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29 April 2011

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Dear Ms. McClellan and Mr. Brett:

**Trans Mountain Pipeline ULC (Trans Mountain) application for approval of the 2011 Negotiated Toll Settlement (2011 NTS) and an application for approval of the 2011 Final tolls**

The National Energy Board has received Trans Mountain's application dated 31 March 2011 for approval of the 2011 NTS and Trans Mountain's application dated 12 April 2011 for approval of 2011 final tolls. In its 12 April 2011 application, Trans Mountain also requested that the Board review and vary its 20 July 2006 decision regarding the disposition of the Westridge Dock Bid Premium.

**2011 NTS and 2011 Final Tolls**

The Board has determined that the 2011 NTS is consistent with the *Revised Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs* dated 12 June 2002.

The Board is satisfied that Trans Mountain calculated its 2011 final tolls in accordance with the 2011 NTS and that the 2011 final tolls are just and reasonable. The Board notes that the 2011 NTS does not contain any major changes from the Trans Mountain's previous toll settlement and that 2010 adjustments are calculated in accordance with Trans Mountain's 2006-2010 Incentive Toll Settlement. Trans Mountain received substantial shipper support for the NTS<sup>1</sup> and no person opposed the 2011 NTS or Trans Mountain's 2011 final tolls.

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<sup>1</sup> The Canadian Association of Petroleum Producers, Chevron Canada Resources, ConocoPhillips Canada, Shell Trading Canada, Suncor Energy Marketing Inc and Tesoro Canada Supply and Distribution Ltd. all support the 2011 NTS. The Alberta Department of Energy does not object to it.

The attached Order TO-02-2011 approves the 2011 NTS and NEB Tariff No. 85 effective 1 May 2011. The Board's approval of the 2011 NTS includes approval of:

- a) the methodology for calculating and determining Trans Mountain's tolls for 2011;
- b) the establishment of the following deferral accounts:
  - a. Flow Through Costs
  - b. Transportation Revenue Adjustments
  - c. NRA's and adjustments
  - d. Petroleum Loss Allowing sharing;
- c) the relief Trans Mountain requested from the Board's minimum filing requirements; and
- d) the revised depreciation rates.

### **Review and Variance of the Board's decision regarding the disposition of the Westridge Dock Bid Premium**

On 20 July 2006, the Board issued a decision that required Trans Mountain to establish a deferral account for Westridge Dock bid premiums. Those premiums would then be refunded to toll payers in the following calendar year.

On 12 April 2011, Trans Mountain applied to review and vary the Board's 20 July 2006 decision pursuant to subsection 21(1) of the *National Energy Board Act* and paragraph 44(1)(b) of the Board's *Rules of Practice and Procedure, 1995*. Trans Mountain asked the Board to vary the 20 July 2006 decision to allow Trans Mountain to refund the 2010 premiums through a toll surcredit over more than one calendar year. Trans Mountain proposes to refund the 2010 premium over 11 months, from 1 May 2011 to 31 March 2012. Trans Mountain asked that the surcredit for 2010 premiums remain in effect until further order of the Board.

Trans Mountain submitted the following changed circumstances in support of its request to review and vary the Board's 20 July 2006 decision:

- 1. the agreement (or non-opposition) of all parties to the proposed disposition;
- 2. the size of the premium in relation to the available time period in 2011 for its refund;
- 3. the unique circumstances associated with arriving at the 2011 NTS, which impacted the timing of this Application;
- 4. resulting from (1) to (3) above, Trans Mountain argued that the public interest and other parties' interests are served by smoothing the toll impact of the premium refund and minimizing the number of toll changes.

Trans Mountain noted that if it were to refund the 2010 premium over the remainder of 2011, shippers would face a large toll increase on 1 January 2012.

On 13 April 2011, the Board initiated a comment process and did not receive comments on Trans Mountain's review and variance application.

## **Views of the Board**

Subsection 44(2) of the Board's *Rules of Practice and Procedure, 1995* sets out what applicants must file when they seek a review and variance of a Board decision. That subsection states in part:

- (2) An application for review or rehearing shall contain:
  - (b) the grounds that the applicant considers sufficient, in the case of an application for review, to raise a doubt as to the correctness of the decision or order or, in the case of an application for rehearing, to establish the requirement for a rehearing, including
    - (i) any error of law or of jurisdiction,
    - (ii) changed circumstances or new facts that have arisen since the close of the original proceeding, or
    - (iii) acts that were not placed in evidence in the original proceeding and that were then not discoverable by reasonable diligence;
  - (c) the nature of the prejudice or damage that has resulted or will result from the decision or order;

A review entails a two-steps process: first, the Board must determine whether a doubt has been raised about the correctness of its decision and, if that test has been met, then a review is considered on its merits.

