

National Energy  
Board



Office national  
de l'énergie

File OF-AF-SAC 04  
10 December 2014

Mr. Chris Horne  
Director, Environment and Regulatory Affairs  
Plains Midstream Canada ULC  
Suite 1400, 607-8th Avenue SW  
Calgary, AB T2P 0A7  
Facsimile 403 233-0399

Dear Mr. Horne:

**Trust Agreements filed by Plains Midstream Canada ULC and Aurora Pipeline Company Ltd. (together, Plains) pursuant to Order MO-032-2014, and the MH-001-2013 Reasons for Decision**

The National Energy Board (Board) is in receipt of the trust agreements filed by Plains on 2 September, 2014. The attached letter decision sets out the Board's comments in of respect the trust agreements.

Yours truly,

*Original signed by*

Sheri Young  
Secretary of the Board

Attachments

## LETTER DECISION

The National Energy Board (Board) is in receipt of the trust agreements filed by Plains Midstream Canada ULC and Aurora Pipeline Company Ltd. (together, Plains) on 2 September, 2014. This letter decision sets out the Board's comments in of respect the trust agreements. The Board's comments are also reflected in the revised trust agreement attached to this decision. A clean copy of this trust agreement has also been included.

### I. BOARD DECISION

The Board has determined that the trust agreements do not fully comply with the MH-001-2013 Reasons for Decision. The Board is of the view that, in order to comply with this decision, the attached revised trust agreement must be used by Plains when the pipeline abandonment trusts are established. Modifications (other than, for Aurora Pipeline Company Ltd., modifications so the trust agreement reflects it as the settlor) are not permitted. If the revised trust agreement is unsatisfactory to any party to the trust, the Model Trust Agreement (Appendix VII to the MH-001-2013 Reasons for Decision) may be used instead.

Plains proposed to use CIBC Trust Corporation as trustee of the pipeline abandonment trusts. The Board notes that the CIBC Trust Corporation is regulated under the *Trust and Loan Companies Act*. The Board approves CIBC Trust Corporation as the original trustee of the Plains trust agreements.

The Board directs Plains to notify the Board by **30 January 2015** whether they will use the revised trust agreement or the Model Trust Agreement. At that time, Plains shall file their fully executed trust agreements. Alternatively, Plains may file a letter of credit or surety bond consistent with the MH-001-2013 Reasons for Decision as described in Order MO-024-2014.

### II. BOARD COMMENTS ON TRUST AGREEMENTS

#### 1. Definition and Appointment of Trustee

The Board is of the view that amendments must be made to paragraph 1.01(bb) of the trust agreements in order to better comply with the Indicative Terms. The Indicative terms state that any trustee appointed under a pipeline abandonment trust must be regulated under the *Trust and Loan Companies Act*. The trust agreements must therefore explicitly require the trustee to be regulated under this legislation.

Modifications have also been made to section 3.03, which relates to trustee removal. The Indicative Terms required trust agreements to set out the circumstances in which a trustee can be terminated. Under the Indicative Terms, trust agreements must include a provision that specifies that if the trustee is convicted of an offence involving dishonest conduct, becomes insolvent with the appointment of a receiver or is in bankruptcy proceedings, or is dissolved or in liquidation, the company, with the approval of the Board, can appoint a new trustee. In the Board's view,

pipeline abandonment funds may be placed at unnecessary risk if the agreements do not explicitly allow for a new trustee to be appointed in these circumstances.

## **2. Trust Definition**

The Board finds the definition of “Trust” set out in the trust agreements to be overly simplistic. The “Trust” definition, as drafted by Plains, referred to the trust being “the trust, as constituted by this trust agreement”. It is the Board’s view that this definition should more comprehensively describe the critical relationships set out in the trust agreements. Accordingly, the definition of “Trust” should explicitly refer to the relationship between the trustee and the beneficiaries. This definition should also clearly state that the trust is established for the purpose of the reclamation obligations of the beneficiaries. Accordingly, the attached trust agreement includes adjustments to paragraph 1.01(aa).

## **3. Qualifying Environmental Trust (QET)**

The Board finds that the trust agreements improperly relied on the QET provisions of the *Income Tax Act* (Tax Act) to govern certain distributions from the trust. Specifically, section 5.03 stated that the trustee was prohibited from accessing the fund for trustee remuneration, expenses, or taxes payable by the trust if such distributions would cause the trust to fail to become or cease to be a QET. In the Board’s view, this approach is inconsistent with the Indicative Terms and the MH-001-2013 Reasons for Decision.

The Indicative Terms clearly stated that, if permitted by the Tax Act, the trustee could access the trust for its remuneration, its incurred expenses, and payment of taxes owing by the trust. However, this was only to be included if companies were certain that these actions were permitted by the Tax Act. The Board expects this determination to be made prior to the execution of Plains’ trust agreements; Plains cannot rely on section 5.03. Accordingly, section 5.03 has been deleted.

If Plains determines that it is consistent with the QET provisions of the Tax Act, the trust agreements may allow for withdrawals by the trustee to pay for the trustee’s remuneration and expenses, and taxes on income earned on the assets held in trust. Otherwise, references to such withdrawals should be deleted from the trust agreements.

## **4. Surplus**

The Board is of the view that modifications are required to the trust agreements in respect of the distribution of surplus. As proposed, section 2.04 of the trust agreements stated that the trustee will shall distribute any surplus funds to Plains. The MH-001-2013 Reasons for Decision and Indicative Terms stated that surplus was to be distributed by the trustee, with the approval of the Board, to one or more of the beneficiaries or to an orphan pipeline fund. Amendments have been made to the attached trust agreement so that it complies with the Indicative Terms.<sup>1</sup>

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<sup>1</sup> The Board has inserted the definition of “Orphan Pipeline Fund into section 1.01 of the revised trust agreement. This definition was originally found in the Board’s Indicative Terms.

## **5. Agents and Sub-Agents of the Trustee**

Several sections of the trust agreements require amendment so that they more accurately reflect the MH-001-2013 Reasons for Decision in respect of agents or sub-agents of the Trustee. Sections 4.03 and 4.10 require additional language in order to clarify that the Trustee is not authorized to appoint the company, a beneficiary, or any affiliates of either as an agent.

In the Board's view, these adjustments are necessary in light of the fact that the agreements, as currently drafted, are broad enough to permit the appointment of these entities as an agent of the trustee. In the MH-001-2013 Reasons for Decision, the Board indicated that it was not acceptable for a company to have decision-making authority regarding investment decisions. It follows then that delegation of decision-making authority regarding investments to the company, a beneficiary, or an affiliate of either would similarly be improper.

In the Board's view, a trust agreement that permits the trustee to appoint the company, a beneficiary, or any of their affiliates poses an unnecessary risk to the trust assets held by the trustee. More particularly, if the company was appointed as investment manager (or any other agent) under the agreements, it would have control and direction over the assets. As a result, there would be a greater risk that the company's creditors could successfully characterize the relationship between the company and trustee as a principal-agent relationship rather than a trust relationship. A principal-agent relationship would not protect the assets held by the trustee from the pipeline company's creditors. The Board notes that the attached trust agreement still allows the trustee to delegate its many powers and duties by appointing any person (other than the company, a beneficiary, or an affiliate of either) as an agent.

The Board has also modified section 5.01 of the trust agreement to include language that requires the trustee, any agent of the trustee, and any sub-delegate under the agreement to ensure that expenses incurred in the discharge of a trustee duty or exercise of a trustee power are reasonable. Given that the purpose of the trust agreements is to fund the reclamation obligations associated with the Plains pipelines, the Board is of the view that the addition of such a clause is appropriate in this case.

## **6. Sale**

In the Board's view, the Plains trust agreements require further certainty regarding the possibility of a sale, transfer, or other disposition of the Plains pipelines. The Indicative Terms required that the trust agreements allow for the trustee to release monies in these circumstances. The revised trust agreement now includes a new section 4.17, which clarifies that monies from the trust assets may be released upon the Board's direction or order.

## **7. Annual Contribution Amount**

The Board has modified paragraph 1.01(d) of the attached trust agreement, which defined "Annual Contribution Amount". The trust agreements, as proposed, defined this term as the

amount collected annually from users of the pipeline. However, in the MH-001-2013 Reasons for Decision, the Board approved Plains' proposal to contribute the annual contribution amount for its proprietary pipelines directly into the trust (the Board also approved Plains' proposal to collect from shippers the annual contribution amount for its common carrier pipelines). The Board has amended the definition to reflect both situations. This amendment is required in only the Plains Midstream Canada ULC trust agreement.

## **8. Indemnity**

Section 5.1 has been amended to clarify that trust assets are not to be used by the company to indemnify the trustee. This is consistent with the irrevocable nature of the trust (i.e., the company cannot access trust assets unless it is a beneficiary satisfying reclamation obligations).

## **9. Duration of the Trust**

The Board has amended section 2.05 of the trust agreements to clarify the process associated with termination of the trust in circumstances where the trust term has been reached. That section, as drafted by Plains, stated that the trust would terminate either upon expiration of the perpetuity period or written notice from the Board of the completion of reclamation obligations. The Board requires further certainty regarding the perpetuity period referenced in the Plains trust agreements, and has modified section 2.05 to reference the *Alberta Perpetuities Act*, which governs the perpetuity period in Alberta.

The Board is further of the view that section 2.05 is not workable as drafted. The Plains trust agreements included a covenant from Plains to establish a new trust no later than five years prior to the expiry of the trust term.<sup>2</sup> The Plains trust agreements could terminate upon notification by the Board of the completion of reclamation obligations. Given that this date is at the discretion of the Board, no certainty can be achieved as to the specific date the trust term will expire. If there is no certainty as to a specific date, Plains would be unable to establish a new trust five years prior to the termination of the original trust (as required by the trust agreements). The concept of termination upon the Board's notice of completion of reclamation obligations cannot be used to measure the trust term; it has therefore been removed.

## **10. Unnecessary Complexity and Further Clarity**

Certain sections of the trust agreement, for example, section 4.09, have been modified to remove unnecessarily complex drafting. Other parts, such as sections 1.01 and 4.10, have been modified to provide further clarity. Given that the trust agreements will be publically available to stakeholders with an interest in abandonment funding, the Board is of the view that it must be clearly drafted and free of unnecessary complexity.

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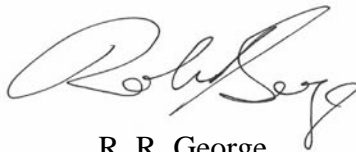
<sup>2</sup> By including a covenant of this nature, Plains complied with the Indicative Terms. However, the Indicative Terms required that the new trust be established on the *same* terms and conditions as the original trust, rather than *similar* terms and conditions. The Plains trust agreements contemplated that the terms of the new trust would be similar to those of the old trust; this wording has been removed.

### III. CONCLUSION

One of the Board's key considerations in the MH-001-2013 Reasons for Decision was whether proposed set-aside mechanisms satisfied the principles and attributes described in the RH-2-2008 Reasons for Decision. The Indicative Terms were established with these principles and attributes in mind.

Of importance to the Board, as noted in the Decision, was the RH-2-2008 attribute of protecting funds from the pipeline company's creditors. This is evident throughout the Indicative Terms. For example, the Indicative Terms allowed the trustee, at its sole discretion, to release trust assets to one beneficiary or another (and to divide the surplus among the beneficiaries and the orphan pipeline fund). This structure further secures the protection of the trust assets from creditors.

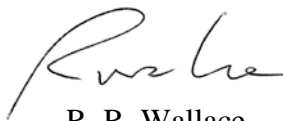
The Board is disappointed that many companies, including Plains, failed to apply the Board's direction throughout their trust documents, requiring significant intervention from the Board in order to bring agreements into compliance with the Indicative Terms. There is a public interest in having funds available to safely and effectively abandon a pipeline. Companies must have regard to the importance of abandonment funding, and to the principles and attributes of the RH-2-2008 Reasons for Decision, as the abandonment funding process continues to evolve in the future.



