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File OF-Gen-06 FRR
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Mr. Bernard Pelletier
Director, Regulatory Tolls and Tariffs
Canadian Natural Gas Pipelines
450 1 Street SW
Calgary, AB T2P 5H1
Email bernard_pelletier@tcenergy.com

Dear Mr. Pelletier:

**Pipeline Financial Resources Requirements
Request for Confidential Treatment from TransCanada PipeLines Limited
(TCPL), NOVA Gas Transmission Ltd. (NGTL), Foothills Pipe Lines Ltd.
(Foothills), Trans Québec & Maritimes Pipeline Inc. (TQM), and Great Lakes
Pipeline Canada Ltd. (GLC) (*collectively, TC Gas Pipelines*)**

Background

On 25 May 2021, TC Gas Pipelines filed a [request](#), pursuant to section 60 of the *Canadian Energy Regulator Act* (CER Act), to file the names of its insurers in its certificates of insurance on a confidential basis (Application). TC Gas Pipelines also requested that the confidential treatment of the names of its insurers be applied to all future annual filings of its certificates of insurance, since the necessity for confidential treatment is unlikely to materially change in future years. TC Gas Pipelines' request relates to its updated certificates of insurance, which must be filed with the Canada Energy Regulator (**CER**) as part of its annual reporting.

TC Gas Pipelines filed its annual financial plans individually on 29 April 2021,¹ indicating that its general liability policies were currently in effect until 1 June 2021, and has not changed since they were last filed on 28 April 2020. TC Gas Pipelines indicated that updated certificates of insurance would be filed with the (**CER**) once the renewal has taken place.

All pipeline companies regulated by the Canada Energy Regulator (**CER**) must have a Financial Resources Plan, which is a set of filings that detail how a company complies with the requirements in the CER Act and *Pipeline Financial Requirements Regulations*. A

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¹ See filing IDs: TCPL ([C12689-1](#)), NGTL ([C12688-1](#)), Foothills ([C12686-1](#)), TQM ([C12710-1](#)), and GLC ([C12687-1](#)).

Financial Resources Plan provides details about a company's financial resources, including the types, terms, timing of access and how the financial resources maintained allow a company to pay the amount of applicable Absolute Liability.²

Requirements to be Met

Paragraph 60(a) of the CER Act requires TC Gas Pipelines to satisfy the Commission that the disclosure of its information, in this instance, the names of its insurers contained in its certificates of insurance, could reasonably be expected to result in a material loss or gain to TC Gas Pipelines, being persons directly affected by the proceedings, or could reasonably be expected to prejudice TC Gas Pipelines' competitive position.

Paragraph 60(b) of the CER Act requires TC Gas Pipelines to satisfy the Commission of two elements. Under sub-paragraph 60(b)(i), TC Gas Pipelines must demonstrate that the information for which confidentiality is sought be financial, commercial, scientific or technical information and that it has been consistently treated as confidential information by TC Gas Pipelines. Under sub-paragraph 60(b)(ii), TC Gas Pipelines must demonstrate that its interest in confidentiality outweighs the public interest in disclosure. Both elements of paragraph 60(b) must be met for TC Gas Pipelines to be granted confidentiality.

Subsection 60(c) of the CER Act requires TC Gas Pipelines to persuade the Commission that there is a real and substantial risk that disclosure of its information will compromise the safety and well-being of persons or cause harm to property or the environment.

To be granted confidentiality, TC Gas Pipelines has to fulfill the requirements of only one of the three paragraphs of the CER Act, as described above.

TC Gas Pipelines' Request

TC Gas Pipelines submitted that they are aware that many of its insurance providers, as well as other insurance providers more broadly, are regularly receiving anti-energy industry communications. It noted that pressure from organized groups in recent years has resulted in several major insurance companies renouncing their support of certain energy projects and exiting the insurance market for the energy sector. As such, TC Gas Pipelines stated that there is a potential that its ability to secure insurance on reasonable terms and conditions could be impaired through disclosure of the names of its insurers. Therefore, the continued disclosure of the names of insurance providers can reasonably be expected to harm its competitive position and negatively impact its customers.

TC Gas Pipelines stated that the names of its insurers have not always been treated confidentially in its past regulatory filings. However, due to recent developments and pressure on insurance companies, TC Gas Pipelines submitted that, starting with the new insurance policies expected to be effective 1 June 1 2021, the names of these providers will have never been made public. TC Gas Pipelines stated that they will consistently treat this commercial information, and that associated with any future policies, as confidential.³

² Additional details regarding Financial Resource Requirements can be found in [Pipeline Financial Requirements Guidelines](#) on the CER's website.

³ See PDF 3 of 4 of TC Gas Pipelines Request for Confidentiality application, 25 May 2021, [C13235-1](#).

TC Gas Pipelines referenced a previous Commission decision regarding Trans Mountain Pipeline ULC (Trans Mountain), where the Commission granted confidentiality over the names of Trans Mountain insurers pursuant to paragraphs 60(a) and 60(b) of the CER Act,⁴ and stated that the same conclusions apply to its request for confidentiality. TC Gas Pipelines submitted that, similar to Trans Mountain, the continuation of the ongoing targeting to stop insurance coverage of pipelines is likely to result in potential material loss due to higher insurance premiums and challenges in maintaining adequate coverage to meet its financial resource obligations. TC Gas Pipelines further submitted that consistent with the precedent set by the Commission's Trans Mountain decision, its interest in maintaining confidentiality over the names of its insurers outweighs the public interest in disclosure.

