

September 24, 2015

**Filed Electronically  
Original by Courier**

Ms. Sheri Young  
Secretary of the Board  
**National Energy Board**  
517-10<sup>th</sup> Avenue S.W.  
Calgary, Alberta  
T2R 0A8

**Re: St. Clair Pipelines Management Inc. (St. Clair)  
National Energy Board (NEB) Order MO-026-2015  
Set-Aside Mechanism (SAM) and Collection Mechanism (COM)  
Amended Trust Agreements and Statement of Investment Policies and Procedures  
(SIPP)  
File OF-AF-SAC 01**

Dear Ms. Young:

Pursuant to the NEB MH-001-2013 Reasons for Decision, issued May 29, 2014, St. Clair requests approval of amendments to its trust agreement. Some of the modifications were specifically requested by the Canada Revenue Agency (CRA) in order to grant a positive advance income tax ruling to the effect that each trust settled pursuant to the relevant trust agreement constitutes a qualifying environmental trust (QET) for tax purposes, while other changes are required either to clarify certain provisions, or to properly reflect the intended United States tax treatment of such trusts. More specifically, the modifications are shown in the enclosed black-line version of the trust agreement and include the following:

- The correction of a clerical error in the definition of 'New Trust'.
- Changes to the definition of Orphan Pipeline Fund (OPF). The changes were specifically requested by the CRA to clarify that the OPF will be a not-for-profit corporation with a certain purpose.
- The addition of proposed paragraphs (b) and (c) in section 2.05. Although not specifically requested by the CRA, it resulted from our discussions with the CRA and is intended to provide the trustee with sufficient flexibility to initiate the process of having a new trust formed and funds transferred to it in the event the trust inadvertently ceased to qualify as a QET or if the trustee becomes concerned about the expiry of the perpetuities period in respect of the trust prior to the objects of the trust being satisfied<sup>1</sup>. The proposed modifications provide the trustee with the foregoing flexibility while ensuring that the funds would be protected in case of

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<sup>1</sup> This would not be a concern if Alberta amends its perpetuities legislation to expressly clarify that the loss of QET status will not cause the perpetuity period to apply from the initial settlement of the trust.

default. The proposed additions also ensure that where the trust ceases to be a QET, it will allow for the transfer to the new trust of the trust's funds to occur as soon as practicable and in a tax efficient manner.

- The deletion of the last part of the last sentence in section 4.11(a). The changes are specifically requested by the CRA to restrict services that can be paid out of the trust funds to maintain the QET status.
- Changes to section 9.08. This clause deals solely with U.S. tax matters and should reflect the intended U.S. tax treatment of the trusts. The current version of section 9.08 is obsolete and does not accurately describe the U.S. tax treatment of the trusts. Moreover, it obligates the parties to take a position for U.S. income tax purposes that is no longer appropriate.

St. Clair is of the view that none of the modifications are inconsistent with the NEB's MH-001-2013 Reasons for Decision.

St. Clair is also filing a revised SIPP. The revisions to the SIPP are not intended to make any changes to St. Clair's investment strategy but simply to provide more clarity as to what investments are approved or restricted to ensure the trust will qualify as a QET. A copy of the revised SIPP is enclosed along with the proposed revised trust agreement.

St. Clair respectfully requests expedited approval of the amendments to the trust agreement, so that St. Clair can execute the agreement and submit it to the CRA in time to receive a final tax ruling prior to the end of the 2015 tax year.

Please address any questions to Warren Reinisch at 519-436-4663 or via email at [wreinisch@uniongas.com](mailto:wreinisch@uniongas.com).

Yours truly,

**<original signed>**

Warren Reinisch  
Manager Upstream Regulation

Enclosures

**THIS TRUST AGREEMENT** made as of the 23<sup>rd</sup> day of January, 2015, as AMENDED and RESTATED as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**BETWEEN:**

**THE BANK OF NOVA SCOTIA TRUST COMPANY**, a licensed trust company with an office located in the City of **CALGARY** in the Province of Alberta  
(the “**NS Trust Company**”)

**AND:**

**ST. CLAIR PIPELINES MANAGEMENT INC.**, as settlor, acting in its capacity of general partner for **ST. CLAIR PIPELINES L.P.**, a limited partnership formed under the Laws of **ONTARIO**,  
(“**St. Clair**”)

**WHEREAS** St. Clair holds the regulatory authorization allowing it to operate the facilities described in Schedule “A” to this trust agreement (the “**Pipeline**”) and as at the date hereof has Reclamation Obligations as defined herein;

**AND WHEREAS** St. Clair is subject to regulation by the National Energy Board under the National Energy Board Act (Canada);

**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) 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 19 April 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 5 May 2014, the National Energy Board ordered St. Clair to set aside funds using a trust structure to pay for the reclamation obligations in respect of the sites in Canada used by St. Clair for the operation of the Pipeline (“**NEB Order**”);

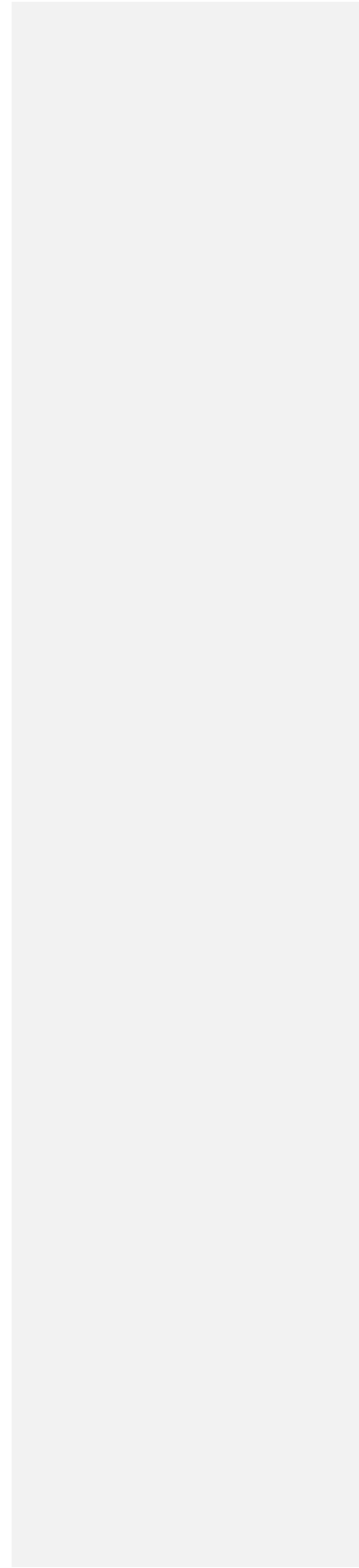
**AND WHEREAS** in satisfaction of the requirements imposed by the National Energy Board, St. Clair has created a trust the fund of which will be used to accumulate funds to meet the discharge of its Reclamation Obligations for the sites in Canada used by St. Clair for the operation of the Pipeline;

**AND WHEREAS to maintain the tax status of the trust and to clarify the trust, certain amendments have been made to the trust pursuant to section 7.01, which were approved by the Tribunal on the \_\_\_\_\_ day of \_\_\_\_\_, 2015;**

**AND WHEREAS** NS Trust Company has agreed to hold the reclamation funds in accordance with the terms and conditions of ~~the~~this trust as amended and restated to the date hereof agreement;

**NOW, THEREFORE, THIS RESTATED 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 the Company to the Trustee under this trust agreement shall be held by the Trustee 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 *National Energy Board Onshore Pipeline Regulations* (Canada) or the *National Energy Board Processing Plant Regulations* (Canada) as applicable, as amended from time to time;
- (a.1) “**Affiliate**” means, with respect to a party, that party’s affiliates within the meaning of the *Canada Business Corporations Act* (Canada);
- (b) “**Annual Contribution Amount**” means separate and identifiable charges for transportation services with respect to the Pipeline that the NEB will require shippers or the Company to pay and that the NEB will require to be contributed by the Company to the Trust at the same frequency as they are collected pursuant to the NEB Order;
- (c) “**Beneficiary**” and “**Beneficiaries**” mean the person or persons, including the Company, having Reclamation Obligations in respect of the Site;
- (d) “**Business Day**” means any day except a Saturday, Sunday or a statutory holiday in the Province of Alberta;
- (d.1) “**Clearinghouse Corporation**” means an institution that settles mutual indebtedness between a number of financial or market organizations, and is usually financed by membership subscriptions and other dues of the market;
- (e) “**Company**” means the person holding the regulatory authorization(s) to operate the Pipeline at the relevant time, whether on its own behalf or on behalf of one or more persons, and for greater certainty, the initial Company shall be St. Clair, in its capacity of general partner for St. Clair Pipelines L.P.;
- (f) “**Company’s Notice of Termination**” has the meaning set out in section 3.03(a) of this trust agreement;
- (f.1) “**Contributions**” mean each of the amounts collected by the Company as approved by the Tribunal from time to time to pay for Reclamation Obligations;
- (f.2) “**Custodian**” means a corporate institution, appointed by the Trustee or by a delegate of the Trustee authorized by the Trustee to sub-delegate, which has title to, or Trustee-authorized possession of, Fund Property with the obligation to hold secure those assets, and to deal with them as authorized by the Trustee or the delegate of the Trustee;
- (g) “**Deactivate**” and “**Deactivation**” mean the same thing as the definition of “deactivate” in the *National Energy Board Onshore Pipeline Regulations* (Canada) or the *National Energy Board Processing Plant Regulations* (Canada) as applicable, as amended from time to time;