R. R. George  
Presiding Member



S. Parrish  
Member



R. R. Wallace  
Member

**THIS TRUST AGREEMENT** made as of the \_\_\_ day of \_\_\_\_\_, 2014.

**BETWEEN:**

**CIBC TRUST CORPORATION**, a licensed trust company governed by the laws of Canada with a place of business located in the City of Calgary, in the Province of Alberta,

**Original Trustee**

**AND:**

**PLAINS MIDSTREAM CANADA ULC**, a corporation incorporated under laws of the Province of British Columbia,

**PMC ULC**

**WHEREAS** PMC ULC holds the regulatory authorization allowing it to operate the Pipeline (as defined herein);

**AND WHEREAS** PMC ULC is subject to regulation by the Tribunal (as defined herein) under the NEB Act (as defined herein);

**AND WHEREAS** on 26 May 2009 the Tribunal issued the RH-2-2008 Reasons for Decision, which required each person holding a regulatory authorization to operate pipelines that are regulated under the NEB Act 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 such pipelines;

**AND WHEREAS** on 12 March 2013, the Tribunal issued the MH-001-2013 Hearing Order, establishing how it would consider each proposed set-aside mechanism;

**AND WHEREAS** in May 2014 the Tribunal issued the MH-001-2013 Reasons for Decision, which outlined set-aside and collection mechanisms for reclamation obligations in respect of sites in Canada used for the operation of pipelines and ordered PMC ULC to set aside funds in a trust to pay for the Reclamation Obligations (as defined herein);

**AND WHEREAS** in satisfaction of the requirements imposed by the Tribunal, PMC ULC wishes to settle a trust ~~(the "Trust")~~, the property of which will be used ~~solely for the most part~~ to satisfy the Reclamation Obligations;

**AND WHEREAS** the Original Trustee has agreed to receive, maintain and hold the property contributed to the Trust in accordance with the terms and conditions of this Agreement, for the sole purpose of assisting the Beneficiaries (as defined herein) in meeting the Reclamation Obligations;

**AND WHEREAS** it is desirable that the Trust shall, at all times, qualify as a QET (as defined herein);

**NOW, THEREFORE, THIS TRUST AGREEMENT WITNESSETH** that in consideration of the promises and of the mutual covenants herein contained, it is hereby mutually

covenanted, agreed and acknowledged by and between the parties hereto that any property contributed by PMC ULC to the Original Trustee under this trust agreement shall be held by the Original 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 OPR ~~Act~~;
- (b) "**Affiliate**" means, with respect to a party, that party's affiliates within the meaning of the Canada Business Corporations Act (Canada), as amended, and for the Original Trustee includes, without limitation, CIBC World Markets Inc., CIBC Asset Management Inc., CIBC Mellon Trust Company, CIBC Mellon Global Securities Services Company, and CIBC Private Investment Counsel, a division of CIBC Asset Management Inc.;
- (c) "**Agreement**" means this instrument, as amended from time to time, which instrument is the vehicle for the trust here created;
- (d) "**Annual Contribution Amount**" means:
  - (i) the amount collected annually by the Company from users of the Pipeline;  
and
  - (ii) the annual amount determined pursuant to Appendix XIV of the MH-001-2013 Reasons for Decision;  
  
and subsequently contributed by the Company to the Trust in accordance with this Agreement ~~to ensure the Beneficiaries have the funds necessary to pay for future Reclamation Obligations~~;
- (e) "**Beneficiary**" and "**Beneficiaries**" mean the Company and any other person or persons ~~required to satisfy~~ having Reclamation Obligations in respect of the Site ~~owing by the Company or any other person or persons~~;
- (f) "**Business Day**" means any day except a Saturday, Sunday or a statutory holiday in the Province of Alberta;
- (g) "**Company**" means the person(s) holding the regulatory authorization(s) for the time being to operate the Pipeline;
- (h) "**Company's Notice of Termination**" has the meaning set out in section 3.03 of this Agreement;
- (i) "**Deactivate**" and "**Deactivation**" mean the same thing as the definition of "deactivate" in the OPR ~~Act~~;
- (j) "**Decommission**" and "**Decommissioning**" mean the same thing as the definition of "decommission" set out in the OPR ~~Act~~;



- (k) "**Default**" has the meaning set out in section 4.05 of this Agreement;
- (l) "**Fund**" means collectively: (i) all property contributed by the Company to the Trust and held by the Trustee and any property substituted therefor, all in accordance with this Agreement, and (ii) any interest, dividends, gains, returns, proceeds or increase earned or realized by the Trust on such property, in accordance with this Agreement;
- (m) "**Fund Property**" has the meaning set out in section 3.04 of this Agreement;
- (n) "**NEB Act**" means the *National Energy Board Act* (Canada), as amended from time to time;
- (o) "**New Trust**" has the meaning set out in section 2.05 of this Agreement;
- (o.1) "Orphan Pipeline Fund" means a not-for-profit organization to be established pursuant to a statute of the Parliament of Canada whose purpose includes paying for the cost to Abandon a pipeline constructed or operated under a statute of Canada;
- (p) "~~OPR Act~~" means the *Onshore Pipeline Regulations* (Canada), as amended from time to time;
- (q) "**Original Trustee**" means CIBC Trust Corporation, a licensed trust company with an office located in the City of Calgary in the Province of Alberta;
- (r) "**PMC ULC**" means Plains Midstream Canada ULC, a company incorporated under the laws of the Province of British Columbia;
- (s) "**Pipeline**" means the pipeline described in Schedule "A" to this Agreement;
- (t) "**QET**" means a "qualifying environmental trust" as this term is defined in subsection 211.6(1) of the Tax Act;
- (u) "**Qualified Investments**" means all or any of those investments that from time to time are qualified investments for a QET, and for greater certainty, such qualified investments on the date hereof include only those types of property described in paragraphs (a), (b), (c), (c.1), (d) and (f) of the definition of "qualified investment" in section 204 of the Tax Act that are not encompassed within the definition of "prohibited investment" in subsection 211.6(1) of the Tax Act as more particularly set out in Schedule "B";
- (v) "**Reclamation Obligations**" means:
  - (i) the ~~Company's~~ 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 ~~Company's~~ 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 ~~Company's~~ duty to carry out post-Abandonment monitoring and remediation of the Site, where post-Abandonment refers to the period of time after a Company has satisfied the conditions of an order or direction issued by the Tribunal (as defined hereafter) granting leave to Abandon;

and all costs incurred in respect of and as a consequence of the foregoing. (~~wx~~)

- (v.1) **"Site"** means the location or locations in Canada used by the Company for the operation of the Pipeline;
- (x) **"Statement of Investment Policies and Procedures"** means the statement of investment policies and procedures established by the Company and delivered to the Trustee and are applicable to the investment of the Fund, which, from time to time, may be amended, modified, supplemented or restated by the Company after complying with any requirements of the Tribunal applicable thereto;
- (y) **"Tax Act"** means the *Income Tax Act* (Canada), as amended or replaced from time to time;
- (z) **"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;
- (aa) **"Trust"** means ~~this relationship between a 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 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 also the Orphan Pipeline Fundtrust, as constituted by this Agreement, and includes a reference to the Trustee acting in its capacity as Trustee;~~
- (bb) **"Trustee"** means the Original Trustee or another trust company licensed under the ~~laws of Trust and Loan Companies Act~~ (Canada) ~~or a province~~ and appointed under this Agreement to hold the office of trustee and, for greater certainty, does not include a person that is not authorized to be a trustee of a QET in accordance with the relevant provisions of the Tax Act and similar applicable provincial legislation; and
- (cc) **"Trust Term"** or **"Term"** shall have the meaning set out in section 2.05 of this Agreement.

## ARTICLE 2: CREATION AND TERM OF THE TRUST

### 2.01 Qualifying Environmental Trust:

It is the express intention of the parties hereto for the Trust settled under this Agreement to constitute a QET. This Agreement shall be read and interpreted in light of and consistent with the QET definition and related provisions in the Tax Act, and the Company, other Beneficiaries and Trustee shall ensure that no actions are taken which would jeopardize the status of this Trust as a QET.

### 2.02 The Trust: initial transfer and contributions

The Company has irrevocably transferred to the Original Trustee one (1) Canadian twenty dollar (\$20) bill bearing the serial number \_\_\_\_\_ for the purpose of creating and settling the Trust. Receipt of such funds is hereby acknowledged by the Original Trustee. The Original Trustee agrees to administer the Fund on the terms and subject to the conditions set out in this Agreement.

The Company also agrees to transfer to the Trustee, on an annual basis, an amount equivalent to the Annual Contribution Amount, and the Trustee also agrees to receive and administer such property on the terms and subject to the conditions set out in this Agreement.

### 2.03 The Trust: discretionary as to two or more beneficiaries

The Fund is held by the Trustee in trust for the benefit of the Beneficiaries, the Trustee having the power, in its discretion, but subject to the receipt of prior written approval from the Tribunal, to distribute all or any part of the Fund to one or more Beneficiaries for the purpose only of permitting such Beneficiary or Beneficiaries, as the case may be, to meet existing Reclamation Obligations. Such distributions may be made by the Trustee to or for the benefit of such Beneficiaries directly or indirectly to a person or persons named by the Tribunal to permit such persons to satisfy the Reclamation Obligations.

### 2.04 The Trust: appropriation of surplus funds

If property remains in the ~~Fund Trust~~ after all Reclamation Obligations ~~of the Beneficiaries are discharged, then the Trustee, with the approval of the Tribunal, may distribute the Fund or any part thereof among any of the Beneficiaries and Orphan Pipeline Fund, or, where such is the case, a single Beneficiary and the said Fund, as the Trustee in its sole discretion sees fit. have, to the satisfaction of the Tribunal, as evidenced by instrument in writing, been satisfied, then the Trustee shall distribute all remaining Trust property to the Company.~~

### 2.05 The Trust: duration (or term) of the Trust

This Agreement terminates (the "**Trust Term**") no later than ~~the earlier of (i) written notice from the Tribunal of the completion of the Reclamation Obligations, as required under applicable laws, and (ii) the expiration of the perpetuity period as determined under the relevant provisions of the Perpetuities Act, R.S.A. 2000, c. P-5, period, if applicable.~~ Not more than five years prior to the expiration of the Trust Term, and provided that ~~Reclamation Obligations remain outstanding and~~ the Company is not in Default, the Trustee shall distribute the Fund to the Company, and the Company covenants upon receipt of the Fund, to establish, at once, a new irrevocable trust upon the terms and subject to the same ~~or similar~~ conditions, ~~as required by applicable law at~~

~~that time, as~~ set out in this Agreement (the "New Trust"), and to contribute to the New Trust the entirety of ~~all remaining Trust property~~the Fund.

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

#### 3.01 Appointment

The Company has the power to appoint a Trustee, subject to the written approval of the Tribunal. The Trustee, and any replacement Trustee, on accepting such appointment agrees to act as Trustee of the Trust in accordance with the terms and conditions of this Agreement.

#### 3.02 Resignation

A Trustee desiring to resign the office shall in writing notify the Company 30 days prior to the intended resignation date and during this period the Company, as provided in section 3.01, shall appoint a replacement Trustee, subject to the written approval of the Tribunal. The replacement Trustee shall take title or possession of the Fund and Fund Property without delay. In any case, the effective date of a Trustee's resignation shall not take place until a replacement Trustee has been appointed and the replacement Trustee has validly accepted such appointment.

#### 3.03 Removal

(a) If the Company delivers a written notice ("**Company's Notice of Termination**") to the Trustee specifying the intent to terminate the appointment of the Trustee hereunder, then in such a circumstance, such appointment shall terminate on the 30<sup>th</sup> day following the date that the Company's Notice of Termination was delivered (or was deemed to have been delivered in accordance with Section 8.02 of this Agreement) to the Trustee or, if earlier than the foregoing, the date a replacement Trustee has been appointed and the replacement Trustee has validly accepted such appointment.