Commission Decision

The Commission has considered the requested relief and finds that TC Gas Pipelines has satisfied the requirements for confidentiality pursuant to paragraph 60(b) of the CER Act. The Commission further finds that TC Gas Pipelines has not satisfied the requirements for confidentiality pursuant to either paragraph 60(a) or paragraph 60(c) of the CER Act. The Commission's reasons are as follows.

In respect of paragraph 60(b), the Commission finds that the names of TC Gas Pipelines insurers are commercial information, as they relate to commercial contracts between the insurance companies and TC Gas Pipelines. The Commission also finds that, in respect of paragraph 60(b)(i), TC Gas Pipelines has met the requirement of consistently treating this commercial information as confidential. The Financial Resources Plan filed by each TC Gas Pipelines company on 29 April 2021, was for certificates of insurance in force until 31 May 2021. It is clear that confidentiality is sought by TC Gas Pipelines over its insurers' names contained in its updated certificate of insurance, which would have been issued after the 31 May 2021 expiry date and would contain new insurers. These new certificates of insurance are required to be filed with the Commission. It is persuasive to the Commission that TC Gas Pipelines has now taken steps to protect the information particular to the pending filings of its updated certificates of insurance, and that the names of these new insurers have consistently been and will continue to be treated as being confidential. The Commission concludes, based on the information in TC Gas Pipelines' Application, that TC Gas Pipelines has treated the names of its insurers within the updated certificate of insurance as confidential information since the expiry of the previous certificates on 31 May 2021.

In respect of sub-paragraph 60(b)(ii), the Commission finds that TC Gas Pipelines' interest in confidentiality outweighs the public interest in disclosure of the names of TC Gas Pipelines' insurers. As previously expressed by the Commission in its decision granting Trans Mountain's request for confidentiality,⁵ while there is a high degree of public interest in knowing pipelines are sufficiently insured, that public interest does not necessarily include a requirement that the particulars of all insurers be made widely available. The Commission is mindful that the information requested to be kept confidential in this Application is only one element of the overall information contained in the certificates of insurance. Information in relation to the limit of liability/amount of coverage, the insurance broker issuing the

⁴ Commission Decision approving Trans Mountain's Request for Confidential Treatment dated 29 April 2021, [C12675-1](#).

⁵ See PDF 6-8 of 9 Commission Decision approving Trans Mountain's Request for Confidential Treatment dated 29 April 2021, [C12675-1](#).

certificate, the policy dates for coverage and the type of coverage are all information that is still be available to the public.

In respect of paragraph 60(a), the Commission is not persuaded by the evidence filed by TC Gas Pipelines that it has met the test for confidentiality. TC Gas Pipelines has not adequately demonstrated that disclosure of the names of its insurers could reasonably be expected to prejudice its competitive position in its dealing with potential insurers. The Commission does not agree with TC Gas Pipelines' argument that they are facing a similar circumstance as Trans Mountain in obtaining insurance at a reasonable price. In its application, Trans Mountain submitted clear evidence of the reduced pool of available insurers for its pipeline following one of its insurance companies dropping coverage,⁶ leading the Commission to find that it was reasonable to expect that further disclosure of insurer names would prejudice its competitive position.⁷ In this Application, TC Gas Pipelines has not provided any evidence of such challenges, and therefore, the Commission is not persuaded that it is reasonable to expect that they are facing a similar circumstance as Trans Mountain in obtaining reasonably priced insurance.

Finally, the Commission is not persuaded that TC Gas Pipelines has met the test for confidentiality as set out in paragraph 60(c), as it has not sufficiently demonstrated that there is a real and substantial risk that disclosure of its insurers' names will compromise the safety and well-being of persons, or cause harm to property or the environment. While the Commission agrees with TC Gas Pipelines' acknowledgment of the importance of having sufficient financial resources to protect people, the environment, and property in the vicinity of pipelines systems, the Commission is of the view that TC Gas Pipelines has not provided any evidence of the substantial risks that may result from the disclosure of its insurers names.

Accordingly, the Commission grants the relief requested by TC Gas Pipelines under paragraph 60(b) to file, in confidence, information in its certificates of insurance that discloses the names of its insurers. The Commission has also determined that this confidential treatment may be applied to all future filings of the names of its insurers, as set out in TC Gas Pipelines certificates of insurance, unless there is a material change. The Commission will not place the confidential information on the public record or otherwise make it available to the public.

The Commission directs TC Gas Pipelines to file its individual updated certificates of insurance by 17 September 2021, by delivering unredacted copies with the names of insurers to the Secretary of the Commission, as well as public filings of redacted versions without the names of insurers on the CER electronic repository.

Yours sincerely,

Signed by

Jean-Denis Charlebois
Secretary of the Commission

⁶ See PDF 2 of 5 of Trans Mountain's Request for Confidentiality application, 22 February 2021, [C11610-1](#).

⁷ See PDF 6 of 9 Commission Decision approving Trans Mountain's Request for Confidential Treatment dated 29 April 2021, [C12675-1](#).