- (h) **“Decommission”** and **“Decommissioning”** mean the same thing as the definition of “decommission” set out in the *National Energy Board Onshore Pipeline Regulations* (Canada) or the *National Energy Board Processing Plant Regulations* (Canada) as applicable, as amended from time to time;
- (i) **“Default”** has the meaning set out in section 4.05(b) of this trust agreement;
- (i.1) **“Depository”** shall mean any authorized domestic or foreign depository or clearing or settlement agency or system, including a transnational book-based system, and shall include The Canadian Depository for Securities Limited and The Depository Trust Company;
- (j) **“Fund”** means collectively (i) all property (including money) held from time to time by the Trustee, in accordance with this trust agreement, including without limitation, all property originally conveyed to the Trustee pursuant to this agreement and all subsequent contributions paid to the Trustee under any section of this trust agreement, and (ii) any interest or other return generated by the investment of such property and excluding all amounts properly paid or disbursed therefrom pursuant to this trust agreement;
- (k) **“Fund Property”** has the meaning set out in subsection 3.04(a) of this trust agreement;
- (l) **“NEB Act”** means the *National Energy Board Act* (Canada), as amended from time to time;
- (m) **“New Trust”** has the meaning set out in section 2.05(b)(iii) of this trust agreement;
- (n) **“Orphan Pipeline Fund”** means a not-for-profit organization ~~to be that will be established pursuant to a statute of the Parliament of Canada and will maintain funds for the purposes of funding the reclamation of abandoned pipelines in Canada consistent with the NEB’s reasons for Decision MH-001-2013 whose purpose includes paying for the cost to Abandon a pipeline constructed or operated under a statute of the Parliament of Canada;~~
- (o) **“Pipeline”** means the facilities described in Schedule “A” to this trust agreement, as such facilities may be modified from time to time;
- (p) **“Qualified Investments”** means investments that are “qualified investments” as that term is defined in section 204 of the Tax Act excluding paragraphs (e), (g) and (h) thereof, and that are not (i) “prohibited investments” as that term is defined in subsection 211.6(1) of the Tax Act, as more particularly set out in Schedule B, or (ii) U.S. Currency Equivalents;
- (q) **“QET”** means a “qualifying environmental trust” as that term is defined in subsection 211.6(1) of the Tax Act;
- (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 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, where post-abandonment refers to the period of time after the Company has satisfied the conditions of an order or direction issued by the Tribunal granting leave to Abandon;

and all costs incurred and consequent thereon.

- (s) “**Site**” means the location or locations in Canada used by the Company for the operation of the Pipeline;
- (t) “**Standard of Care**” has the meaning set out in section 4.10 of this trust agreement;
- (u) “**Statement of Investment Policies and Procedures**” means a written statement of investment policies and procedures approved by the Company in respect of the Fund’s portfolio of investments and loans which sets out broad policies and procedures for investment of the Fund, including without limitation: categories of investments and loans, including derivatives, options and futures; diversification of the investment portfolio; asset mix and rate of return expectations; liquidity of investments; the lending of cash or securities; the retention or delegation of voting rights acquired through Fund investments; the method of, and basis for, the valuation of investments that are not regularly traded at a public exchange; and any related party transactions and the criteria to be used to establish whether such a transaction is nominal or immaterial to the Fund, having regard to all factors that may affect the performance of the Fund and the purpose for which it is established;
- (v) “**Tax Act**” means the *Income Tax Act* (Canada) and the regulations promulgated thereunder, as amended from time to time;
- (w) “**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;
- (x) “**Trust**” means the relationship between the Trustee and a Beneficiary or Beneficiaries, including the obligations of the Trustee 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 trust agreement; and in the context of this trust instrument, means a discretionary trust for the purpose of reclamation in favour of the one or several Beneficiaries that have Reclamation Obligations with regard to the Site and the Orphan Pipeline Fund;
- (y) “**Trustee**” means NS Trust Company, and any other trust company that accepts the appointment as a trustee of the Fund, provided that throughout the time a Trustee is appointed hereunder it is a trust company that is: (i) licensed under the *Trust and Loan Companies Act* (Canada); (ii) a corporation resident in Canada for purposes of the

Tax Act; and (iii) authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee,;

- (z) “**Trust Term**” or “**Term**” shall have the meaning set out in section 2.05(a) of this trust agreement; and
- (aa) “**U.S. Currency Equivalents**” shall have the meaning set out in section 4.03(g) of this trust agreement.

## **ARTICLE 2: CREATION OF THE TRUST**

### **2.01 Acceptance of the Trust as Qualifying Environmental Trust**

- (a) The Company hereby establishes a trust in accordance with the terms of this trust agreement and appoints NS Trust Company as the trustee of this Trust. NS Trust Company hereby accepts the appointment and agrees to adhere to the trusts, covenants and obligations set out in this trust 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 trust agreement for the purposes of the Trust. NS Trust Company acknowledges it has received a contribution of \$100.00 to establish the Trust.
- (b) It is the express intention of the parties hereto for the Trust settled under this trust agreement to constitute a QET resident in Alberta for the duration of the Trust Term. This trust agreement shall be read and interpreted in light of and consistently with the definition and attributes of a QET, as set out in the Tax Act. The Company and the Trustee shall ensure that no actions are taken which would jeopardize the status of this Trust as a QET resident in Alberta.

### **2.02 Trust Purpose and Custody**

The purpose of the Trust is to accept, hold and invest funds that are contributed to the Trustee for the sole purpose of funding Reclamation Obligations as a QET. In carrying out its duties and obligations hereunder, the Trustee shall ensure that the Fund is kept separate and distinct from the other assets of the Trustee. If the Fund Property is mixed with the other assets of the Trustee, the resulting mixed property shall be deemed to be held in trust on behalf of the Beneficiaries but only to the extent necessary to satisfy Reclamation Obligations.

### **2.03 Contributions**

The Company settles the Fund irrevocably upon NS Trust Company, to be administered upon the terms and subject to the conditions set out in this trust agreement. The Company shall pay irrevocably to NS Trust Company, or to any subsequent Trustee, Contributions at the same frequency as they are collected pursuant to the NEB Order. In furtherance of the foregoing:

- (a) The Company shall within 30 days of the beginning of a calendar year provide to the Trustee a written statement and certification which sets out (i) the estimated Annual Contribution Amount to be remitted in trust to the Trustee for the year, (ii) the date(s) upon which the contribution(s) is (are) due to be remitted in the year, and (iii) a written



certification signed by an authorized officer of the Company indicating that the amount is the annual amount determined pursuant to Appendix XIV of the MH-001-2013 Reasons for Decision.

- (b) The Company shall within 30 days after the end of the calendar year provide to the Trustee a written statement certifying that all contributions required to be remitted to the Trust in respect of the Annual Contribution Amount have been remitted.
- (c) The Trustee shall have no obligation to ensure that the Annual Contribution Amount is calculated correctly or is remitted, but shall notify the Tribunal in writing if it reasonably believes that one or more contributions identified in the statement contemplated in subsection 2.03(a) are due and not paid, or in the event the Company fails to provide to the Trustee the statement contemplated in subsection 2.03(a).

#### 2.04 **Payments**

##### (a) **Surplus**

If property remains in the Fund after all Reclamation Obligations of the Beneficiaries are discharged as finally determined by the Tribunal, then the Trustee, with the approval of the Tribunal, may distribute the Fund or any part thereof among any of the Beneficiaries and the Orphan Pipeline Fund as the Trustee in its sole discretion sees fit, or, where such is the case, a single Beneficiary and the Orphan Pipeline Fund.

##### (b) **Payment to Beneficiaries or Third Parties**

If Reclamation Obligation expenses are incurred by a third party then the Trustee shall make payment from the Fund in accordance with sections 4.06 and 4.07.

#### 2.05 **Duration of the Trust**

(a) This trust 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.