(b) A Trustee shall cease to hold the office of Trustee if convicted of an offence involving dishonest conduct, becomes insolvent with the appointment of a receiver or is in bankruptcy proceedings, or being a corporation that is dissolved or in liquidation. With the approval of the Tribunal the Company shall appoint an interim corporate Trustee regulated under the Trust and Loan Companies Act (Canada), as amended from time to time. The predecessor Trustee, upon receipt of payment for any outstanding amount for its services and expenses then unpaid, shall transfer, deliver and pay over to such successor Trustee, the Fund and all Fund Property on deposit with or in the possession of such predecessor Trustee hereunder. The interim Trustee will take title to the Trust Fund, and take possession of all assets deposited with the predecessor Trustee, and secure the same. The interim Trustee is entitled to call for and receive all Trustee contributions that are due, accounting to a permanent replacement Trustee when such is appointed.

#### 3.04 Obligation of Trustee upon termination

Following termination of the Trustee's appointment and subject to its rights hereunder, the Trustee shall continue to hold in trust:

- (a) the Fund; and
- (b) all documents, information, and books and records created, received or maintained by the Trustee which relate to or arise or have arisen in connection with the performance by the Trustee of its duties hereunder (collectively hereinafter referred to as the "**Fund Property**"),

until the replacement Trustee takes hold of the Fund and the Fund Property.

### 3.05 Number of Trustees

At any given time, the Trust shall only have one validly appointed and acting Trustee.

### 3.06 Qualifications of a Trustee

For greater certainty, no person other than a trust company licensed under the laws of Canada ~~or a province~~, and authorized to be a trustee of a QET in accordance with the Tax Act and similar applicable provincial legislation, may be authorized and appointed to act as a trustee of this Trust.

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

### 4.01 Responsibilities of the Trustee

The duties and obligations of the Trustee shall be determined solely by applicable laws and the provisions of this Agreement, and accordingly the Trustee shall be responsible only for the performance of such duties and obligations.

### 4.02 Trustee Receipt of Funds

- (a) The Trustee solely shall be responsible for all property delivered to it.
- (b) The Trustee shall have no duty or responsibility for (i) the determination of the amount, or timing, of any Annual Contribution Amount, (ii) the collection from any person the Annual Contribution Amount, or (iii) the sufficiency of the Fund to meet and discharge the Reclamation Obligations.

### 4.03 Investment of Fund

- (a) Notwithstanding any other provision of this Agreement, the Trustee will ensure that the entirety of the Fund will consist solely of Qualified Investments in accordance with the Statement of Investment Policies and Procedures.
- (b) The Trustee will have the power to retain, invest or reinvest, any cash, funds or property constituting the whole or any part of the Fund in Qualified Investments that the Trustee will, in its absolute discretion, consider advisable including, without limitation, any Qualified Investments that are deposits, investment products or obligations issued or administered by the Trustee or its Affiliates, or by anyone or 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 or further delegation of its investments duties.

- (c) The Trustee may from time to time appoint one or more investment managers or advisors, any of whom may be an Affiliate of the Trustee, to assist the Trustee and provide the Trustee with advice with respect to the investment and/or reinvestment of the Trust property, and the exercise of any powers or functions related thereto. All charges for such services shall be paid out of the Fund as seems appropriate to the Trustee notwithstanding any association which may exist between the Trustee and any agent so employed. The fees and remuneration of any such agent or person shall be an expense of the Trust and shall be in addition to the compensation payable to the Trustee.
- (d) The Trustee and any investment manager or advisor may deposit any cash in or invest in or purchase securities, products or services of related and connected issuers of the Trustee or its Affiliates, notwithstanding that the Trustee, its Affiliates, any related and connected issuers, its agents and/or advisors may benefit therefrom. None of the Trustee, any Affiliate, related and connected issuer, agent or advisor shall be required to account for, or to give up, any such benefit.
- (e) The Trustee shall have no liability for any investment losses resulting from investments made by the Trustee in accordance with the terms of this Agreement, including any losses on any investment required to be liquidated prior to maturity in order to make a payment required pursuant to the terms of this Agreement, and any losses resulting from a loss of opportunity. The Trustee shall have no liability to any person should it be unable to invest all or any portion of the Fund as aforesaid for any period of time, provided that it has made commercially reasonable efforts to do so.
- (f) 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 Fund to be Used Solely for Reclamation

Subject to Article 5, the Trustee shall distribute all or part of the Fund ~~to the Beneficiaries~~ to ensure the satisfaction of the Reclamation Obligations of the Beneficiaries. For greater certainty, access to the Fund, including the precise amount of the Fund to be distributed to satisfy the Reclamation Obligations, is subject to the Tribunal's approval.

#### 4.05 Distribution to a Beneficiary

The Trustee may distribute Trust property to pay for the Reclamation Obligations, on presentation by a Beneficiary of:

- (a) a written direction or an order from the Tribunal confirming the amount to be distributed, the timing of the distribution and the identity of the Beneficiary to receive the distribution; 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 (individually, each an act of "**Default**"), and that to the officer's knowledge, the Beneficiary will not suffer a Default within a year following the date of the certificate of the officer.

On receipt of the Tribunal's written direction or order, and the certificate of an officer of the Beneficiary, the Trustee shall make the requested distribution.

#### 4.06 Distribution to a Third Party

The Trustee may distribute Trust property directly to any third party for the purposes of satisfying the Reclamation Obligations of a Beneficiary on presentation of a written direction or an order from the Tribunal, with such direction or order confirming the amount to be distributed, and the timing of the distribution. On receipt of the written direction or order, the Trustee shall make the requested distribution directly to the third party set out in the order or direction of the Tribunal.

#### 4.07 Duties of the Trustee Regarding Distributions

The funds which are to be distributed in accordance with sections 4.05 and 4.06 may be obtained by the Trustee calling in or redeeming certain investments which it holds in the Trust, provided that the Trustee shall only call in or redeem such investments after consultation with the Company.

#### 4.08 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 distribution of Trust property all or part of the Fund, and shall provide the Company with the following, on or before the 15<sup>th</sup> Business Day following the last day of each month:
  - (i) statement of account or report showing all contributions made by the Company to the Trust, and all distributions made by the Trust to the Beneficiaries, during the immediately preceding month;
  - (ii) statement of account or report showing all relevant information concerning the Fund including, without limitation, information detailing all acquisitions and dispositions of investments; reinvestments; income accrued; income and gains/losses earned and recognized; distributions, expenses and costs; and cash inflows and outflows recorded as a cash transaction, incurred during the immediately preceding month; and
  - (iii) any other report or information reasonably requested by the Tribunal or the Company.
- (b) The Trustee shall, on reasonable prior notice and during normal business hours, make available to and permit the officers, employees and authorized agents of

the Tribunal or the Company and/or the auditors of the Company to inspect all books, records and accounts required to be maintained by the Trustee, in connection with this Agreement or as required by law.

- (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 applicable similar provincial legislation, must be filed or issued in respect of the Trust or a QET, and such other returns or forms as the Trustee deems necessary in its sole discretion. In so doing, the Trustee may make any elections, determinations and designations under the Tax Act or any applicable similar provincial legislation.

#### 4.09 Standard of Care

In the exercise and discharge of its obligations and duties at law or hereunder, the Trustee shall act honestly and in good faith and shall:

- (a) exercise that degree of care, diligence and skill that a reasonably prudent person functioning in the office of Trustee would exercise in comparable circumstances;
- (b) comply with any and all applicable laws, rules and regulations in respect of the Trustee's dealing with, or handling of the Fund pursuant to the terms hereof; and
- (c) be responsible for loss occasioned by reason of the failure of the Trustee to comply with its obligations at law or duties under this Trust, or its negligence or willful misconduct on the part of itself, its employees, officers or agents.

#### 4.10 Appointment of Agents

- (a) The Trustee may appoint such agents and employ or retain such legal counsel, accountants, appraisers or other experts or advisors (each, an “Agent”) as may be reasonably required for the purpose of discharging its duties or exercising its powers hereunder and shall not be responsible for any misconduct on the part of any of them except as provided in section 4.09(c). 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.
- (b) Provided an Agent was properly appointed by the Trustee in accordance with section 4.09, the Trustee may act in good faith on the opinion or advice of, or information obtained from an Agent in relation to any matter arising in the performance of its duties related to such appointment.
- (c) The Trustee may deal on behalf of the Trust 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 of the Trustee or does not deal at arm's length from the Trustee within the meaning of the Tax Act, the terms of such appointment, retainer or other dealing shall be disclosed to the Company and be on a commercially reasonable



basis.

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

#### 4.11 Safekeeping of Funds

So far as is allowed by law, and in accordance with this Agreement, the Trustee shall control and hold in trust, in such form and manner as may be necessary to establish a valid trust as against any creditor or creditors of the Beneficiaries, the Fund.

#### 4.12 Acceptance of Obligations

The Trustee hereby accepts the covenants and obligations set out in this Agreement and agrees to discharge the same upon the terms and conditions herein set forth, and to hold and exercise the rights, privileges and benefits conferred upon it by this Agreement for the purposes of the Trust.

#### 4.13 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 Agreement. Such documentation must not require the exercise of any discretion or independent judgment on the part of the Trustee.

#### 4.14 Trustee Not to Expend Own Funds

None of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or property 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.

#### 4.15 Restrictions on Trustee Actions

For greater certainty, the Trustee is not authorized to, nor shall it, undertake or propose to undertake any action that would cause the Trust to not be or cease to be a QET.

#### 4.16 Reliance

The Trustee shall not incur liability for acting in reliance on any written notice, request, consent, certificate, receipt, affidavit, statutory declaration or other paper or document furnished to it by or on behalf of any person authorized to do so by the terms of this Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the veracity of any information therein contained, provided the Trustee's reliance thereon is in accordance with the Standard of Care.

#### 4.17 Sale of the Pipeline or a Portion Thereof

For greater certainty, monies from the Fund may be released in accordance with this Agreement upon the Tribunal's direction or order approving the sale, assignment, transfer or other disposition of the Pipeline or a portion thereof from a Beneficiary to another person pursuant to paragraphs 74(1)(a), (b) and (c) of the NEB Act.

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

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

The Company and the Trustee shall, from time to time, agree to reasonable remuneration to be paid out of the Fund to the Trustee for its services hereunder. The Trustee is also entitled to be reimbursed out of the Fund for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration of its duties hereunder (including, without limitation, legal fees and expenses and the reasonable compensation and disbursements of all other advisers, agents or experts employed or retained pursuant to this Agreement), provided that the Trustee shall first deliver to the Company true copies of all invoices, statements or receipts in relation thereto or in evidence thereof. For greater certainty, the payment of such amounts contemplated in this Section 5.01 may be made out of the Fund without prior written approval from the Tribunal.

The Trustee, and every delegate and sub-delegate of the Trustee, including any investment manager, is to 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 by the Trustee of Taxes**

In the event the Trust created hereunder becomes liable to or subject to any taxes under the Tax Act or any similar provincial legislation or otherwise, the Trustee shall be entitled to make payment of such taxes, including instalments of taxes, out of the Fund to the appropriate taxing authority without prior written approval from the Tribunal, provided the Trustee has received notification as to the amount of taxes, including instalments of taxes, owing by reference to an assessment or notice from the appropriate taxing authority or a signed copy of the Trust's annual tax return for that year previously reviewed by the Company.

