

IR No.	Information Request	Response to Information Request	Intervenor's submission	TransCanada's submission	Intervenor Reply
Union 1.3	<p>c. How will TransCanada ensure Herbert LTFP service is only used to serve Power Plant load, and not other TransGas load on days the full 58 TJ/d is not needed for the Power Plant, regardless of the reason why gas supply is not needed for the Power Plant.</p> <p>i. Why does the Power Plant owner (SaskPower) not hold the Herbert LTFP contract in its own name?</p> <p>ii. Please describe how TransCanada will ensure that TransGas cannot divert gas under its other FT contracts when the Power Plant does not require the gas but TransGas nominates its full LTFP entitlement.</p> <p>iii. Is TransGas rendering a buy/sell service or a delivered service (commodity included) to the Power Plant?</p> <p>iv. Please identify the terms and conditions of the service under which TransGas will deliver the gas to the Power Plant.</p> <p>i. Does the service restrict SaskPower from requesting gas deliveries, (i) when the Power Plant is not operating and and/or (ii) higher or lower than required for planned operations on a given day?</p> <p>ii. What are the load balancing arrangements between TransGas and SaskPower?</p> <p>iii. How many TransGas industrial or power generation customers hold transportation contracts in their own name upstream of their plant? Please provide details.</p> <p>iv. How many industrial or power generation customers obtain their gas supply service from TransGas in the same manner as the Power Plant in the present Application?</p>	<p>c. Refer to the response to EGD I 1.6. With respect to part i), TransCanada understands that TransGas holds the gas transportation for customers in its franchise area.</p> <p>ii. Refer to the response to NEB 1.3(a).</p> <p>iii. and iv. TransCanada is not privy to the arrangement between the Power Plant (or other power or industrial shippers) and TransGas.</p>	<p>c. Union seeks information relevant to an important feature of the present application, namely the isolation of the LTFP discounted toll to volumes of gas for exclusive consumption by only SaskPower, the owner of the Power Plant. Concerns that the discounted LTFP service may be used by TransGas for its other loads in the SSDA (or elsewhere) have been reflected in information requests posed by all intervenors and by the Board. Correspondence, arrangements, agreements, side letters and the like relating to SaskPower's intended use of the LTFP supplies, TransGas use of those supplies (particularly when SaskPower, its affiliate, is not taking its full contractual entitlement for the Power Plant) the contractual mechanisms and services (including but not limited to Buy/Sell T-Service, load balancing agreements) are relevant and probative to the issue before the Board. Intervenors and the Board are entitled to test the basis for TransCanada's representations. Intervenors are also entitled to confirmation or production of the information TransCanada provided relating to TransGas, its affiliates MIPL, SaskPower and TransCanada's affiliate Foothills by the party which is best placed to provide that information. This is particularly true for any information relating to TransGas (and its affiliates) in light of paragraph 7 b) of the Executed Memorandum of Understanding whereby TransGas commits to provide its assistance to TransCanada in its responses to information requests. Therefore, Union requests TransCanada to seek the information from TransGas.</p>	<p>TransCanada maintains the position set out in its response to Union 1.3(c).</p> <p>The response refers Union to the response to NEB 1.3(a). In response to NEB 1.3(a), TransCanada provides a complete answer as to the measures it negotiated to mitigate the risk that the Herbert LTFP Contract will be used to serve loads other than the Power Plant. These measures form part of the proposed Herbert LTFP service and are relevant to the Board's assessment of the Application.</p> <p>As noted in the response, TransCanada is not privy to the arrangements between TransGas and the Power Plant or any other power or industrial shippers of TransGas. Union requests that TransCanada seek this information from TransGas on the basis of section 7(b) of the MOU. TransCanada declines to do so for the following reasons. Pursuant to section 7(b) of the MOU, TransGas is required to respond to any "reasonable requests for information" in the Herbert LTFP regulatory proceedings. TransCanada submits it is not reasonable to request the details of TransGas' downstream arrangements with its customers as these arrangements are not relevant to the determinations to be made by the Board in respect of the Application. The Application deals with the approval of a Mainline service and the relevant question is what measures are in place as a part of the Herbert LTFP service to mitigate against the risk that the Herbert LTFP Contract will be used to serve loads other than the Power Plant. As noted above, TransCanada has provided a complete answer to this question.</p>	
Union 1.6	<p>b. Please provide all correspondence between TransCanada or its affiliate (Foothills) and TransGas or SaskPower (or their representatives) regarding competitive transportation alternatives to serve the Power Plant.</p>	<p>Refer to the response to Gaz Métro 1.1(c).</p>	<p>For similar reasons as noted in respect to 1.3 c) above, all correspondence between TransCanada, Foothills, TransGas and SaskPower would provide the Board and Intervenors the necessary information and assurance supporting TransCanada's claim that the proposed Herbert LTFP is in response to a credible, independent bypass alternative. This information would also help to ensure transparency around the process undertaken to derive a custom, discounted, service</p>	<p>TransCanada maintains the position set out in its responses to Union 1.6(b) and 1.7(a)(ii) and (iv).</p> <p>Union appears to be of the view that the information request process is analogous to, or perhaps even broader than, the discovery process in civil litigation. The Board has held that a party to a regulatory proceeding is not required to produce every document that is in its possession. As noted in Union's motion, the Board will consider "the</p>	