##### (b) In the event that

(i) the Trust ceases to qualify as a QET in circumstances other than those contemplated by section 2.04(a), or

(ii) the Trustee is of the view that the period permitted by the perpetuity legislation of Alberta may expire in not more than five years,

then, as soon as practicable,

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(iii) if the Company is not in Default, the Trustee shall pay the Fund to the Company to be held and identified as property to be used for Reclamation Obligations, and the Company covenants upon receipt of the Funds, to settle, at once, a new irrevocable trust that qualifies as a QET upon terms and conditions approved by the Tribunal (the “New Trust”), and to contribute at once to the New Trust an amount equal to the value of the entirety of the Fund, and

(iv) in any other circumstance, the Trustee shall seek directions from the Tribunal on the successive arrangements which are appropriate in the circumstances in accordance with Section 7.02, and

(v) thereafter this Agreement and the trusts hereunder shall terminate.

~~(a)~~

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### **ARTICLE 3: APPOINTMENT, RESIGNATION, AND REMOVAL OF TRUSTEE**

#### **3.01 Appointment**

The Company has the power to appoint NS Trust Company and successor trustees, subject to the written approval of the Tribunal. The Trustee, on accepting such appointment shall agree to act as trustee of the Fund in accordance with terms and conditions that are the same as the terms and conditions of this trust agreement.

#### **3.02 Resignation**

- (a) A Trustee desiring to resign the office shall notify the Company in writing one hundred and twenty (120) days prior to the intended resignation date and, during this period the Company shall appoint a successor Trustee, subject to the written approval of the Tribunal as provided in section 3.01.
- (b) In the event the Company fails to appoint a successor Trustee within one hundred and twenty (120) days of receipt of the written notice of resignation, the predecessor Trustee, at the expense of the Fund shall have the right to seek appointment of a successor Trustee from the Tribunal or a court.

#### **3.03 Removal**

- (a) The Company has the power to terminate a Trustee’s appointment 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, and such appointment shall terminate on the thirtieth (30<sup>th</sup>) day following the date that the Company’s Notice of Termination is delivered to 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.

#### 3.04 **Obligations upon Resignation or Removal**

Following the resignation or removal of a Trustee and subject to its rights hereunder, the Trustee:

- (a) shall continue to hold in trust the Fund and 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**”);
- (b) upon receipt of payment for any outstanding amount for its services and expenses then unpaid, shall transfer, deliver and pay over to the successor Trustee, the Fund and all Fund Property on deposit with or in the possession of the Trustee; and
- (c) shall have no duties, responsibilities or liability with respect to the acts or omissions of the successor Trustee.

The successor Trustee shall take title to the Fund and possession of all assets deposited with the predecessor Trustee, and shall secure the same, shall be entitled to call for and receive all contributions that are due, and shall have no duties, responsibilities or liability with respect to the acts or omissions of the predecessor Trustee.

### **ARTICLE 4: THE DUTIES AND POWERS OF THE TRUSTEE**

#### 4.01 **Responsibilities of the Trustee**

The powers, duties and obligations of the Trustee shall be determined solely by applicable law and the provisions of this trust agreement, and accordingly the Trustee shall be responsible only for the performance of such powers, duties and obligations.

#### 4.02 **Trustee Receipt of Funds**

- (a) All contributions made by the Company, as contemplated in section 2.03 of this trust agreement 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) Subject to section 4.03(g), the Trustee and its authorized delegates shall invest the Fund and maintain the Fund invested in Qualified Investments and in accordance with a Statement of Investment Policies and Procedures received by the Trustee from time to time.

- (b) The Trustee shall 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 shall 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.
- (c) Subject to the Standard of Care, the Trustee is authorized to delegate investment selection power to, and to obtain investment management advice from, investment managers or advisors in order (i) to invest and reinvest assets of the Fund, and (ii) 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 any powers or functions so conferred on it by the Trustee. The Trustee may appoint and retain for such purpose any person, including any of its Affiliates or subsidiaries, or any successors thereof, or any corporation with which any of these may amalgamate or become part thereof as a result of any reorganization, and it is acknowledged that such appointment may be made by the Trustee irrespective of any such relationship between them.
- (d) All interest and other returns generated by 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).
- (e) Subject to the Standard of Care, the Trustee shall have no liability for any investment losses resulting from investments made by the Trustee or its delegates in accordance with the terms of this trust 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 trust 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.
- (f) At the end of each calendar year during which the Trustee has held the Fund, the Trustee shall cause to be issued to the Company, within the prescribed times, such forms as appropriate pursuant to the Tax Act and any equivalent provincial legislation or regulation, in respect of any interest, dividend, capital gains or other earnings or losses on the Fund.
- (g) Notwithstanding anything to the contrary in this trust agreement, in no event shall any portion of the Fund be invested in (i) United States dollars or (ii) other money which is readily convertible into United States dollars (collectively, "**U.S. Currency Equivalents**"), and any purported investment in a U.S. Currency Equivalent shall be void ab initio; provided that this section 4.03(g) shall not preclude the temporary deposit of any currency in accounts described in section 4.15(e) pending their

investment in Qualified Investments or their use to discharge Reclamation Obligations of the Company.

- (h) The Trustee, for the purposes of this section, shall in no circumstances appoint the Company or a Beneficiary or any Affiliates of either.

#### 4.04 **Funds to be Used for Reclamation**

Subject to Article 5, the Trustee shall draw upon the Fund solely for the purpose of funding the discharge of the Reclamation Obligations of the Beneficiaries.

For greater certainty, access to the Fund, including the precise amount of the Fund to be released for payment of amounts required to satisfy the Reclamation Obligations of the Beneficiaries, is subject to the Tribunal's written approval.

#### 4.05 **Release of Funds to a Beneficiary**

The Trustee shall draw upon the Fund and pay to a Beneficiary with respect to the Reclamation Obligations of the Beneficiary, on presentation by the Beneficiary of and pursuant to:

- (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 one (1) year following the date of the certificate of the officer.

#### 4.06 **Release of Funds to a Third Party**

The Trustee shall draw on the Fund and pay to any third party for the purposes of funding the discharge of the Reclamation Obligations of a Beneficiary on presentation by the third party of a written direction or an order from the Tribunal, with such direction or order confirming the amount to be disbursed from the 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 comprising all or a portion of the Fund, 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, assets from the Fund may be released or transferred to another QET for Reclamation Obligations in accordance with this trust agreement upon the Tribunal's direction or order, including any such direction or order that is made part of 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 to the Company:
  - (i) on or before the fifteenth (15<sup>th</sup>) Business Day following the last day of each month, a statement of account setting forth all contributions paid to the Trustee and 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;
  - (ii) within sixty (60) days following the close of each fiscal year of the Trust or such other period as may be agreed upon between the Trustee and the Company, and within sixty (60) days after the removal or resignation of the Trustee or termination of the Trust, a written statement of account setting forth all investments, receipts, disbursements and other transactions effected by it during such period (including a statement of all items of income, gain, loss, deduction and credit of the Fund for such fiscal year); and
  - (iii) any other report or information reasonably requested by the Tribunal, a Beneficiary, the Company, or required by law, including without limitation, accounting and financial reports and an internal control report.
- (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, at an office of the Trustee located in the province of Alberta, required to be maintained by the Trustee, in connection with this trust agreement or as required by law.
- (c) The Trustee shall prepare and file or issue, on a timely basis, all income tax returns, elections and other forms which, by virtue of the Tax Act and any provincial legislation or regulation, must be filed or issued in respect of a QET, and such other returns or forms as may be agreed upon between the Company and the Trustee. In

doing so, the Trustee may, subject to the Standard of Care, make or join in making any election or designation which the Trustee in its absolute discretion deems advisable.

#### 4.10 Standard of Care

In the discharge of its obligations and duties or the exercise of its powers 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 institutional trustee acting in like capacity would exercise in comparable circumstances;
- (b) comply with the terms of this trust agreement and 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) Subject to the Standard of Care, the Trustee may, upon consultation with the Company, 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 or exercising its powers hereunder and shall not be responsible for any loss occasioned by, or misconduct on the part of, any of them.

The Trustee may pay out of the Fund reasonable remuneration for all services performed for it in the discharge of its duties or exercise of its powers hereunder ~~without taxation for costs or fees of any counsel, solicitor or attorney, including solicitor fees on a solicitor and own client basis.~~

- (b) Subject to the Standard of Care, 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 or advisor retained or employed by it, in relation to any matter arising in the performance of its duties or exercise of its powers under this trust agreement.
- (c) The Trustee, for the purposes of this section, shall in no circumstances appoint the Company or a Beneficiary or any Affiliates of either.

#### 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 trust agreement.

#### 4.13 **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 trust agreement.

#### 4.14 **Trustee Not to Expend Own Funds or Borrow**

None of the provisions contained in this trust 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.