### ~~5.03—Restrictions on Payment of Trust Expenses and Taxes~~

~~Notwithstanding any other provision of this Agreement, the Trustee shall be prohibited from using any part of the Fund to pay amounts contemplated in Sections 4.03 and 4.10 and this Article 5 if such payments would cause the Trust to fail to become or cease to be a QET.~~

## **ARTICLE 6: INDEMNIFICATION OF THE TRUSTEE AND FORCE MAJEURE**

### **6.01 Indemnity**

In addition to and without limiting any other protection of the Trustee hereunder or otherwise by law, the Company shall indemnify and hold the Trustee harmless from any and all liabilities, losses, claims, damages, penalties, actions, suits, demands, levies, costs, expenses and disbursements including any and all reasonable legal and adviser fees and disbursements of whatever kind of nature, which may at any time be suffered by, imposed on, incurred by or asserted against the Trustee, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee in connection with its acting as Trustee hereunder,

unless the claim arising from the conduct of the Trustee fails to comply with its obligations at law or under this Agreement including, without limitation, the provisions of section 4.09 hereof, or otherwise the negligence or willful misconduct on the part of the Trustee, its employees, or officers. Notwithstanding any other provision hereof, this indemnity shall survive the removal, or resignation of the Trustee, and termination of this Agreement. For greater certainty, the funds for such indemnification shall not be paid out of the Trust Fund.

#### 6.02 Force Majeure

Notwithstanding anything in this Agreement to the contrary, the Trustee shall not be responsible or liable for its failure to perform under this Agreement or for any losses to the Trust resulting from any event beyond the reasonable control of the Trustee through its exercise of the Standard of Care, including but not limited to nationalization, strikes, expropriation, devaluation, seizure, or similar action by any governmental authority, de facto or de jure; or enactment, promulgation, imposition or enforcement by any such governmental authority of currency restrictions, exchange controls, levies or other charges affecting the Fund's property; or the breakdown, failure or malfunction of any utilities or telecommunications systems; or any order or regulation of any banking or securities industry including changes in market rules and market conditions affecting the execution or settlement of transactions; or acts of war, terrorism, insurrection or revolution; or acts of God; or any similar or third party event. This section shall survive the termination of this Agreement.

### **ARTICLE 7: AMENDMENT AND TERMINATION OF THE TRUST**

#### 7.01 Amendment

The Company and the Trustee may agree to amend the terms of the Trust, including the terms of this Agreement. No amendment to the terms of the Trust and the terms of this Agreement ~~are~~ is binding or effective unless the Tribunal approves the amendment and such amendment does not cause the Trust to not be or cease to be a QET.

#### 7.02 Trust Irrevocable

The Trust, and the schedules thereto, which are hereby incorporated into the Trust, may not be revoked by the Company or Beneficiaries acting as a whole, or the Trustee, except that the Tribunal in its total discretion may direct a termination of the Trust, and order such successive arrangements as are appropriate.

### **ARTICLE 8: NOTICES**

#### 8.01 Acting on Written Notice

The Trustee shall not incur liability for acting upon any written notice, request, consent, certificate, receipt, affidavit, statutory declaration or other paper or document furnished to it by or on behalf of any person authorized to do so by the terms of this Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the verity of any information therein contained, provided the Trustee is acting properly and reasonably in accepting the representations made to it.

## 8.02 Mode of Giving Notice

Any notice or other document required to be given or delivered hereunder will be valid and effective if given by registered letter (postage prepaid), courier, by personal delivery or by fax addressed by the party to whom such notice is to be given, and will be deemed to have been effectively delivered on:

- (a) the date of actual delivery, if couriered or personally delivered during normal business hours of the party to whom such notice is delivered (and if not, on the next following Business Day); or
- (b) the first Business Day following the date of the fax, if faxed; or
- (c) on the fifth Business Day after effectual posting, if sent by mail.

## 8.03 Addresses of the Parties

The addresses of the parties for purposes of this section shall be as follows, but may be changed by any party by the delivery of notice of such change in accordance with the notice requirements hereof:

CIBC TRUST CORPORATION  
301 8<sup>th</sup> Avenue S.W. – 3<sup>rd</sup> Floor – Hollingsworth Building  
Calgary, AB T2P 1C5

PLAINS MIDSTREAM CANADA ULC  
1400, 607 8<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 0A7

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:

Attention: Secretary  
National Energy Board  
517 10<sup>th</sup> Avenue S.W.  
Calgary, AB T2R 0A8

## **ARTICLE 9: MISCELLANEOUS**

### 9.01 Assignment and Enurement

This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. No party may assign this Agreement or any benefits or obligations hereunder without the prior written approval of the Tribunal.

#### 9.02 Applicable Law

This 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 Agreement represents the entire agreement amongst the parties respecting the Trust, and supersedes all prior discussions, agreements and understandings of every kind and nature amongst them.

#### 9.05 Right to disclose

The Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of the Trustee, or its legal counsel, it is required to disclose under any applicable laws, court order or administrative directions. The Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred relating to such disclosure.

#### 9.06 Merger, Consolidation, Amalgamation

Any company with which the Trustee may be merged, consolidated or amalgamated will become the successor Trustee hereunder without any further action on the part of the Trustee.

#### 9.07 Review of Agreement

This Agreement shall be reviewed by the parties and the Tribunal at least every five (5) years, or earlier if directed by the Tribunal.

#### 9.08 Residence of the Trust

In furtherance of the intention of the parties that the Trust be considered resident in Alberta for tax purposes, the Trustee shall, where possible and as reasonably necessary, exercise its duties hereunder in Alberta.

**[This space intentionally left blank; execution page to follow.]**

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

**CIBC TRUST CORPORATION**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**PLAINS MIDSTREAM CANADA ULC**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

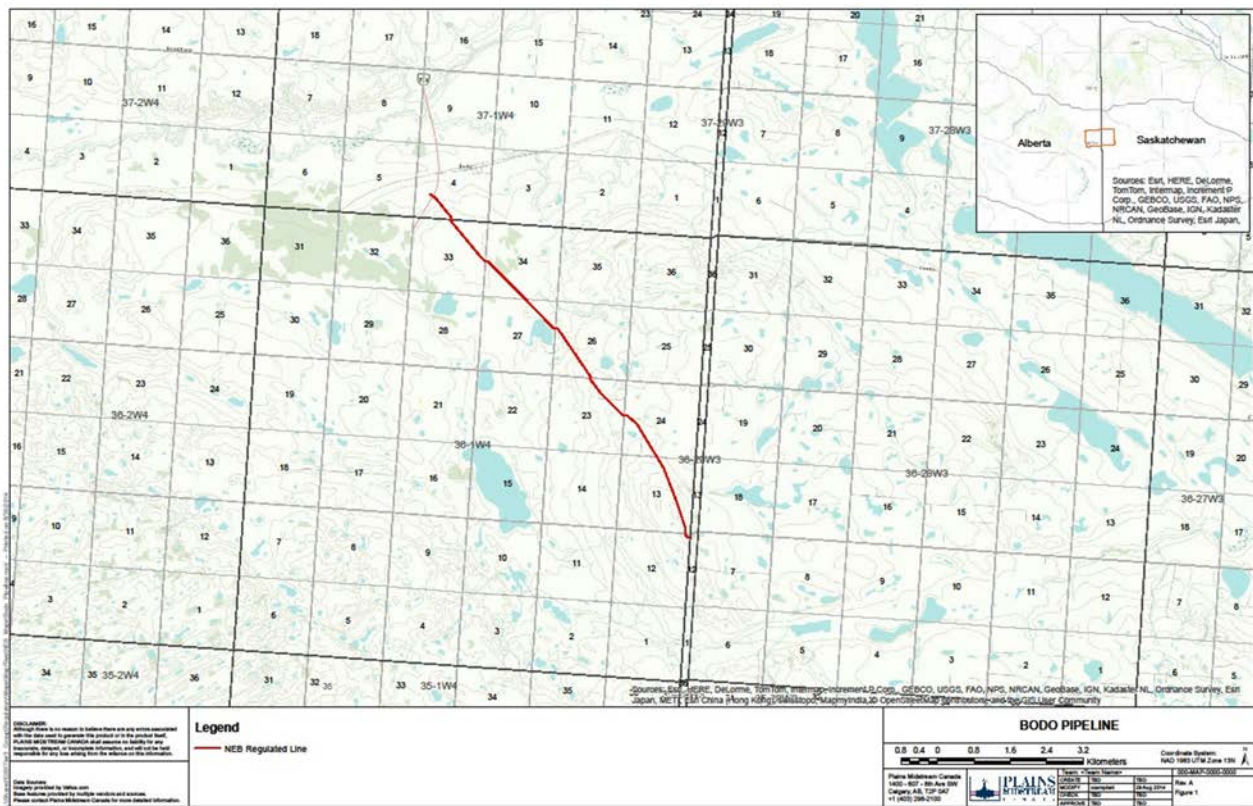
## Schedule "A"

### Plains Midstream Canada ULC - Pipeline Systems

#### Bodo Pipeline System

Order XO-2-85 (as amended by AO-1-XO-2-85; AO-2-XO-2-85; AO-3-XO-2-85)

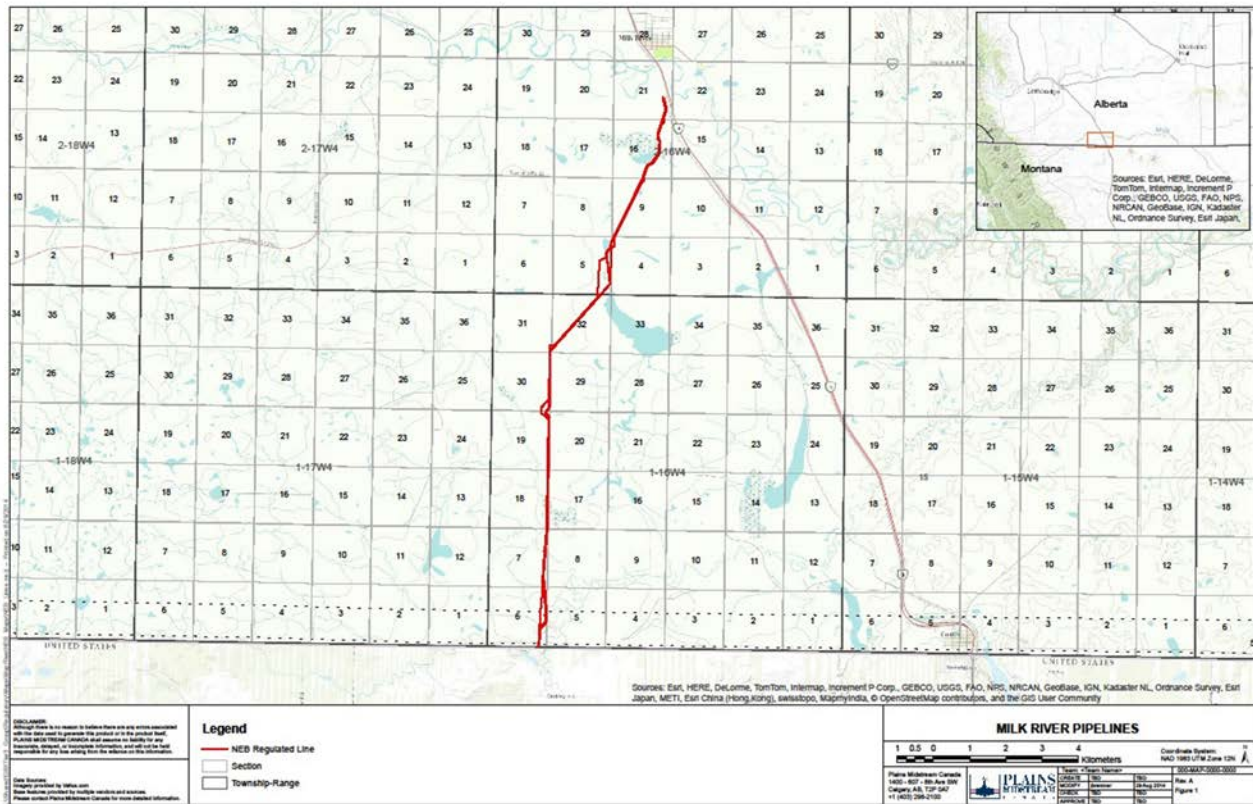
Parallel 3" and 6" pipelines located between 16-27-035-28W3M (Saskatchewan) and 05-04-037-01W4M (Alberta) and parallel 3" and 6" pipelines located between 05-04-037-01W4M (Alberta) and 01-19-037-01W4M (Alberta). The pipelines include one pump station/terminal facility and one block valve/trap riser site. The total length of pipe is 45.7 km.