### **Step 1: Has Trans Mountain raised a doubt about the correctness of the Board's 20 July 2006 decision?**

The Board finds that the unanticipated amount of premiums collected by Trans Mountain in 2010 is a change in circumstances. Trans Mountain collected \$57.3 million in premiums in 2010. That amount was not anticipated in 2006. For comparison Trans Mountain collected and refunded about \$4.8 million in 2006, the first year premiums were collected. In these circumstances, the Board finds that Trans Mountain has raised a doubt about whether the Board's 20 July 2006 decision should apply to Trans Mountain's refund of premiums collected in 2010. Therefore, the Board has decided to review whether the 2010 premiums should be refunded in the 2011 calendar year, as required by the Board's 20 July 2006 decision.

**Step 2: Should the 2010 premiums be refunded in the 2011 calendar year, as required by the Board's 20 July 2006 decision?**

The Board has reviewed Trans Mountain's submissions. The Board accepts that varying its 20 July 2006 decision would levelize Trans Mountain's tolls and minimize any toll increase faced by shippers in 2012. Therefore, the Board has decided to vary its 20 July 2006 decision to allow Trans Mountain to refund the 2010 premium as a surcredit, effective 1 May 2011. That surcredit remains in effect until further order of the Board.

Distributions of premiums collected in any other year continue to be governed by the Board's direction in its 20 July 2006 decision.

Trans Mountain is directed to serve a copy of this letter and the attached Order on shippers and interested parties.

Yours truly,

A handwritten signature in cursive script that reads "AnneMarie Erickson".

Anne-Marie Erickson  
Secretary of the Board

Attachment



**ORDER TO-02-2011**

**IN THE MATTER OF** the *National Energy Board Act* (Act)  
and the regulations made thereunder; and

**IN THE MATTER OF** applications by Trans Mountain Pipeline  
ULC (Trans Mountain) dated 31 March 2011 and 11 April 2011 for  
approval of the final tolls for 2011 effective 1 May 2011 pursuant to  
Part IV of the Act filed with the National Energy Board under file  
OF-Tolls-Group1-T260-2011-02 01.

**BEFORE** the Board on 29 April 2011.

**WHEREAS** on 24 November 2006 the Board issued Order TO-06-2006, allowing  
Trans Mountain to begin charging, on an interim basis effective 1 January 2011, tolls in  
effect on 31 December 2010 until final tolls are approved for 2011;

**AND WHEREAS** on 31 March 2011 Trans Mountain applied for approval of its 2011  
Negotiated Toll Settlement (2011 NTS);

**AND WHEREAS** the Alberta Department of Energy, Canadian Association of Petroleum  
Producers (CAPP), Chevron Canada Resources (Chevron), ConocoPhillips Canada, Shell  
Trading Canada, Suncor Energy Marketing Inc and Tesoro Canada Supply and Distribution Ltd  
support or do not oppose the 2011 NTS;

**AND WHEREAS** on 12 April 2011 Trans Mountain applied for Board approval of 2011 Final  
Tolls;

**AND WHEREAS** Trans Mountain's final tolls are calculated in accordance with the 2011 NTS;

**AND WHEREAS** CAPP and Chevron support Trans Mountain's 2011 final tolls;

**AND WHEREAS** Trans Mountain served a copy of its applications and proposed tolls on all  
interested parties and no person filed comments with the Board on the applications or the  
proposed final tolls;

**AND WHEREAS** the Board has determined that the 2011 final tolls are just and reasonable;

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**THEREFORE, IT IS ORDERED THAT**, pursuant to Part IV of the Act:

1. The 2011 NTS is approved.
2. The 2011 interim tolls pursuant to TO-06-2006 are approved as final for the period 1 January 2011 to 30 April 2011.
3. The applied-for tolls in NEB Tariff No. 85 are approved as final effective 1 May 2011.
4. Trans Mountain recover, in accordance with the 2011 NTS, that part of tolls charged since 1 January 2011 under Order TO-06-2006, that is less than the tolls determined by the Board to be just and reasonable in this Order.

NATIONAL ENERGY BOARD

A handwritten signature in black ink, reading "AnneMarie Erickson". The signature is written in a cursive, flowing style.

Anne-Marie Erickson  
Secretary of the Board