The Trustee shall not, at any time, borrow any funds for or on behalf of the Trust.

#### 4.15 **Other Powers and Duties of the Trustee**

For greater certainty, in administering the Trust and investing the Fund, the Trustee shall be specifically authorized to:

- (a) **Appoint Custodians.** Appoint or cause to be appointed domestic Custodians (including Affiliates of the Trustee) as to part or all of the Fund Property, provided the Trustee shall not be responsible or liable for any losses or damages suffered by the Trust arising as a result of the insolvency of any such Custodian, except to the extent the Trustee failed to adhere to the Standard of Care in the selection, appointment or continued retention of such Custodian. The Trustee shall be responsible for holding its Custodians to a commercially reasonable standard of care under their contract of appointment. Where a Custodian has caused a loss to the Trust, the Trustee agrees, upon written request by the Company, to pursue commercially reasonable remedies on behalf of the Trust against any such Custodian. Upon request by the Company, the Trustee shall provide the Company with a list of its current Custodians.
- (b) **Hold Investments.** Hold or cause to be held Fund Property in nominee name, in bearer form, or in book entry form, in a Clearinghouse Corporation or in a Depository (including an Affiliate of the Trustee), provided that the Trustee's records clearly indicate that the assets held are a part of the Fund Property and provided that the Trustee shall not be responsible for any losses resulting from the deposit or maintenance of Fund Property (in accordance with market practice, custom or regulation) with any recognized foreign or domestic clearing facility, book entry system, centralized custodial Depository, or similar organization.
- (c) **Purchase and Sell Property.** Purchase and sell and engage in other transactions, including receipts and deliveries, exchanges, exercises, conversions, subscriptions, and other voluntary corporate actions, with respect to Fund Property.



- (d) **Exercise Owner's Rights.** Deal with any securities or interests in any Fund Property, including without limitation, the ability to vote upon any Fund Property; give general or special proxies or powers of attorney with or without power of substitution; exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and delegate discretionary powers, and pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to all Fund Property held as part of the Fund Property.
- (e) **Deposit Cash.** Deposit cash in interest bearing accounts in the deposit department of the Trustee, or any banking Affiliate of the Trustee.
- (f) **Nominate Directors.** Nominate members of the boards of directors of corporations, and appoint representatives or trustees in connection with investments of the Trust whenever or wherever such right of nomination or appointment is available.
- (g) **Deal with Claims.** Settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust and commence or defend suits or legal or administrative proceedings and represent the Trust in all suits and legal and administrative proceedings in any court or before any other body or tribunal as the Trustee shall deem necessary to protect the Trust, provided that the Trustee shall not be obligated to do so until it has first been indemnified by the Company, at the Company's expense, to its reasonable satisfaction against any fees and expenses or liabilities which it may incur as a result thereof.
- (h) **Collect Income and Proceeds.** Collect income payable to and distributions due to the Trust and sign on behalf of the Trust any declarations, affidavits, certificates of ownership and other documents required to collect income and principal payments, including but not limited to, tax reclamations, rebates and other withheld amounts and collect proceeds from Fund Property, which may mature, provided that whenever a Fund Property offers the Trustee the option of receiving dividends in shares or cash, the Trustee is authorized to select the shares option.
- (i) **Redeem Securities.** Present for redemption or exchange any Fund Property which may be called, redeemed, withdrawn or retired provided that timely receipt of written notice of the same is received by the Trustee from the issuer.
- (j) **Execute Instruments.** Make, execute and deliver any and all documents, agreements or other instruments in writing as are necessary or desirable for the accomplishment of any of the powers and duties in this trust agreement.
- (k) **Determine Value.** Determine the fair market value of the Fund Property not less frequently than quarterly and as at December 31 of each fiscal year, in accordance with methods consistently followed and uniformly applied.
- (l) **Power to do any Necessary Act.** Generally take all action, whether or not expressly authorized, which the Trustee may deem necessary or desirable, acting in accordance with the Standard of Care, for the fulfillment of its duties hereunder.
- (m) **Self Dealing.** Deal with any person which is an Affiliate of the Trustee, in which

event neither the Trustee nor the Affiliate shall be accountable for any profit earned in the course of such dealing, provided that when the Trustee directly retains or appoints a person at the expense of the Trust who is an Affiliate, the terms of such appointment, retainer, or other dealing shall be on a commercially reasonable basis and consistent with the Standard of Care.

## **ARTICLE 5: REMUNERATION AND EXPENSES OF THE TRUSTEE**

### **5.01 Trustee's Fees and Expenses of the Trustee**

- (a) The Company and the Trustee shall, from time to time, agree to reasonable remuneration to be paid to the Trustee for its services hereunder.
- (b) Such remuneration and 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, investment expenses, including management and advisory expenses, and the reasonable compensation and disbursements of all other advisers, agents or experts employed or retained pursuant to this trust agreement) shall be drawn from the Fund, 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.
- (c) The Trustee, and every delegate or sub-delegate of the Trustee, including any manager or advisor appointed by the Trustee under this agreement, shall ensure that every expense item about to be incurred in the discharge of a Trustee duty or the exercise of a Trustee power is necessarily incurred and is demonstratively reasonable in cost, the intent of such prudence being to maximize the Trust Fund resources that are available for Reclamation Obligations.

### **5.02 Payment of Trustee Fees**

In the event the Trust created under this trust 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 draw 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**

- (a) In the event the Trust created hereunder becomes liable to or subject to any taxes under the Tax Act, any similar provincial legislation or otherwise, the Trustee shall prepare and file all required tax returns and 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 the Standard of Care, 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.

- (b) The Trustee shall give written notice to the Company and provide the Company the opportunity to dispute obligations, where a material tax obligation of the Trust or financial obligation for environmental liability specifically relates to interest or penalties levied or assessed against the Trustee in respect of the Trust prior to paying such interest or penalty.

If, in the opinion of the Company, such tax obligation or environmental assessment is not lawfully assessed or exigible, the Trustee shall contest the validity of such tax obligation or environmental assessment if the Company so requests, upon such additional indemnity and provision for fees and expenses as the Trustee may reasonably require, or the Company may choose to contest the validity of such tax obligation or environmental assessment itself on behalf of the Trust, but Funds may not be removed from the Trust for such purposes.

## **ARTICLE 6: INDEMNIFICATION AND OTHER OBLIGATIONS**

### **6.01 Indemnity**

- (a) 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 fees 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 results from any act, omission or error of the Trustee or a delegate of the Trustee (i) failing to act in accordance with an order, direction or written approval of the Tribunal, (ii) failing to comply with an obligation imposed at law or under this trust agreement including, without limitation, the Standard of Care, or (iii) causing, authorizing or permitting any action which could result in the Trust no longer qualifying as a QET or failing to take all reasonable care in the circumstances to prevent the Trust from failing to maintain its status as a QET. For greater certainty, the funds for such indemnification shall not be paid out of the Trust Fund. Notwithstanding any other provision hereof, this indemnity shall survive the removal, or resignation of the Trustee, and termination of this trust agreement.
- (b) In addition to and without limiting any other protection of the Company hereunder or otherwise, the Trustee shall indemnify and hold the Company 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 fees on a solicitor and own client basis which may at any time be suffered by, imposed on,

incurred by or asserted against the Company, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee or any delegate of the Trustee, in connection with or arising out of (i) failure to act in accordance with an order, direction or written approval of the Tribunal, (ii) failure to comply with an obligation imposed at law or under this trust agreement including, without limitation, the Standard of Care, and (iii) causing, authorizing or permitting any action could result in the Trust no longer qualifying as a QET or failing to take all reasonable care in the circumstances to prevent the Trust from failing to maintain its status as a QET. Notwithstanding any other provision hereof, this indemnity shall survive the removal, or resignation of the Trustee, and termination of this trust agreement, and, for greater certainty, notwithstanding any other provision of this agreement, the Fund Property may not be used for the purposes of this indemnity.

#### **6.02 Business Recovery**

The Trustee shall, at all times that this trust agreement is in force, maintain a commercially reasonable business recovery programme.

### **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 trust agreement. No amendment to the terms of the Trust and this trust agreement shall be binding or effective unless and until the Tribunal approves the amendment in writing.