## Milk River Pipe Line System

Orders XO-4-68 (AO-1-XO-4-68; AO-2-XO-4-68); XO-5-92 (AO-1-XO-5-92); XO-W23-18-95; GPLO-P384-017-2012

Parallel 6", 12" and two 10" pipelines located between 08-21-002-16W4M (Alberta) and 01-06-001-16W4M (Alberta-USA border) and a 10" pipeline located between 16-07-001-16W4M (Alberta) and 01-06-001-16W4M (Alberta-USA border). The pipelines include one pump station/terminal facilities and 3 block valve/riser sites. The total length of pipe is 69.1 km.

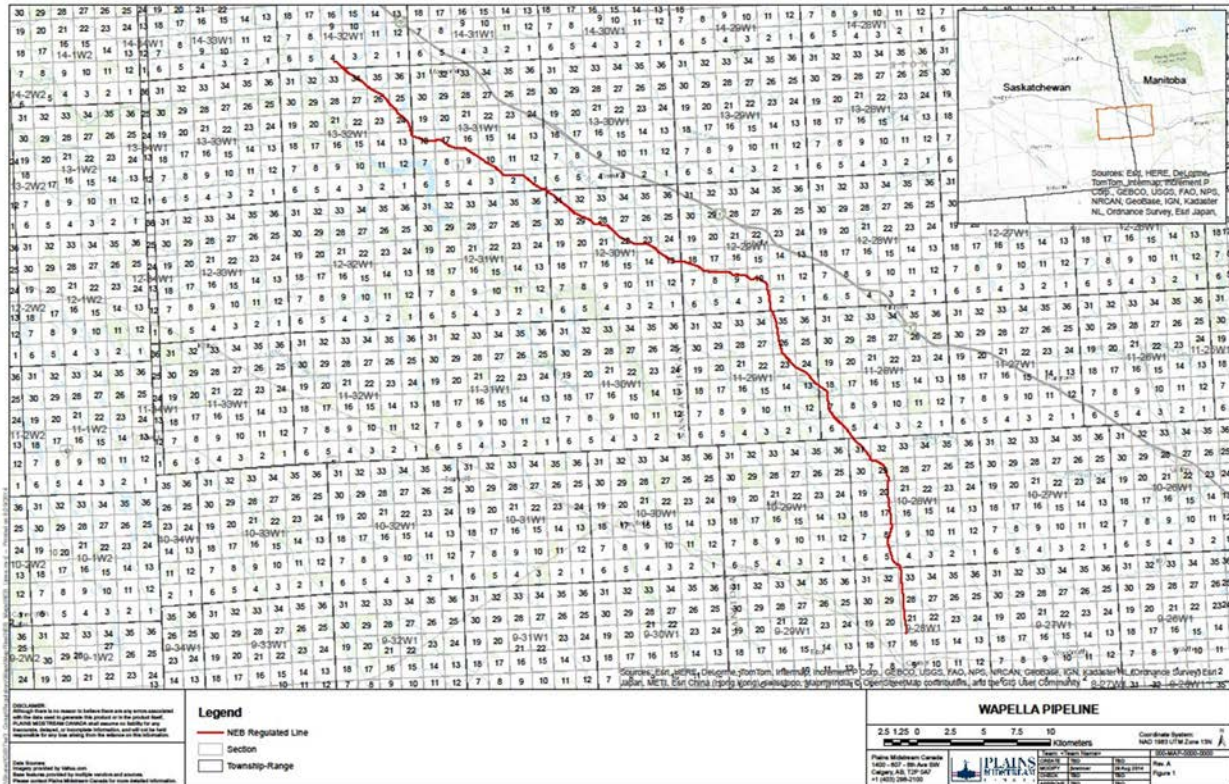




# Wapella Pipe Line System

## Certificate OC-46 (AO-1-OC-46)

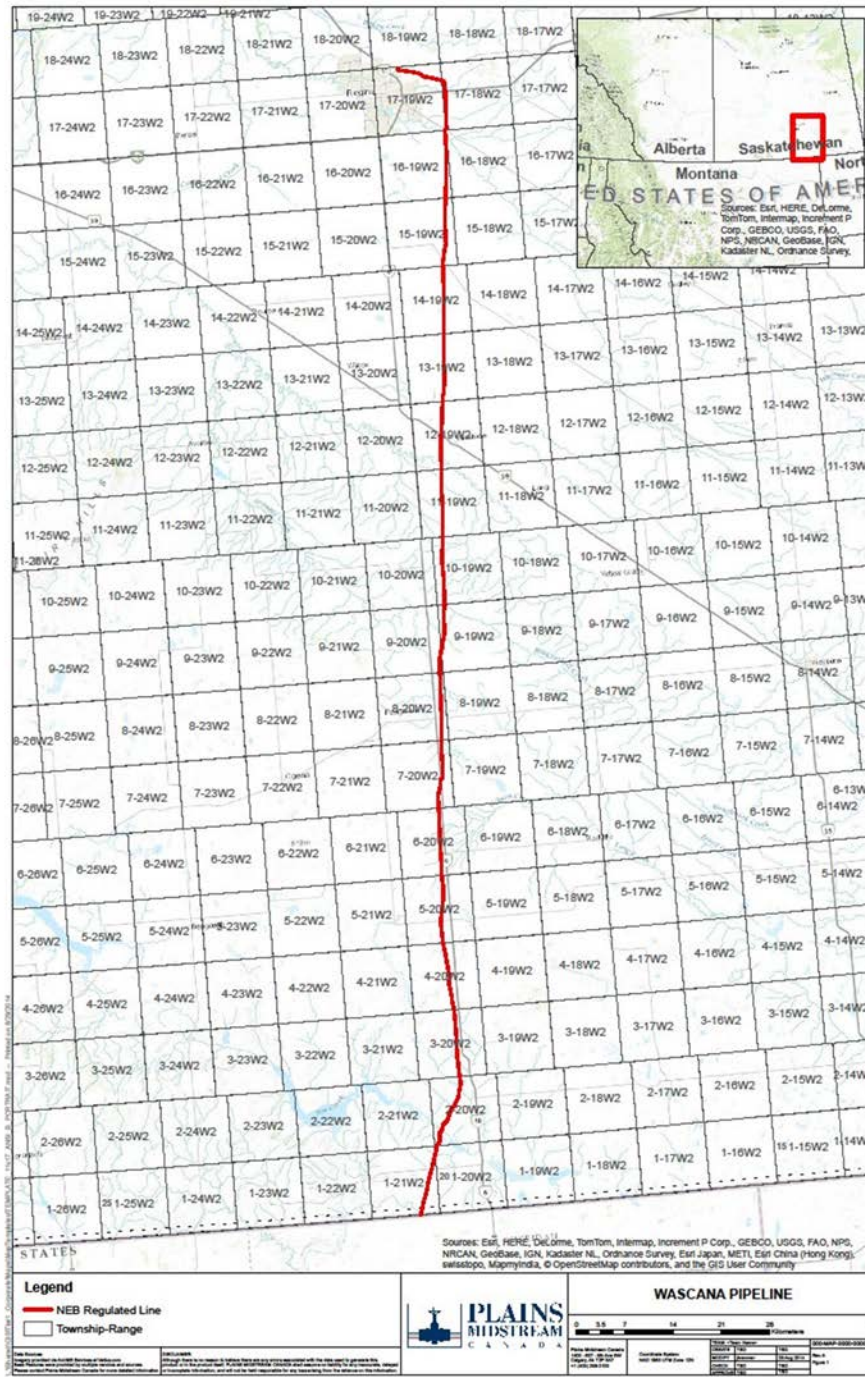
An 8" pipeline located between 14-16-009-28W1M (Manitoba) and 07-04-014-32W1M (Saskatchewan). The pipeline includes two pump station/terminal facilities and two block valve/trap riser sites. The total length of pipe is 64.0 km.



# Wascana Pipeline System

## Certificate OC-26 (AO-2-OC-26; AO-3-OC-26)

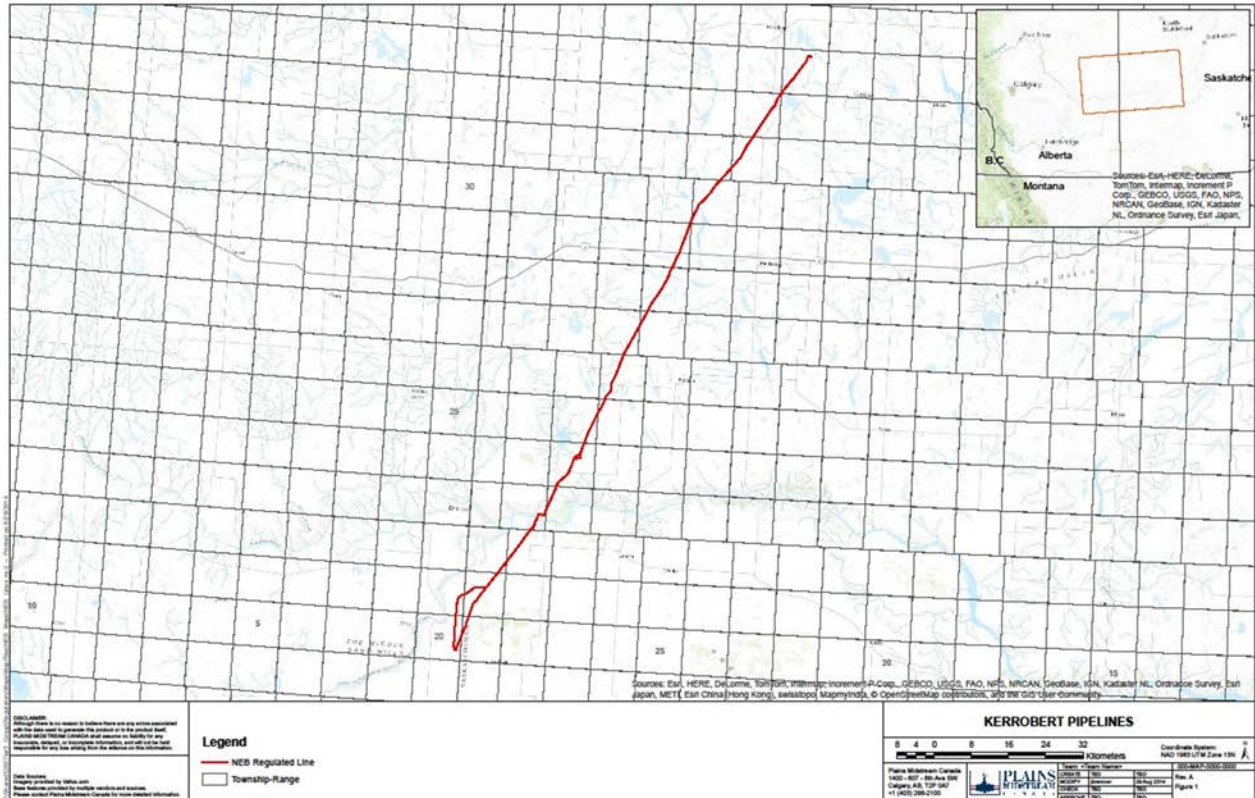
A 12" pipeline located between NW-33-017-18W2M (Regina, Saskatchewan) and 03-02-001-21W2 (Saskatchewan-USA border) and a short 24" connector line located in Regina. The total length of pipe is 212.0 km.



## Kerrobert Pipeline System

### Certificates GC-39, and OC-44

Two pipelines, 10" and 8", running from the Empress Straddle plants in Alberta, to the Kerrobert, Saskatchewan storage terminal. Total length of pipe is 309.7 km.