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			<p>that is being offered to a single shipper. The information discussed between or amongst SaskPower, TransGas, MILP and TransCanada is relevant and probative to the issues before the Board. Accordingly, correspondence and analysis respecting TransCanada and Foothills alternatives to provide service to SaskPower's new Power Plant via MIPL and TransGas should be produced.</p>	<p>relevance of the information sought, its significance and the reasonableness of the request".<sup>1</sup> The Board "seeks to balance these factors to ensure that the purposes of information request process are satisfied, while ensuring that an intervenor does not engage in a 'fishing expedition' that could unfairly burden the applicant".<sup>2</sup> TransCanada submits that this approach to information requests reflects the Board's public interest mandate that includes not only the determination of just and reasonable tolls, but also regulatory efficiency.</p> <p>Contrary to the characterization of Union, TransCanada has not made "representations" or "claims" regarding the development, circumstances and terms and conditions of Herbert LTFP service or the alternatives available to TransGas. TransCanada has provided <u>evidence</u> on these matters through its Application and responses to Information Requests. Therefore, any written correspondence or other documents would provide no additional probative value and are not relevant or significant to the matters to be determined by the Board in this proceeding. The requests for these documents appear to be based on an incorrect assumption that TransCanada's evidence will not be sworn or affirmed. While the Streamlined Regulatory Process established by the Board does not provide an opportunity for oral cross-examination, TransCanada fully expects and is prepared to have its representative swear or affirm an affidavit adopting the company's written evidence and attesting to its accuracy as required by section 37(4) of the <i>National Energy Board Rules of Practice and Procedure, 1995</i> of all parties filing evidence in written proceedings. To require extensive document discovery as a means of testing the veracity of written evidence would seriously undermine regulatory efficiency and would limit the Board's discretion in determining the appropriate process to consider a given application.</p> <p>As Herbert LTFP service was developed over time, the requested correspondence may contain views of the parties that were modified through the negotiation of the MOU and development of the Application. This is a further basis upon which TransCanada submits the requested documents are not relevant or significant to the matters to be determined in this proceeding. The Board is being asked to make a determination on the <u>applied for</u></p>	

<sup>1</sup> Westcoast Energy Inc., GH-5-94 at transcript pages 342-343.