#### **7.02 Trust Irrevocable**

The Trust, and the schedules hereto, 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 trust 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 in accordance with the Standard of Care 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:

The Bank of Nova Scotia Trust Company  
Suite 1600, 700 2<sup>nd</sup> Street SW  
Calgary, AB T2P 2W1

Attention: Greg Vibert, Manager, Aboriginal Business  
Fax: (403) 299-3054  
Email: greg.vibert@scotiaprivateclient.com

St. Clair Pipelines Management Inc.  
c/o Spectra Energy  
Suite 2600, 425 1<sup>st</sup> Street SW  
Fifth Avenue Place, East Tower  
Calgary, AB T2P 3L8

Attention: Tracy Holden  
Fax: (403) 699-1585  
Email: tholden@spectraenergy.com

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 SW Calgary, AB  
T2R 0A8

## **ARTICLE 9: MISCELLANEOUS**

### **9.01 Assignment and Enurement**

This trust agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. No party may assign this trust agreement or any benefits or obligations hereunder without the approval of the Tribunal except in accordance with section 9.06 in which case the Trustee shall provide written notice of the assignment to the Company, the Beneficiaries and the Tribunal as soon as commercially practicable.

### **9.02 Applicable Law**

This trust agreement (and any amendments hereto) shall be governed by the law of the Province of Alberta 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 certainty, this trust 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 trust agreement shall be reviewed by the parties and the Tribunal at least every five (5) years, or earlier if directed by the Tribunal.

### **9.08 United States Tax Matters**

Notwithstanding anything to the contrary in this agreement, the parties hereto recognize ~~orand~~

intend that, for United States Federal tax purposes:

- (a) ~~The Trust will be treated as a grantor trust of which the Company is the grantor pursuant to sections 671 through 678 of the United States Internal Revenue Code of 1986, as amended (the "Code") and the regulations thereunder. The Trust is an eligible entity that may elect to be classified, for United States Federal tax purposes, as an association taxable as a corporation or as an entity disregarded as separate from the Company, and the parties hereto hereby authorize the Company (acting through its duly authorized officers), to execute, sign and file Internal Revenue Service Forms 8832 to make or change any such elections, as contemplated by section 7701(a) of the United States Internal Revenue Code of 1986, as amended (the "Code") and the regulations thereunder.~~
- (b) The Trustee is prohibited from investing any portion of the Fund in U.S. Currency Equivalents.
- (c) A decision of the Tribunal, an agency of the Government of Canada, requires the Company to contribute the Annual Contribution Amount to the Fund and requires the income of the Fund to be retained by the Trust (the "**Restrictions**"). The Restrictions thus preclude both (i) the distribution of any of the Annual Contribution Amount or the income of the Fund to the Company (other than to discharge Reclamation Obligations of the Company) ~~or its shareholders~~ and (ii) the conversion of any of the Annual Contribution Amount or the income of the Fund into U.S. Currency Equivalents.
- (d) There are no procedures available to the Company to avoid the Restrictions.
- (e) ~~Accordingly, i~~Income of the Fund ~~should~~may constitute blocked foreign income (as described in section 964 of the Code and the regulations thereunder) for purposes of sections 952, 955 and 956 of the Code, until the Restrictions are removed (in whole or in part).
- (f) ~~In addition, f~~For purposes of the Code other than sections 951 through 965, the income of the Company corresponding to the Annual Contribution Amount contributed to the Fund, together with the income of the Fund, ~~should~~may constitute "deferrable income" described in Revenue Rulings 74-351 and 81-290, and ~~accordingly~~ the Company may elect, pursuant to section 446 of the Code, to use a method of accounting to which the reporting of deferrable income as taxable income is deferred until the income ceases to be deferrable income.

~~No party hereto shall take any position for United States Federal tax purposes that is inconsistent with the provisions set forth above unless required by applicable law.~~

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| **IN WITNESS WHEREOF** the parties hereto have executed this restated trust agreement as of the day and year first set forth above.

**THE BANK OF NOVA SCOTIA TRUST  
COMPANY**

Per:

Per:

**ST. CLAIR PIPELINES L.P.**  
by its general partner **ST. CLAIR PIPELINES  
MANAGEMENT INC.**

Per:

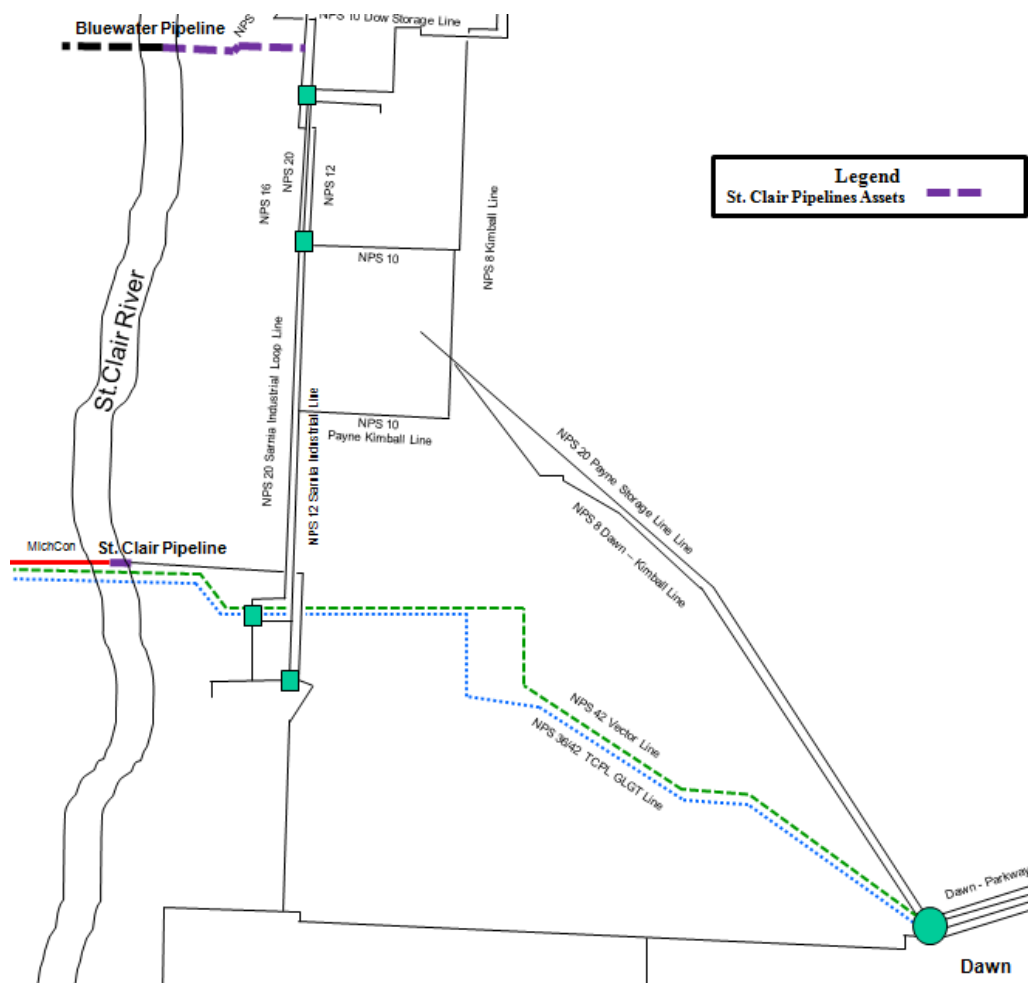
Per:



**Schedule "A"**

The pipelines that are the subject of this trust agreement are the St. Clair River Crossing and the Bluewater Pipeline. The St. Clair River Crossing consists of 0.9 kilometers of NPS 24 pipeline from the edge of the St. Clair River in St. Clair Township to the United States/Canada international border.

The Bluewater Pipeline consists of 0.5 kilometers of NPS 20 pipeline from the edge of the St. Clair River in St. Clair Township to the United States/Canada international border.



**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)<sup>1</sup> applies or*

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<sup>1</sup> 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;

**[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;

**[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;

**[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;

**[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;

**[[municipally-owned corporation earning] income with boundaries of entities]** – subject to subsections (1.2) and

- (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<sup>2</sup>,
  - (ii) a corporation the shares of which are listed on a designated stock exchange outside Canada<sup>3</sup>, or
  - (iii) an authorized foreign bank<sup>4</sup> and payable at a branch in Canada of the bank,

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(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;

**[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.

<sup>2</sup> 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.

<sup>3</sup> *Ibid.* The Department of Finance website referred to also includes the list of designated stock exchanges outside Canada.

<sup>4</sup> 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<sup>5</sup>,
  - (B) the debt obligations have an investment grade rating with a prescribed credit rating agency,<sup>6</sup> 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,<sup>7</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> *Ibid*

<sup>7</sup> *Supra* note 2.

- (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)<sup>8</sup> 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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<sup>8</sup> 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.