## Windsor Storage Facility

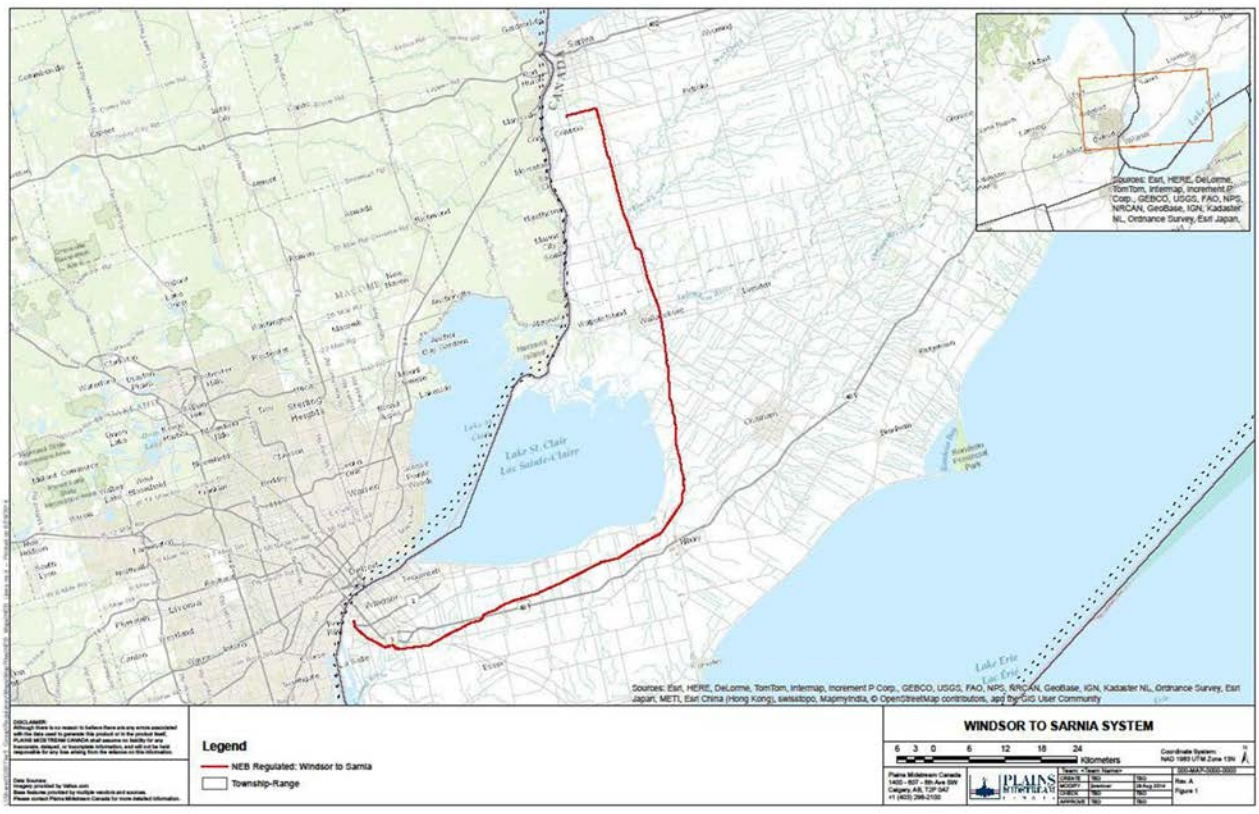
### *Certificate OC-29, and Order MO-25-86*

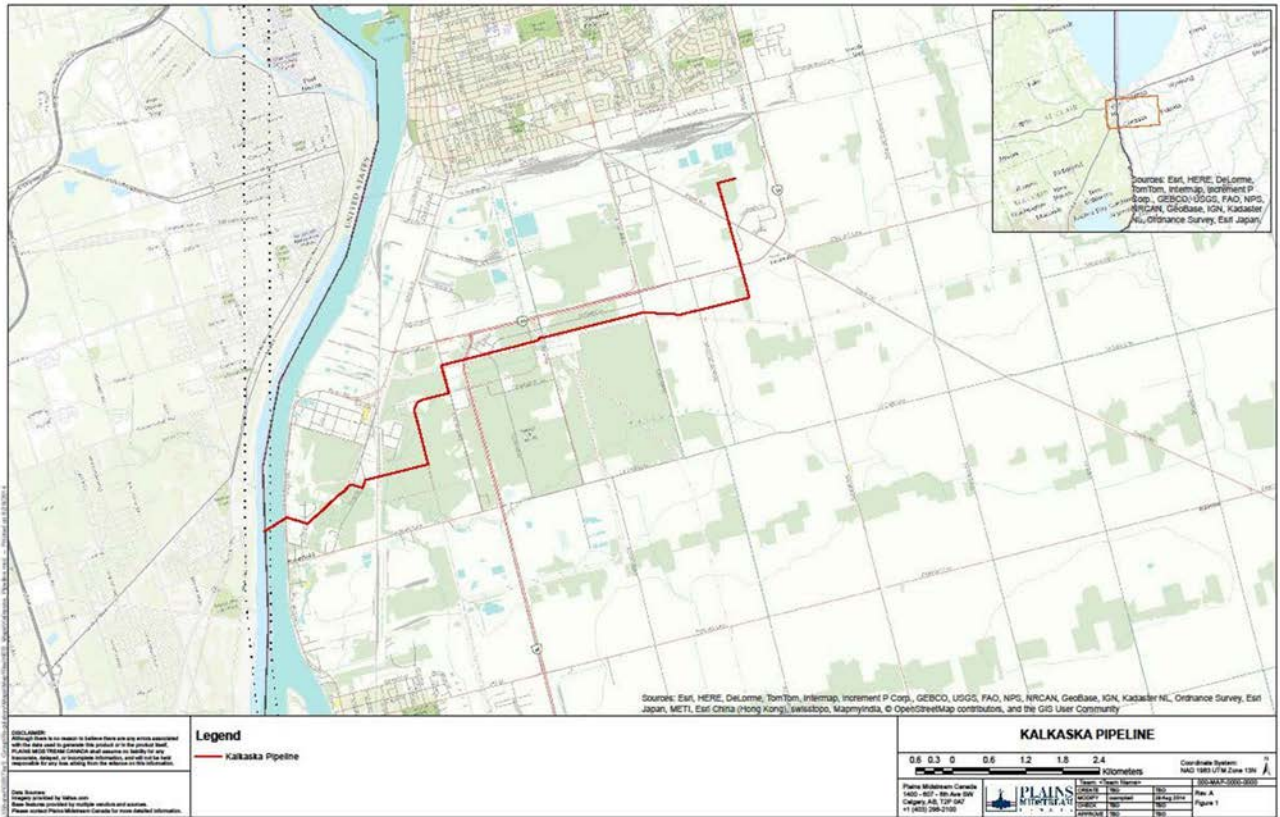
Four natural gas liquids underground storage caverns with associated brine ponds, piping, metering, and piping equipment located in Windsor, Ontario.

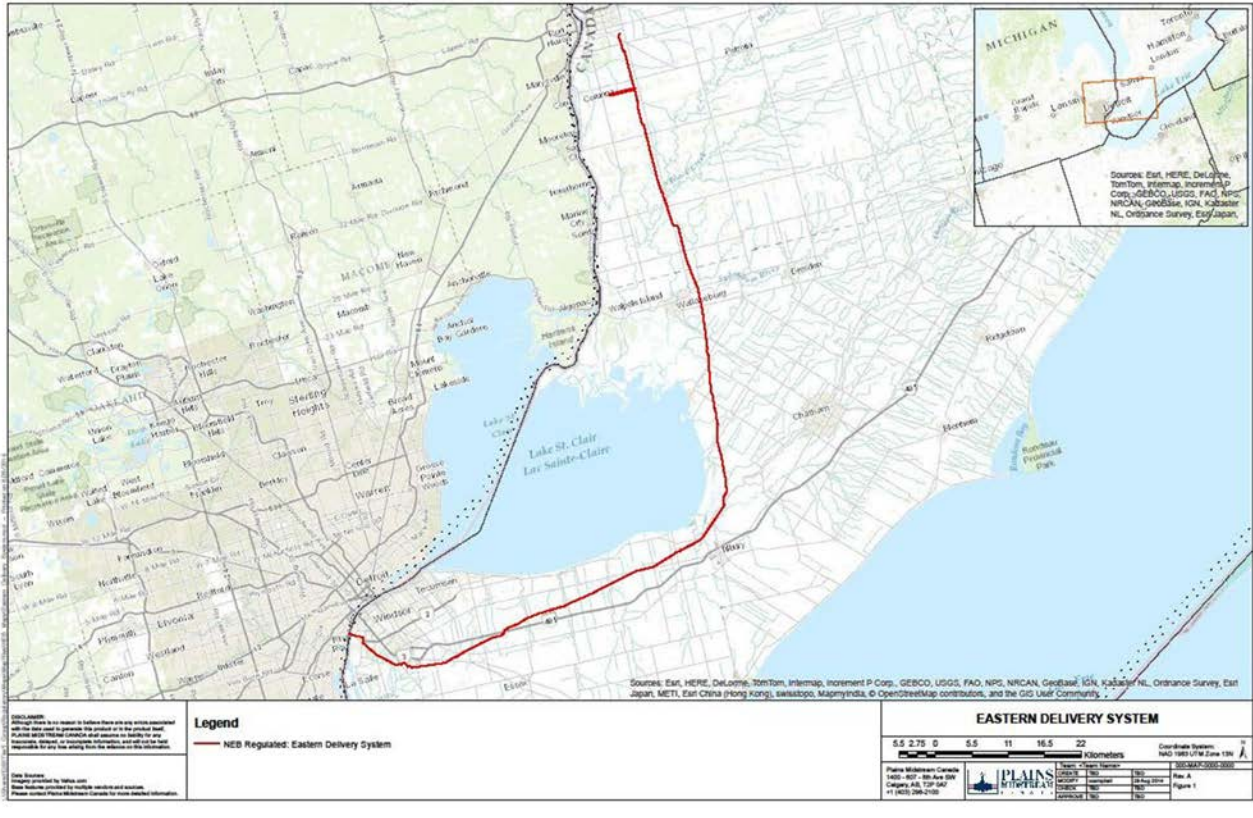
## Windsor Sarnia Pipeline (WSP), Kalkaska Pipeline, and the Eastern Delivery Pipeline System (EDS-S and EDS-N)

### *Order XO-1-73, and Certificates OC-28, OC-29*

Four pipelines running from the international border near Windsor, Ontario in the Detroit River to the Windsor Storage Facility, continuing on to various other facilities in the Sarnia, Ontario area and the international border near Sarnia in the St. Clair River. Total length of pipe is 293 km.







## Sarnia Downstream System

### Certificate OC-28, and Order XO-3-71

Three 8” pipelines originating at Plains’ Sarnia Fractionation Facility and ending at the international border near Sarnia, Ontario in the St. Clair River. Total length of pipe is 29.4 km.



## Schedule "B"

**The relevant paragraphs of the definition of "qualified investment" in section 204 of the Tax Act 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 of subsection 149(1) of the Tax Act read as follows:

(d) [**corporations owned by the Crown**] - a corporation, commission or association all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;

(d.1) [**corporations 90% owned by the Crown**] - a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a Province;

(d.2) [**wholly-owned [by Crown corporation] corporations**] - a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or paragraph (d) applies for the period;

(d.3) [**90% [Crown] owned corporations**] - a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by:

- (i) one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (d) or (d.2) applies for the period, or



- (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) one or more municipalities in Canada in combination with one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (d) or (d.2) applies for the period;

*(d.4) [combined [Crown] ownership]* - a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or any of paragraphs (d) to (d.3) applies for the period;

*(d.5) [municipally-owned corporation earning] income with boundaries of entities]* – subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90% of the capital of which was owned by one or more entities each of which is a municipality in Canada, or a municipal or public body performing a function of government in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the entities does not exceed 10% of its income for the period;

*(d.6) [subsidiaries of municipal corporations]* - subject to subsections (1.2) and (1.3), a particular corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more entities (referred to in this paragraph as "qualifying owners") each of which is, for the period, 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.