<sup>2</sup> *Ibid.*

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				<p>terms and conditions of Herbert LTFP and not all matters that were ever discussed between the parties. Only the package of terms and conditions reflected in the executed MOU can be said to be acceptable to both TransGas and TransCanada.</p> <p>As noted in the responses to NEB 1.4(a) and Union 1.7(b), TransCanada treats its discussions with all shippers regarding the development of potential new services as confidential. Similar to the confidentiality provisions of the TTF, this allows the free and open exchange of commercially sensitive information on a “without prejudice” basis with the aim of reaching an agreement. TransCanada has provided evidence regarding the <u>outcome</u> of the negotiations with TransGas and the justification for the terms and conditions of service it is ultimately proposing in this Application. TransCanada submits that requiring the disclosure of all correspondence exchanged during the commercial negotiation leading to the execution of the MOU would be unreasonable and create a precedent which would chill future commercial discussions as TransCanada pursues pricing and service proposals with its shippers.</p> <p>Similarly, TransCanada treats its internal discussions regarding the common management of its regulated affiliates as commercially sensitive and confidential. TransCanada has provided evidence regarding the process through which Herbert LTFP was developed and the alternative available on the Foothills system, which is based on standard tariff service. To require TransCanada to disclose internal correspondence relating to the management of its businesses would be unreasonable.</p> <p>The Board can and does take the confidential nature of the material into consideration when assessing whether the information sought is relevant, significant and whether the request is reasonable or would unfairly burden the applicant. For all of the reasons given in this response, TransCanada submits that the test for disclosure is not met and there is no need for TransCanada to rely on the confidential filing provisions of the <i>National Energy Board Act</i>.</p> <p>Further, Herbert LTFP was developed with the common understanding among all parties that it would require NEB approval and the discussions surrounding its development and the development of the Application were therefore conducted in anticipation of this regulatory proceeding. As a result, the requested documents are subject to</p>	

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				common interest litigation privilege.  Finally, TransCanada submits that it would be unreasonable and contrary to regulatory efficiency for TransCanada to be required to invest the time required to conduct an exhaustive search for any and all written correspondence or other documents that may have been created since the parties began discussing TransGas' delivery requirements in 2015 (see response to Centra-TCPL 1.06 for a timeline and description of these discussions). This would place an undue burden on TransCanada in this case and would create a precedent that could significantly delay regulatory proceedings in the future.	
Union 1.7	<p>a. Please describe the evolution of circumstances that led to the development of the Herbert LTFP service offering for TransGas. Specifically, please provide the following:</p> <p>i. An explanation as to how TransCanada was made aware of the alternative option to serve the Power Plant load via Foothills;</p> <p>ii. All internal / external communications that encompassed discussion of the Herbert LTFP service, or the provision of a competitive Mainline service for either TransGas or SaskPower to serve the Power Plant in general;</p> <p>iii. Whether TransGas or SaskPower requested from Foothills or if Foothills offered a similar discounted service; and,</p> <p>iv. The analysis completed by or on behalf of TransGas or SaskPower, or both, including all supporting schedules, evaluating each alternative.</p> <p>i. Please include the tolls (including all abandonment fees, fuels or charges of any kind) quoted to TransGas from Foothills for service from McNeil to Shaunavon and from MIPL for service from Shaunavon or Herbert to the Power Plant.</p> <p>ii. Please also include TransGas' analysis of the total annual cost under each option, similar to the format provided in Table 2, including a discussion of the costs remaining to be recovered at the end of the initial 10-year term.</p>	<p>a. Refer to the response to Centra – TCPL 1.06.</p> <p>i. Refer to the response to Centra – TCPL 1.06 c) through e).</p> <p>ii. Refer to the response to EGDI 1.5(h) and Gaz Métro 1.1(c).</p> <p>iii. Refer to the response to Centra-TCPL 1.03 d).</p> <p>iv. To the extent TransCanada is in possession of any analysis completed by or on behalf of TransGas or SaskPower, refer to the response to Gaz Métro 1.1(c).</p>	<p>a. ii) and iv) Again, all internal/external TransCanada communications that encompassed discussion of the Herbert LTFP service, or the provision of a competitive Mainline service for either TransGas or SaskPower to serve the Power Plant is relevant and probative for the purpose of testing, for example, TransCanada's representations respecting service attributes; TransGas or SaskPower or TransCanada load balancing, diversions, extent of expected plant use, monitoring mechanisms to prevent use of LTFP for general TransGas SSDA requirements; tolls and costs; contract term and so forth. The same submissions apply with equal force to the Foothills materials requested in the referenced information request(s). Please see also responses regarding Union 1.3 c) and 1.6 b) which also apply to this IR.</p>	<p>Refer to the response to Union 1.6 above in relation to Union 1.7.</p>	