**Spectra Energy Companies**

**Qualifying Environmental Trusts**

**Statement of Investment Policies and Procedures**

**September 2015**

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## Section I - Introduction

- 1.1 Westcoast Energy Inc., carrying on business as Spectra Energy Transmission (“**WEI**”), St. Clair Pipelines L.P. (“**SCPL LP**”), Maritimes & Northeast Pipeline Limited Partnership (“**M&NP LP**”), Spectra Energy Empress L.P. (“**Empress LP**”), Spectra Energy Midstream Canada L.P. (“**Midstream LP**”), Express Pipeline Limited Partnership (“**Express LP**”) and Union Gas Limited (“**UGL**”) each own assets that are federally regulated and subject to the five year action plan established under the National Energy Board (“**NEB**”) RH-2-2008 Reasons for Decision relating to Stream 3 of the Land Matters Consultation Initiative. As part of this initiative, the NEB has directed companies to begin setting aside funds annually to cover the costs of abandoning their facilities in the future. By virtue of its MH-001-2013 Reasons for Decision, the NEB has approved the use of a qualifying environmental trust as defined in the Tax Act (“**QET**”) as the mechanism to set aside these abandonment funds.
- 1.2 Accordingly, each of St. Clair Pipelines Management Inc. (“**SCPL GP**”), Maritimes & Northeast Pipeline Management Ltd. (“**M&NP GP**”), Spectra Energy Empress Management Inc. (“**Empress GP**”), Express Pipeline Ltd. (“**Express GP**”) and Spectra Energy Midstream Canada Partner Corporation (“**Midstream GP**”) in their capacity as general partners for SCPL LP, M&NP LP, Empress LP, Midstream LP and Express LP, respectively, and WEI and UGL (each company referred to individually as a “**Pipeline Company**” and together as the “**Pipeline Companies**”) have formed a QET.
- 1.3 More specifically, WEI will form the BC Pipeline QET and the Field Services QET and UGL will form the UGL QET. SCPL GP, M&NP GP, Empress GP and Midstream GP, each in its capacity as general partner for its own limited partnership, will form the SCPL QET, the M&NP QET, the Empress QET, the Midstream QET, and the Express QET, respectively.
- 1.4 This Statement of Investment Policies and Procedures (the “**SIP&P**”) sets out the investment policies and asset allocation applicable to QET funds. It outlines the risk tolerances and return objectives, taking into account the relevant investment principles, time horizon, liquidity requirements and any legal provisions, in order to ensure the investment of the funds is consistent with obligations relating to each QET. It also sets out the processes for monitoring and reviewing the objectives and risk tolerances and changing the asset allocation.



## Section II - Definitions

### Definitions

- 2.1 “Abandonment Costs” means the estimated costs to abandon the pipeline systems and associated facilities, including the costs of abandonment planning, as updated from time to time and as approved by or filed with the NEB.
- 2.2 “Cash and Short Term Securities” has the meaning set out in section 7.4.
- 2.3 “Designated Stock Exchange” has the meaning set out in section 7.9.
- 2.4 “Equity Securities” has the meaning set out in section 7.6.
- 2.5 “Fixed Income Securities” has the meaning set out in section 7.5.
- 2.6 “Investment Authority” has the meaning set out in section 3.6.
- 2.7 “Investment Grade Rating Agency” has the meaning set out in section 7.9.
- 2.8 “Investment Manager” means one or more independent professional investment managers retained by the Trustee to manage the QET Fund.
- 2.9 “NEB” means the National Energy Board.
- 2.10 “Pipeline Companies” has the meaning set out in section 1.2.
- 2.11 “QETs” means, collectively, the BC Pipe QET, Field Services QET, UGL QET, SCPL QET, M&NP QET, Empress QET, Express QET and Midstream QET.
- 2.12 “QET Fund” means, in respect of a QET, the assets held under the QET.
- 2.13 “SIP&P” means this Statement of Investment Policies and Procedures.
- 2.14 “Tax Act” means the *Income Tax Act* (Canada) and the regulations thereunder, as amended.
- 2.15 “Trust Agreement” means the agreement between the Trustee and a Pipeline Company relating to the relevant QET.
- 2.16 “Trustee” means the trustee of a QET.

## Section III - Organization and Roles

### General

- 3.1 Persons providing custodial, management or investment advisory services to the QETs, including but not limited to the Pipeline Companies, Trustee and Investment Manager shall:
- a) acknowledge in writing that they have read this SIP&P and have adhered to its provisions;
  - b) carry out their duties and responsibilities honestly and in good faith consistent with the purposes and nature of the liabilities of the QETs and with the care, diligence and skill that a person of ordinary prudence would exercise;
  - c) exercise a degree of knowledge and skill that they possess or, by reason of their profession or the purpose for which their services are retained, they ought to possess; and
  - d) create and maintain written records of all material decisions relating to the QET Fund, including where appropriate, minutes of meetings, noting time and place, attendees, conflicts, matters discussed and material decisions reached.
- 3.2 No person shall take any action or fail to take any action that would cause a QET to cease qualification as a QET under the Tax Act. All persons responsible for governance of a QET or providing services to a QET shall take, or refrain from taking such actions as may be required by the NEB.

### Pipeline Companies

- 3.3 Each Pipeline Company shall select the Trustee for its QET, and shall obtain NEB approval of the Trustee and Trust Agreement.
- 3.4 In accordance with section XI, the Pipeline Companies and the Trustee shall review this SIP&P at least once each year and shall make such changes as they determine are appropriate. The Pipeline Companies shall promptly file a copy of the SIP&P and any amendment thereto with the NEB, the Trustee and each Pipeline Company.
- 3.5 For the purpose of ensuring compliance with section 7.9 a) i), the Pipeline Companies shall provide the trustee a listing of:
- All persons that are “related” to or partnerships that are “affiliated” with, any of the Pipeline Companies; and
  - All persons or partnerships in which any of the Pipeline Companies or any persons with whom any of the Pipeline Companies are not dealing at arm’s length own, directly or indirectly, in aggregate, (i) not less than 10% of the issued shares of any class of shares of such corporate issuer; or (ii) not less than 10% of the fair market value of all interests in a partnership or a trust that is the issuer, as the case may be.

The Pipeline Companies shall provide written notice to the trustee of any changes to the listing described above.

## Trustee

3.6 The Trustee has final authority for making day-to-day investment decisions and executing investment transactions relating to the QET, within the confines of the SIP&P (“**Investment Authority**”) The Trustee may consult with and rely on professional investment advisors and the views of the Pipeline Companies. The Trustee may delegate Investment Authority to another person, including an affiliate. Any consultation or delegation shall be in compliance with the terms of the QET and any direction of the NEB.

## Investment Manager

- 3.7 Subject to the terms of its engagement agreement, the Investment Manager shall
- a) exercise functional discretionary management authority over the portion of the QET Fund allocated to it, including specific asset allocation and selection, investment performance monitoring, and compliance with this SIP&P;
  - b) provide periodic reporting to the Trustee and the Pipeline Companies relating to its performance and compliance in accordance with reporting procedures or directions provided to it by the Trustee from time to time; and
  - c) promptly report to the Trustee and to the Pipeline Companies any material developments that may affect the portion of the QET Fund under its management, and any material deviation from objectives established in any written mandate provided to it by the Trustee or any deviation from strategies, policies or objectives set out in this SIP&P.

## Section IV – Legal Provisions and Tax Constraints

- 4.1 Notwithstanding any other provision of this SIP&P, investment of the QET Fund must comply with the terms of the Trust Agreement, National Energy Board MH-001-2013 Reasons for Decision and the QET provisions of the Tax Act. In the event of any inconsistency between this section 4.1 and any other provision of the SIP&P, this section will govern.

## Section V – Risks and Return

### Risks

- 5.1 Market risk, capital preservation and liquidity risk shall be managed and mitigated through diversification between asset classes as provided through the asset allocation set forth in this SIP&P.
- 5.2 Currency risk is controlled by limiting investments in foreign stocks through the asset allocation guidelines set forth in this SIP&P.
- 5.3 Credit risk is managed by requiring that 90% or more of the market value of short term securities has a minimum credit rating of A-, or its equivalent, and that 90% or more of other Fixed Income Securities have a minimum credit rating of BBB, or its equivalent.
- 5.4 The Pipeline Companies have communicated the balanced portfolio approach to their shippers who have not raised any concerns regarding this strategy.

### Return

- 5.5 The target rate of return for each QET is 6.25% per annum less investment management, custody and fees necessary for the operation and maintenance of the QET paid from the QET.
- 5.6 The targeted rate of return will be reviewed periodically taking into account performance benchmarks and actual returns and shall be amended as necessary to ensure that the targeted return is realistic in view of actual returns of the investment portfolios.