- (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,
- (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

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<sup>3</sup> See previous footnote. 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:

"foreign bank", subject to Section 12, means an entity incorporated or formed by or under the laws of a country other than Canada that

- (a) 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 [of Finance] 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> See previous footnote.

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
- (e) ...
- (f) 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) of the Tax Act 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

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<sup>7</sup> See footnote 2.

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 or 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.

**THIS TRUST AGREEMENT** made as of the \_\_\_ day of \_\_\_\_\_, 2014.

**BETWEEN:**

**CIBC TRUST CORPORATION**, a licensed trust company  
governed by the laws of Canada with a place of business located in  
the City of Calgary, in the Province of Alberta,

**(Original Trustee)**

**AND:**

**PLAINS MIDSTREAM CANADA ULC**, a corporation  
incorporated under laws of the Province of British Columbia,

**(PMC ULC)**

**WHEREAS** PMC ULC holds the regulatory authorization allowing it to operate the Pipeline (as defined herein);

**AND WHEREAS** PMC ULC is subject to regulation by the Tribunal (as defined herein) under the NEB Act (as defined herein);

**AND WHEREAS** on 26 May 2009 the Tribunal issued the RH-2-2008 Reasons for Decision, which required each person holding a regulatory authorization to operate pipelines that are regulated under the NEB Act 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 such pipelines;

**AND WHEREAS** on 12 March 2013, the Tribunal issued the MH-001-2013 Hearing Order, establishing how it would consider each proposed set-aside mechanism;

**AND WHEREAS** in May 2014 the Tribunal issued the MH-001-2013 Reasons for Decision, which outlined set-aside and collection mechanisms for reclamation obligations in respect of sites in Canada used for the operation of pipelines and ordered PMC ULC to set aside funds in a trust to pay for the Reclamation Obligations (as defined herein);

**AND WHEREAS** in satisfaction of the requirements imposed by the Tribunal, PMC ULC wishes to settle a trust, the property of which will be used for the most part to satisfy the Reclamation Obligations;

**AND WHEREAS** the Original Trustee has agreed to receive, maintain and hold the property contributed to the Trust in accordance with the terms and conditions of this Agreement, for the sole purpose of assisting the Beneficiaries (as defined herein) in meeting the Reclamation Obligations;

**AND WHEREAS** it is desirable that the Trust shall, at all times, qualify as a QET (as defined herein);

**NOW, THEREFORE, THIS TRUST AGREEMENT WITNESSETH** that in consideration of the promises and of the mutual covenants herein contained, it is hereby mutually covenanted, agreed and acknowledged by and between the parties hereto that any property contributed by PMC ULC to the Original Trustee under this trust agreement shall be held by the Original 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 OPR;
- (b) "**Affiliate**" means, with respect to a party, that party's affiliates within the meaning of the *Canada Business Corporations Act* (Canada), as amended, and for the Original Trustee includes, without limitation, CIBC World Markets Inc., CIBC Asset Management Inc., CIBC Mellon Trust Company, CIBC Mellon Global Securities Services Company, and CIBC Private Investment Counsel, a division of CIBC Asset Management Inc.;
- (c) "**Agreement**" means this instrument, as amended from time to time, which instrument is the vehicle for the trust here created;
- (d) "**Annual Contribution Amount**" means:
  - (i) the amount collected annually by the Company from users of the Pipeline; and
  - (ii) the annual amount determined pursuant to Appendix XIV of the MH-001-2013 Reasons for Decision;subsequently contributed by the Company to the Trust in accordance with this Agreement;
- (e) "**Beneficiary**" and "**Beneficiaries**" mean the Company and any other person or persons having Reclamation Obligations in respect of the Site;
- (f) "**Business Day**" means any day except a Saturday, Sunday or a statutory holiday in the Province of Alberta;
- (g) "**Company**" means the person(s) holding the regulatory authorization(s) for the time being to operate the Pipeline;
- (h) "**Company's Notice of Termination**" has the meaning set out in section 3.03 of this Agreement;

- (i) "**Deactivate**" and "**Deactivation**" mean the same thing as the definition of "deactivate" in the OPR;
- (j) "**Decommission**" and "**Decommissioning**" mean the same thing as the definition of "decommission" set out in the OPR;
- (k) "**Default**" has the meaning set out in section 4.05 of this Agreement;
- (l) "**Fund**" means collectively: (i) all property contributed by the Company to the Trust and held by the Trustee and any property substituted therefor, all in accordance with this Agreement, and (ii) any interest, dividends, gains, returns, proceeds or increase earned or realized by the Trust on such property, in accordance with this Agreement;
- (m) "**Fund Property**" has the meaning set out in section 3.04 of this Agreement;
- (n) "**NEB Act**" means the *National Energy Board Act* (Canada), as amended from time to time;
- (o) "**New Trust**" has the meaning set out in section 2.05 of this Agreement;
- (o.1) "**Orphan Pipeline Fund**" means a not-for-profit organization to be established pursuant to a statute of the Parliament of Canada whose purpose includes paying for the cost to Abandon a pipeline constructed or operated under a statute of Canada;
- (p) "**OPR**" means the *Onshore Pipeline Regulations* (Canada), as amended from time to time;
- (q) "**Original Trustee**" means CIBC Trust Corporation, a licensed trust company with an office located in the City of Calgary in the Province of Alberta;
- (r) "**PMC ULC**" means Plains Midstream Canada ULC, a company incorporated under the laws of the Province of British Columbia;
- (s) "**Pipeline**" means the pipeline described in Schedule "A" to this Agreement;
- (t) "**QET**" means a "qualifying environmental trust" as this term is defined in subsection 211.6(1) of the Tax Act;
- (u) "**Qualified Investments**" means all or any of those investments that from time to time are qualified investments for a QET, and for greater certainty, such qualified investments on the date hereof include only those types of property described in paragraphs (a), (b), (c), (c.1), (d) and (f) of the definition of "qualified investment" in section 204 of the Tax Act that are not encompassed within the definition of "prohibited investment" in subsection 211.6(1) of the Tax Act as more particularly set out in Schedule "B";

- (v) **"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 a Company has satisfied the conditions of an order or direction issued by the Tribunal (as defined hereafter) granting leave to Abandon;

and all costs incurred in respect of and as a consequence of the foregoing.

- (v.1) **"Site"** means the location or locations in Canada used by the Company for the operation of the Pipeline;
- (x) **"Statement of Investment Policies and Procedures"** means the statement of investment policies and procedures established by the Company and delivered to the Trustee and are applicable to the investment of the Fund, which, from time to time, may be amended, modified, supplemented or restated by the Company after complying with any requirements of the Tribunal applicable thereto;
- (y) **"Tax Act"** means the *Income Tax Act* (Canada), as amended or replaced from time to time;
- (z) **"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;
- (aa) **"Trust"** means the relationship between a 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 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 also the Orphan Pipeline Fund;
- (bb) **"Trustee"** means the Original Trustee or another trust company licensed under the *Trust and Loan Companies Act* (Canada) and appointed under this



Agreement to hold the office of trustee and, for greater certainty, does not include a person that is not authorized to be a trustee of a QET in accordance with the relevant provisions of the Tax Act and similar applicable provincial legislation; and

- (cc) "**Trust Term**" or "**Term**" shall have the meaning set out in section 2.05 of this Agreement.

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

### 2.01 Qualifying Environmental Trust:

It is the express intention of the parties hereto for the Trust settled under this Agreement to constitute a QET. This Agreement shall be read and interpreted in light of and consistent with the QET definition and related provisions in the Tax Act, and the Company, other Beneficiaries and Trustee shall ensure that no actions are taken which would jeopardize the status of this Trust as a QET.

### 2.02 The Trust: initial transfer and contributions

The Company has irrevocably transferred to the Original Trustee one (1) Canadian twenty dollar (\$20) bill bearing the serial number \_\_\_\_\_ for the purpose of creating and settling the Trust. Receipt of such funds is hereby acknowledged by the Original Trustee. The Original Trustee agrees to administer the Fund on the terms and subject to the conditions set out in this Agreement.

The Company also agrees to transfer to the Trustee, on an annual basis, an amount equivalent to the Annual Contribution Amount, and the Trustee also agrees to receive and administer such property on the terms and subject to the conditions set out in this Agreement.

### 2.03 The Trust: discretionary as to two or more beneficiaries

The Fund is held by the Trustee in trust for the benefit of the Beneficiaries, the Trustee having the power, in its discretion, but subject to the receipt of prior written approval from the Tribunal, to distribute all or any part of the Fund to one or more Beneficiaries for the purpose only of permitting such Beneficiary or Beneficiaries, as the case may be, to meet existing Reclamation Obligations. Such distributions may be made by the Trustee to or for the benefit of such Beneficiaries directly or indirectly to a person or persons named by the Tribunal to permit such persons to satisfy the Reclamation Obligations.

### 2.04 The Trust: appropriation of surplus funds

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

## 2.05 The Trust: duration (or term) of the Trust

This Agreement terminates (the "**Trust Term**") no later than the expiration of the perpetuity period as determined under the relevant provisions of the *Perpetuities Act*, R.S.A. 2000, c. P-5. Not more than five years prior to the expiration of the Trust Term, and provided that the Company is not in Default, the Trustee shall distribute the Fund to the Company, and the Company covenants upon receipt of the Fund, to establish, at once, a new irrevocable trust upon the terms and subject to the same conditions set out in this Agreement (the "**New Trust**"), and to contribute to the New Trust the entirety of the Fund.

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

### 3.01 Appointment

The Company has the power to appoint a Trustee, subject to the written approval of the Tribunal. The Trustee, and any replacement Trustee, on accepting such appointment agrees to act as Trustee of the Trust in accordance with the terms and conditions of this Agreement.

### 3.02 Resignation

A Trustee desiring to resign the office shall in writing notify the Company 30 days prior to the intended resignation date and during this period the Company, as provided in section 3.01, shall appoint a replacement Trustee, subject to the written approval of the Tribunal. The replacement Trustee shall take title or possession of the Fund and Fund Property without delay. In any case, the effective date of a Trustee's resignation shall not take place until a replacement Trustee has been appointed and the replacement Trustee has validly accepted such appointment.

### 3.03 Removal

- (a) If the Company delivers a written notice ("**Company's Notice of Termination**") to the Trustee specifying the intent to terminate the appointment of the Trustee hereunder, then in such a circumstance, such appointment shall terminate on the 30<sup>th</sup> day following the date that the Company's Notice of Termination was delivered (or was deemed to have been delivered in accordance with Section 8.02 of this Agreement) to the Trustee or, if earlier than the foregoing, the date a replacement Trustee has been appointed and the replacement Trustee has validly accepted such appointment.
- (b) A Trustee shall cease to hold the office of Trustee if convicted of an offence involving dishonest conduct, becomes insolvent with the appointment of a receiver or is in bankruptcy proceedings, or being a corporation that is dissolved or in liquidation. With the approval of the Tribunal the Company shall appoint an interim corporate Trustee regulated under the *Trust and Loan Companies Act* (Canada), as amended from time to time. The predecessor Trustee, upon receipt of payment for any outstanding amount for its services and expenses then unpaid, shall transfer, deliver and pay over to such successor Trustee, the Fund and all

Fund Property on deposit with or in the possession of such predecessor Trustee hereunder. The interim Trustee will take title to the Trust Fund, and take possession of all assets deposited with the predecessor Trustee, and secure the same.

The interim Trustee is entitled to call for and receive all Trustee contributions that are due, accounting to a permanent replacement Trustee when such is appointed.

#### 3.04 Obligation of Trustee upon termination

Following termination of the Trustee's appointment and subject to its rights hereunder, the Trustee shall continue to hold in trust:

- (a) the Fund; and
- (b) all documents, information, and books and records created, received or maintained by the Trustee which relate to or arise or have arisen in connection with the performance by the Trustee of its duties hereunder (collectively hereinafter referred to as the "**Fund Property**"),

until the replacement Trustee takes hold of the Fund and the Fund Property.

#### 3.05 Number of Trustees

At any given time, the Trust shall only have one validly appointed and acting Trustee.

