII

Required Filings

Timelines for Filings		
Pipeline Companies using a Trust to Set-Aside Funds		
All companies establishing trusts	Apply for approval of Trustee	2 September 2014
	File Trust Agreement for approval	2 September 2014
	File initial Statement of Investment Policy and Procedures and related investment documents	1 December 2014
Group 1 companies (with exception of Westcoast Gathering and Processing)	File for approval a contribution amount for the upcoming toll year. This will be final when approved Describe the surcharge or toll impact, and indicate whether surcharge or toll approval sought is interim or final Apply for any true-up mechanism for managing variances (e.g. a deferral account)	No later than 5 December 2014
Group 2 companies collecting funds from shippers to contribute to a trust	File a contribution amount for the upcoming toll year Describe the surcharge or toll impact Apply for any true-up mechanism for managing variances (e.g. a deferral account)	No later than 5 December 2014
Group 2 companies self-funding	File revised contribution amount for the upcoming fiscal year taking into account Board direction in MH-001-2013	31 December 2014
All companies establishing trusts	Submit Annual Reporting form shown in Appendix XV	31 January (annually)

Specific Direction for Pipeline Companies using a Trust to Set-Aside Funds		
M&NP	File revised investment strategy	1 December 2014
Union, St. Clair and Emera	File revised investment strategy, unless providing Letter of Credit or Surety Bond	
M&NP	File with Collection Period of 19.5 years	No later than 5 December 2014
TransCanada	File revised surcharge based on the ratio of rate base methodology	
Westcoast Transmission	File with Collection Period of 40 years	
Emera	File with Collection period of 19.5 years	
Westcoast Gathering and Processing (self-funding)	File for approval a contribution amount for the upcoming fiscal year taking into account Board direction and findings in MH-001-2013 Reasons for Decision, including the costs for all facilities within	No later than 5 December 2014

	Zone 1 and 2.	

Pipeline Companies Using a Letter of Credit or Surety Bond to Set-Aside Funds	
Provide as per direction in Chapter 5	31 December 2014
Submit Annual Reporting form (Appendix XVI)	31 January (annually)

Exempted Pipeline Companies	
Submit Annual Reporting form (Appendix XVI, excluding part C)	31 January (annually)

Appendix XIV

Annual Contribution Amount Calculation Form

Instructions: In calculating its annual contribution amount, each pipeline company must use, as applicable to them, the assumptions that the Board has approved in the MH-001-2013 Reasons for Decision. In particular, they must use:

1) An inflation rate of 2%;
2) The pipeline-specific collection period;
3) The pipeline-specific return on funds collected;
4) The pipeline-specific tax rate; and
5) The pipeline-specific estimate of trustee's fees and expenses incurred by the trustee.

Computation of Annual Contribution Amount		
Step 1: Provide total cost estimated for abandonment		
Line 1	Abandonment cost estimate in dollars in base year (e.g. $500,000 in Canadian 2010 dollars)	
Step 2: Convert to future value (i.e. cost estimated in future year dollars)		
Line 2	Inflation rate	2%
Line 3	Years remaining in Collection Period	
Line 4	Years elapsed between year of cost estimate and current date (e.g. 5 years if cost estimate in 2010 dollars and contribution commences in 2015)	
Line 5	Number of years from cost estimate date to end of Collection Period = Line 3 + Line 4	
Line 6	Future value of abandonment cost estimate (i.e. cost estimated in future year dollars) = Line 1*(1 + Line 2)$^{\text{Line 5}}$	
Step 3: Calculate company-specific after-tax rate of return on funds collected		
Line 7	Pre-tax rate of return on funds collected	
Line 8	Adjustment for variable[1] trustee expenses and investment management fees	
Line 9	Company-specific tax rate on <u>investment income</u>	
Line 10	After-tax rate of return on funds collected = (1 – Line 9) * (Line 7 – Line 8)	
Step 4: Compute Annual Contribution Amount		
Line 11	Annual Contribution Amount, before fixed trustee expense adjustment = (Line 6 * Line 10) / [(1 + Line 10)$^{\text{Line 3}}$ – 1]	
Line 12	Adjustment for fixed trustee expenses[2]	
Line 13	Annual Contribution Amount to Trust = (Line 11 + Line 12)	

[1] That is, those expressed in percentage of invested funds.

[2] That is, those expressed in dollars per year.

Appendix XV

Reporting Form – Companies using Trusts for Set-aside mechanism

Table I.1 Update on Abandonment Funding for Pipeline with Trust			
Regulatory Instrument Holder (entity which holds certificate/order)			
Filed by (company name) if different from regulatory instrument holder			
Pipeline System Name (for each, fill-in separate form)			
For Group 2 companies, associated order numbers or certificates			
Update on Abandonment Funds			
Year open date	Date	**Planned**	**Actual**
Year open balance	millions		
Directed by Board to set aside	millions		
Collected from Shippers	millions		
Contributed by Pipeline Owners	millions		
Other	millions		
Earnings within Trust	millions		
Taxes paid on earnings within Trust	millions		
Disbursements (and Board orders authorizing the disbursements)	millions		
Year Close Balance	millions		
Year close date	Date		
Any Other relevant information	Attach (e.g. include explanation where actual varies materially from planned)		
Compliance Confirmation			
The Investment Policy (or Statement of Investment Policy and Practices) filed with the Board still current and in use?	Agree	If not, file new one	
All investment decisions and actions the year complied with this Investment Policy throughout the year?	Agree	If not, file explanation	
Changes in cost estimates, or other components that could prompt material changes in funding plan	No changes	If changes, file explanation	
Pipeline is still in operation	Agree	If not, explain	
Filed by (Officer of the Pipeline System Certificate holder) ***Print name of individual***			
Signature			
Dated			

Appendix XVI

Reporting Form – Companies using Set-aside mechanisms other than Trusts, and Exempt Companies

A - Update on Abandonment Funding for Pipeline with Alternative Set-Aside Mechanism		
Regulatory Instrument Holder (entity which holds certificate/order)		
Filed by (company name) if different from regulatory instrument holder		
Pipeline System Name (for each, fill-in separate form)		
For Group 2 companies, Associated Order Numbers or Certificates		
Exempt pursuant to MH-001-2013?	**Yes**	**No**
Confirm exemption is still valid. Provide reason (e.g. Letter of Credit with CNSOPB or publicly owned).		
B - Abandonment Cost Estimate (for all Companies)		
Estimate, as assessed by NEB	$million	
In Dollars of what year?		
Estimate Timing of Abandonment as assessed by NEB		
C - Method of Assuring Funding (except for those companies exempted)		
Form	**Letter of Credit**	**Surety Bond**
For	$million	$million
Name of Bank or Surety	Bank	Surety
Confirm up-to-date payment of fees for Letter of Credit or Surety Bond on file with NEB		
Any information likely to impact renewal of Letter of Credit or Surety Bond		
Any Other relevant information	Attach	
D - Update on Status of Pipeline (for all Companies)		
Any changes in cost estimates, or other components that could prompt material changes in plans to fund abandonment	None	If yes, file explanation
Pipeline is still in operation (not deactivated nor decommissioned)	Yes	If not, explain
Pipeline has third party shippers	Yes	No
Any ownership changes in last year, or planned for pending year	Yes	No
E - Filed by Officer of the Company Holding Regulatory Instrument		
Print name of individual		
Signature		
Dated		