## Section VI – Investment Principles and Strategy

- 6.1 Although the collection period for each QET may vary, the investment principles and strategy for the QETs assume that the QET Fund will be invested over a period of not less than 19.5 years. Given these long term horizons applicable to all QETs, the same investment principles and strategy will apply to all of the QETs. The appropriateness of using the same investment principles and strategy for all the QETs will be reviewed at minimum every five (5) years.
- 6.2 The QET Fund will be diversified both by asset class and within asset class. Within each asset class, securities will be diversified among economic sector, industry, quality, and size. The purpose of diversification is to provide reasonable assurance that no single security will have a disproportionate impact on the performance of the total fund.
- 6.3 The efficient frontier is a concept in modern portfolio theory that is a set of optimal portfolios that offers the highest expected return for a defined level of risk or the lowest risk level for a given level of expected return.
- 6.4 The objectives for the balanced investment portfolio approach are to preserve capital and maximize risk-adjusted return on investment with an objective to outperform the benchmark by 0.30% over rolling four-year periods.
- 6.5 Except for payment of allowable fees and expenses associated with the QET and investment transactions, there is minimal or no liquidity requirement within a 5 year period. Liquidity requirements will be reviewed annually.

## Section VII – Strategic Asset Allocation

### Asset Allocation and Performance Benchmark

7.1 The asset allocation and performance benchmark are as follows:

Asset Class	Min	Target	Max	Benchmark
Cash & Short Term Securities	0%	0%	10%	FTSE TMX 60-Day T-Bill Index
Fixed Income Securities	20%	40%	50%	FTSE TMX Universe Bond Index
Canadian Equities	0%	5%	20%	S&P/TSX Composite Index
Canadian Small Cap Equities	0%	10%	15%	BMO Small Cap Weighted Index
U.S. Equities	5%	25%	30%	S&P 500 Index (C\$)
International Equities	5%	20%	25%	MSCI EAFE Index (C\$)

### Rebalancing Criteria

7.2 If the asset mix deviates from the above ranges at the end of any quarter, the Investment Manager shall take corrective action to bring the asset mix back within the range as soon as practicable.

In the case of rapidly fluctuating markets, market forces may cause an asset class to move outside of its permitted range. In such cases, the Investment Manager may use its discretion to adjust investment allocations back to within the established limits but in any case this must be completed by the following month end.

### Approved Investments

7.3 Each investment made by the Investment Manager **must be** listed in paragraphs (a), (b), (c), (c.1), (d) or (f) of the definition of “qualified investment” in section 204 of the Tax Act (as referred to in sections 7.4 to 7.7), **must not be** a “prohibited investment” as defined in section 211.6 of the Tax Act (see restrictions listed in section 7.9 b) and is subject to other restrictions listed in sections 7.8 to 7.10.

7.4 Cash and Short Term Securities

The Investment Manager may invest in Cash and Short Term Securities, in this SIPP, defined as money, deposits or Fixed Income Securities or Equity Securities (referred to in sections 7.5 and 7.6, with restrictions listed in sections 7.8 to 7.10, as applicable), with a maturity of less than 365 days.

7.5 Fixed Income Securities

The Investment Manager may invest in Fixed Income Securities, defined in this SIPP in reference to the following investments:

- a) debt obligations of, or guaranteed by, the Government of Canada, the government of a province or a municipality of Canada including their agencies and crown corporations<sup>1</sup>, subject to other restrictions listed in section 7.9 and section 7.10;

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<sup>1</sup> paragraph (b) of the definition of “qualified investment” in section 204.

- b) debt obligations issued by a corporation, mutual fund trust or limited partnership the shares or units of which are listed on a Designated Stock Exchange in Canada<sup>2</sup>, subject to Canadian tax restrictions listed in section 7.9 and other restrictions listed in section 7.10;
- c) debt obligations issued by a corporation the shares of which are listed on a Designated Stock Exchange outside Canada<sup>3</sup>, subject to Canadian tax restrictions set out in section 7.9 and other restrictions listed in section 7.10;
- d) debt obligations issued by an authorized foreign bank and payable at a branch in Canada of the bank<sup>4</sup>, subject to Canadian tax restrictions listed in section 7.9 and other restrictions listed in section 7.10;
- e) debt obligations with an investment grade rating with an Investment Grade Rating Agency with DBRS, Fitch, Moody's or S&P and either: (i) the debt obligations must have been issued as part of a single issue of debt of at least \$25 million; or (ii) in the case of debt obligations that are issued on a continuous basis under a debt issuance program, the issuer of the debt obligations must have had issued and outstanding debt under the program of at least \$25 million<sup>5</sup>, and subject to the Canadian tax restrictions listed in section 7.9 and other restrictions listed in section 7.10; and
- f) guaranteed investment certificates issued by a trust company incorporated under the laws of Canada or of a province<sup>6</sup>, subject to the Canadian tax restrictions listed in section 7.9 and other restrictions listed in section 7.10.

Fixed Income Securities with an effective term to maturity of less than 365 days will remain Fixed Income Securities for asset mix purposes (floating rate notes will also be considered Fixed Income Securities, with the next reset date deemed to be the final maturity date).

## 7.6 Equity Securities

The Investment Manager may invest in Canadian, Canadian Small Cap, US and International Equities that are listed on a Designated Stock Exchange (other than futures contracts or derivatives instrument in respect of which the holder's risk of loss may exceed the holder's

<sup>2</sup> sub-paragraph (c)(i) of the definition of "qualified investment" in section 204.

<sup>3</sup> sub-paragraph (c)(ii) of the definition of "qualified investment" in section 204.

<sup>4</sup> sub-paragraph (c)(iii) of the definition of "qualified investment" in section 204.

<sup>5</sup> paragraph (c.1) of the definition of "qualified investment" in section 204.

<sup>6</sup> paragraph (f) of the definition of "qualified investment" in section 204.



cost)<sup>7</sup>, subject to Canadian restrictions listed in section 7.9 and other restrictions listed in section 7.10.

#### 7.7 Other securities

The Investment Manager may invest in other securities which it determines appropriate for this portfolio including but not limited to investment funds which invest primarily in investments such as mutual and other aggregated or investment funds, including those related to Scotia Institutional Asset Management, and exchange-traded funds/index participations units.

Such other securities **must not be issued by partnerships and must be** listed on a Designated Stock Exchange **and must not be** futures contracts or other derivatives instruments in respect of which the holder's risk of loss may exceed the holder's cost<sup>8</sup> and are subject to the Canadian tax restrictions listed in section 7.9 and other restrictions listed in section 7.10.

### Qualitative and Quantitative Restrictions

The Investment Manager must comply with the following restrictions:

#### 7.8 US tax restrictions and requirements

Investments listed in section 7.4 cannot include (i) United States dollars or (ii) other money which is readily convertible into United States dollars.

This requirement shall preclude the temporary deposit of any currency in accounts other than interest bearing accounts in the deposit department of the Trustee or any banking affiliate of the Trustee pending investment in other qualified investments, or pending deployment to discharge reclamation obligations authorized under the QET.

#### 7.9 Canadian tax restrictions and requirements

- a) The acquisition, holding or disposition of any of the investments shall not be undertaken in a manner that would result in the QET being a borrower.
- b) Investments listed in sections 7.5 to 7.7 may be subject to the following restrictions, as the case may be.
  - i. Investments listed in paragraphs b) to e) of section 7.5 and sections 7.6 and 7.7 must not be issued by:
    - Any of the Pipeline Companies;

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<sup>7</sup> paragraph (d) of the definition of "qualified investment" in section 204.

<sup>8</sup> paragraph (d) of the definition of "qualified investment" in section 204.

- A person that is “related” to or a partnership that is “affiliated”<sup>9</sup> with, any of the Pipeline Companies, such as Spectra Energy Corp (NYSE: SE); or
  - A person or a partnership in which any of the Pipeline Companies or any person with whom any of the Pipeline Companies is not dealing at arm’s length<sup>10</sup> own, directly or indirectly, in aggregate, (i) not less than 10% of the issued shares of any class of shares of such corporate issuer; or (ii) not less than 10% of the fair market value of all interests in a partnership or a trust that is the issuer, as the case may be.
- ii. Securities listed in sections 7.6 and 7.7 must not include interests in a partnership, unless such type of securities has been confirmed in a ruling or published administrative position of the Canada Revenue Agency, or in a “comfort letter” issued by the Department of Finance (Canada) as a “qualified investment” and not a “prohibited investment” for a QET for purposes of the rules in section 211.6 of the Tax Act.
- c) A Designated Stock Exchange has the meaning set out in section 248(1) of the Tax Act, for which a designation by the Minister of Finance under section 262 is in effect and listed under the Minister of Finance’s following website:  
<http://www.fin.gc.ca/act/fim-imf/dse-bvd-eng.asp>
- d) Investment Grade Rating Agency is a prescribed credit rating agency under subsection 4900(2) of the *Income Tax Regulations* and includes, on the date hereof:  
 A.M. Best Company Inc;  
 DBRS Limited;  
 Fitch, Inc.;;  
 Moody’s Investors Service Inc; and  
 Standard & Poor’s Financial Services LLC.

#### 7.10 Other restrictions and requirements

- a) Fixed Income Securities
- Minimum credit rating on any security must be BBB(low) or R1(low) by DBRS, or equivalent by S&P or Moody’s.
  - Maximum effective term to maturity for short-term securities will be 365 days.
  - Asset-backed securities shall be rated by at least two rating agencies and fully backed with a global-style liquidity facility covering both accrued interest and principal.

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<sup>9</sup> “Related” has the meaning set out under subsection 251(2) of the Tax Act and “affiliated” has the meaning set out under section 251.1 of the Tax Act and would include Spectra Energy Corp and any of its subsidiaries, directly or indirectly owned.

<sup>10</sup> “Not dealing at arm’s length” has the meaning set out in sub-section 251(1) of the Tax Act and its determination is a question of facts. Factors such as the existence of common mind, parties acting in concert to make decisions, etc. will be relevant to the factual determination.

- Collateralized debt obligations shall be fully collateralized with highly liquid issues rated R-1 (high) or AAA, as applicable, that otherwise meet the requirements of this SIP&P for cash and short term securities in section 7.4.
- The aggregate duration of the portfolio shall be maintained within one year of the FTSE TMX Universe Bond Index.
- No more than 5% of the QET Fund shall be invested in any one corporation or security with the exception of those issued or guaranteed by the Government of Canada or by a province of Canada having at least an “A” rating.

b) Equity securities

- Not more than 5% of the large capitalization Canadian Equity portfolio shall be invested in securities not included in the S&P/TSX Composite index.
- Not more than 5% of the small capitalization Canadian Equity portfolio shall be invested in securities not included in the BMO Small Cap Weighted index.
- Not more than 5% of the U.S. equity and International equity portfolios shall be invested in companies having market capitalization below \$1 billion (USD).
- Not more than 5% of the International equity portfolio shall be invested in countries not included in the MSCI EAFE Index.
- The Investment Manager may not invest in related issuers, such as Spectra Energy Corp (NYSE: SE), unless the securities are held passively within the context an exchange-traded fund or an index fund.

c) Other, applicable to all investments:

- Maximum exposure to illiquid securities is limited to 5% of the portfolio. A security will be deemed to be illiquid if its resale is prohibited by agreement or statute or if the security cannot be readily sold into the market at a reasonable competitive price during usual market conditions.
- Maximum aggregate exposure to any single non-government issuer is limited to 10% of the market value of the portfolio.
- Investments in commodities, precious metals, mineral rights, bullion or collectibles are not permitted.

## Section VIII - Voting rights

- 8.1 The responsibility of exercising and directing voting rights acquired through the QET Fund's investments shall be delegated to the Investment Manager, who shall be required at all times to act prudently and in the best interest of the QETs. The Investment Manager shall be required to provide a copy of their voting rights policy to the Trustee and the Pipeline Companies.
- 8.2 The Investment Manager shall be required to maintain a record of how the QET Fund's voting rights have been exercised and provide a copy of such record to the Trustee annually.
- 8.3 In case of doubt as to the best interest of the QETs, the Investment Manager shall be required to request instructions from the Trustee and act in accordance with such instructions.
- 8.4 The Investment Manager shall be required to advise the Trustee and provide details in advance of the vote when the Investment Manager has acquired on behalf of itself and its clients securities to which are attached 10% or more of the voting rights of that class of securities.

## Section IX - Monitoring Investment Performance and SIP&P Review

- 9.1 The Trustee and the Pipeline Companies will review the SIP&P periodically and at least annually and propose any changes to the SIP&P as necessary to ensure that the targeted return is reflective of the actual achieved returns of the investment portfolios. More specifically, the Trustee shall meet with the Pipeline Companies at least annually to review, discuss and consider:
- a) the QET Fund and liabilities to monitor the target asset allocation, including any mismatch between portfolio assets and abandonment liabilities;
  - b) the risk profiles and compliance with this SIP&P, applicable law or any regulatory requirements;
  - c) any changes to applicable law or any regulatory requirements;
  - d) material changes to the estimated Abandonment Costs and expected future performance over the market performances and rate of returns;
  - e) issues and opportunities in the market relating to the QET Fund;
  - f) the fees and expenses incurred in managing the QET Fund;
  - g) shortcomings of the SIP&P or investment policies and procedures that emerge in practical application; and
  - h) any other key issues and concerns that may affect future performance of the QETs.
- 9.2 The Trustee shall meet at least once a year with the Investment Manager to discuss investment performance, investment strategies, expected future performance and any changes in the Investment Manager's organization, investment processes and professional staff.

## Section X - Conflicts of Interest

- 10.1 The Pipeline Companies shall satisfy themselves that an appropriate policy regarding conflicts of interest exists and is followed by any parties providing management and/or investment advisory services to the QETs. As a minimum, the Code of Ethics and Standards of Professional Conduct adopted by the Institute of Chartered Financial Analysts shall be expected to apply to the Investment Manager.
- 10.2 The Investment Manager shall not directly or indirectly lend monies of the QETs to a related party or invest those monies in the securities of a related party, or enter into a transaction with a related party, except as follows:
  - a) The Investment Manager may acquire securities of a related party if the securities are acquired at a public exchange, or if the value of the transaction is nominal or the transaction is immaterial to the QETs. A related party transaction shall be classified as nominal or immaterial if such transaction represents less than 0.5% of the QET Fund.
  - b) The Investment Manager may enter into a transaction with a related party if the transaction is required for the operation or administration of the QET Fund and the terms of the transaction are not less favorable to the QETs than market terms and conditions.
- 10.3 None of the parties providing management and/or advisory investment services to the QETs shall knowingly permit his or her interest or duty to conflict with the proper exercise of his or her duties and powers as described herein.
- 10.4 If a party providing management and/or advisory investment services to the QETs has or acquires any material interest, direct or indirect, in any matter in which the QET Fund is concerned or may benefit materially from knowledge of, participation in, or by virtue of an investment decision or holding of the QET Fund, or may be perceived as such, the person involved shall, as soon as practicable, disclose this conflict of interest in writing to the Trustee.
- 10.5 Every disclosure of a conflict of interest and the process for dealing with it under this section shall be recorded in the minutes of the relevant written record of material decisions taken by the Trustee or Investment Manager pursuant to section 3.1(d).
- 10.6 The failure of a person to comply with the procedures described in this Section shall not of itself invalidate any decision, contract or other matter. In the event such failure is discovered, the decision, contract or other matter pertaining to the investment of the QET Fund which is affected by such failure shall be reconsidered by the Trustee.

## Section XI – Review and Confirmation or Amendment

11.1 This SIP&P will be reviewed and affirmed at least annually, but otherwise whenever a major change is apparent or necessary. Such review may be prompted by:

- a) a material change in the expected Abandonment Costs;
- b) a revision to the expected long-term trade-off between risk and reward on key asset classes;
- c) a shift in the financial risk tolerance of the QETs;
- d) shortcomings of the investment policies and procedures that emerge in their practical operation;
- e) modifications that are recommended by an Investment Manager;
- f) changes in applicable legislation; or
- g) such other event or circumstance as may be relevant to prudent management of the QET funds.

AUTHORIZATION

(Number and position as per paragraph 4 of Certified Resolution):

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

This SIP&P is accepted by:

WESTCOAST ENERGY INC., CARRYING ON BUSINESS AS SPECTRA ENERGY TRANSMISSION	SIGNATURE
ST. CLAIR PIPELINES L.P. by its general partner ST. CLAIR PIPELINES MANAGEMENT INC.	SIGNATURE
SEPCTRA ENERGY EMPRESS L.P. by its general partner SPECTRA ENERGY EMPRESS MANAGEMENT INC.	SIGNATURE
EXPRESS PIPELINE LIMITED PARTNERSHIP by its general partner EXPRESS PIPELINE INC.	SIGNATURE
SPECTRA ENERGY MIDSTREAM CANADA L.P. by its general partner SPECTRA ENERGY MIDSTREAM CANADA PARTNER CORPORATION	SIGNATURE
MARITIMES & NORTHEAST PIPELINE LIMITED PARTNERSHIP by its general partner MARITIMES & NORTHEAST PIPELINE MANAGEMENT LTD.	SIGNATURE
UNION GAS LIMITED	SIGNATURE
THE BANK OF NOVA SCOTIA TRUST COMPANY	SIGNATURE
1832 ASSET MANAGEMENT L.P.	SIGNATURE