#### 3.06 Qualifications of a Trustee

For greater certainty, no person other than a trust company licensed under the laws of Canada and authorized to be a trustee of a QET in accordance with the Tax Act and similar applicable provincial legislation may be authorized and appointed to act as a trustee of this Trust.

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

#### 4.01 Responsibilities of the Trustee

The duties and obligations of the Trustee shall be determined solely by applicable laws and the provisions of this Agreement, and accordingly the Trustee shall be responsible only for the performance of such duties and obligations.

#### 4.02 Trustee Receipt of Funds

- (a) The Trustee solely shall be responsible for all property delivered to it.
- (b) The Trustee shall have no duty or responsibility for (i) the determination of the amount, or timing, of any Annual Contribution Amount, (ii) the collection from any person the Annual Contribution Amount, or (iii) the sufficiency of the Fund to meet and discharge the Reclamation Obligations.

#### 4.03 Investment of Fund

- (a) Notwithstanding any other provision of this Agreement, the Trustee will ensure that the entirety of the Fund will consist solely of Qualified Investments in accordance with the Statement of Investment Policies and Procedures.
- (b) The Trustee will have the power to retain, invest or reinvest, any cash, funds or property constituting the whole or any part of the Fund in Qualified Investments that the Trustee will, in its absolute discretion, consider advisable including, without limitation, any Qualified Investments that are deposits, investment products or obligations issued or administered by the Trustee or its Affiliates, or by anyone or 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 or further delegation of its investments duties.
- (c) The Trustee may from time to time appoint one or more investment managers or advisors, any of whom may be an Affiliate of the Trustee, to assist the Trustee and provide the Trustee with advice with respect to the investment and/or reinvestment of the Trust property, and the exercise of any powers or functions related thereto. All charges for such services shall be paid out of the Fund as seems appropriate to the Trustee notwithstanding any association which may exist between the Trustee and any agent so employed. The fees and remuneration of any such agent or person shall be an expense of the Trust and shall be in addition to the compensation payable to the Trustee.
- (d) The Trustee and any investment manager or advisor may deposit any cash in or invest in or purchase securities, products or services of related and connected issuers of the Trustee or its Affiliates, notwithstanding that the Trustee, its Affiliates, any related and connected issuers, its agents and/or advisors may benefit therefrom. None of the Trustee, any Affiliate, related and connected issuer, agent or advisor shall be required to account for, or to give up, any such benefit.
- (e) The Trustee shall have no liability for any investment losses resulting from investments made by the Trustee in accordance with the terms of this Agreement, including any losses on any investment required to be liquidated prior to maturity in order to make a payment required pursuant to the terms of this Agreement, and any losses resulting from a loss of opportunity. The Trustee shall have no liability to any person should it be unable to invest all or any portion of the Fund as aforesaid for any period of time, provided that it has made commercially reasonable efforts to do so.

- (f) 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 Fund to be Used Solely for Reclamation

Subject to Article 5, the Trustee shall distribute all or part of the Fund to ensure the satisfaction of the Reclamation Obligations of the Beneficiaries. For greater certainty, access to the Fund, including the precise amount of the Fund to be distributed to satisfy the Reclamation Obligations, is subject to the Tribunal's approval.

#### 4.05 Distribution to a Beneficiary

The Trustee may distribute Trust property to pay for the Reclamation Obligations, on presentation by a Beneficiary of:

- (a) a written direction or an order from the Tribunal confirming the amount to be distributed, the timing of the distribution and the identity of the Beneficiary to receive the distribution; 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 (individually, each an act of "**Default**"), and that to the officer's knowledge, the Beneficiary will not suffer a Default within a year following the date of the certificate of the officer.

On receipt of the Tribunal's written direction or order, and the certificate of an officer of the Beneficiary, the Trustee shall make the requested distribution.

#### 4.06 Distribution to a Third Party

The Trustee may distribute Trust property directly to any third party for the purposes of satisfying the Reclamation Obligations of a Beneficiary on presentation of a written direction or an order from the Tribunal, with such direction or order confirming the amount to be distributed, and the timing of the distribution. On receipt of the written direction or order, the Trustee shall make the requested distribution directly to the third party set out in the order or direction of the Tribunal.

#### 4.07 Duties of the Trustee Regarding Distributions

The funds which are to be distributed in accordance with sections 4.05 and 4.06 may be obtained by the Trustee calling in or redeeming certain investments which it holds in the Trust, provided that the Trustee shall only call in or redeem such investments after consultation with the

Company.

#### 4.08 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 distribution of all or part of the Fund, and shall provide the Company with the following, on or before the 15<sup>th</sup> Business Day following the last day of each month:
  - (i) statement of account or report showing all contributions made by the Company to the Trust, and all distributions made by the Trust to the Beneficiaries, during the immediately preceding month;
  - (ii) statement of account or report showing all relevant information concerning the Fund including, without limitation, information detailing all acquisitions and dispositions of investments; reinvestments; income accrued; income and gains/losses earned and recognized; distributions, expenses and costs; and cash inflows and outflows recorded as a cash transaction, incurred during the immediately preceding month; and
  - (iii) any other report or information reasonably requested by the Tribunal or the Company.
- (b) The Trustee shall, on reasonable prior notice and during normal business hours, make available to and permit the officers, employees and authorized agents of the Tribunal or the Company and/or the auditors of the Company to inspect all books, records and accounts required to be maintained by the Trustee, in connection with this Agreement or as required by law.
- (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 applicable similar provincial legislation, must be filed or issued in respect of the Trust or a QET, and such other returns or forms as the Trustee deems necessary in its sole discretion. In so doing, the Trustee may make any elections, determinations and designations under the Tax Act or any applicable similar provincial legislation.

#### 4.09 Standard of Care

In the exercise and discharge of its obligations and duties at law or hereunder, the Trustee shall act honestly and in good faith and shall:

- (a) exercise that degree of care, diligence and skill that a reasonably prudent person functioning in the office of Trustee would exercise in comparable circumstances;

- (b) comply with any and all applicable laws, rules and regulations in respect of the Trustee's dealing with, or handling of the Fund pursuant to the terms hereof; and
- (c) be responsible for loss occasioned by reason of the failure of the Trustee to comply with its obligations at law or duties under this Trust, or its negligence or willful misconduct on the part of itself, its employees, officers or agents.

#### 4.10 Appointment of Agents

- (a) The Trustee may appoint such agents and employ or retain such legal counsel, accountants, appraisers or other experts or advisors (each, an “**Agent**”) as may be reasonably required for the purpose of discharging its duties or exercising its powers hereunder and shall not be responsible for any misconduct on the part of any of them except as provided in section 4.09(c). 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.
- (b) Provided an Agent was properly appointed by the Trustee in accordance with section 4.09, the Trustee may act in good faith on the opinion or advice of, or information obtained from an Agent in relation to any matter arising in the performance of its duties related to such appointment.
- (c) The Trustee may deal on behalf of the Trust 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 of the Trustee or does not deal at arm’s length from the Trustee within the meaning of the Tax Act, the terms of such appointment, retainer or other dealing shall be disclosed to the Company and be on a commercially reasonable basis.
- (d) The Trustee, for the purposes of this section, shall in no circumstances appoint the Company or a Beneficiary or any Affiliates of either.

#### 4.11 Safekeeping of Funds

So far as is allowed by law, and in accordance with this Agreement, the Trustee shall control and hold in trust, in such form and manner as may be necessary to establish a valid trust as against any creditor or creditors of the Beneficiaries, the Fund.

#### 4.12 Acceptance of Obligations

The Trustee hereby accepts the covenants and obligations set out in this Agreement and agrees to discharge the same upon the terms and conditions herein set forth, and to hold and exercise the rights, privileges and benefits conferred upon it by this Agreement for the purposes of the Trust.

#### 4.13 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 Agreement. Such documentation must not require the exercise of any discretion or independent judgment on the part of the Trustee.

#### 4.14 Trustee Not to Expend Own Funds

None of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or property 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.

#### 4.15 Restrictions on Trustee Actions

For greater certainty, the Trustee is not authorized to, nor shall it, undertake or propose to undertake any action that would cause the Trust to not be or cease to be a QET.

#### 4.16 Reliance

The Trustee shall not incur liability for acting in reliance on any written notice, request, consent, certificate, receipt, affidavit, statutory declaration or other paper or document furnished to it by or on behalf of any person authorized to do so by the terms of this Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the veracity of any information therein contained, provided the Trustee's reliance thereon is in accordance with the Standard of Care.

#### 4.17 Sale of the Pipeline or a Portion Thereof

For greater certainty, monies from the Fund may be released in accordance with this Agreement upon the Tribunal's direction or order approving the sale, assignment, transfer or other disposition of the Pipeline or a portion thereof from a Beneficiary to another person pursuant to paragraphs 74(1)(a), (b) and (c) of the NEB Act.

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

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

The Company and the Trustee shall, from time to time, agree to reasonable remuneration to be paid out of the Fund to the Trustee for its services hereunder. The Trustee is also entitled to be reimbursed out of the Fund for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration of its duties hereunder (including, without limitation, legal fees and expenses and the reasonable compensation and disbursements of all other advisers,



agents or experts employed or retained pursuant to this Agreement), provided that the Trustee shall first deliver to the Company true copies of all invoices, statements or receipts in relation thereto or in evidence thereof.

For greater certainty, the payment of such amounts contemplated in this Section 5.01 may be made out of the Fund without prior written approval from the Tribunal.

The Trustee, and every delegate and sub-delegate of the Trustee, including any Investment Manager, is to 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 by the Trustee of Taxes

In the event the Trust created hereunder becomes liable to or subject to any taxes under the Tax Act or any similar provincial legislation or otherwise, the Trustee shall be entitled to make payment of such taxes, including instalments of taxes, out of the Fund to the appropriate taxing authority without prior written approval from the Tribunal, provided the Trustee has received notification as to the amount of taxes, including instalments of taxes, owing by reference to an assessment or notice from the appropriate taxing authority or a signed copy of the Trust's annual tax return for that year previously reviewed by the Company.

### **ARTICLE 6: INDEMNIFICATION OF THE TRUSTEE AND FORCE MAJEURE**

#### 6.01 Indemnity

In addition to and without limiting any other protection of the Trustee hereunder or otherwise by law, the Company shall indemnify and hold the Trustee harmless from any and all liabilities, losses, claims, damages, penalties, actions, suits, demands, levies, costs, expenses and disbursements including any and all reasonable legal and adviser fees and disbursements of whatever kind of nature, which may at any time be suffered by, imposed on, incurred by or asserted against the Trustee, whether groundless or otherwise, howsoever arising from or out of any act, omission or error of the Trustee in connection with its acting as Trustee hereunder, unless the claim arising from the conduct of the Trustee fails to comply with its obligations at law or under this Agreement including, without limitation, the provisions of section 4.09 hereof, or otherwise the negligence or willful misconduct on the part of the Trustee, its employees, or officers. Notwithstanding any other provision hereof, this indemnity shall survive the removal, or resignation of the Trustee, and termination of this Agreement. For greater certainty, the funds for such indemnification shall not be paid out of the Trust Fund.

#### 6.02 Force Majeure

Notwithstanding anything in this Agreement to the contrary, the Trustee shall not be responsible or liable for its failure to perform under this Agreement or for any losses to the Trust resulting from any event beyond the reasonable control of the Trustee through its exercise of the Standard

of Care, including but not limited to nationalization, strikes, expropriation, devaluation, seizure, or similar action by any governmental authority, de facto or de jure; or enactment, promulgation, imposition or enforcement by any such governmental authority of currency restrictions, exchange controls, levies or other charges affecting the Fund's property; or the breakdown, failure or malfunction of any utilities or telecommunications systems; or any order or regulation of any banking or securities industry including changes in market rules and market conditions affecting the execution or settlement of transactions; or acts of war, terrorism, insurrection or revolution; or acts of God; or any similar or third party event. This section shall survive the termination of this Agreement.

## **ARTICLE 7: AMENDMENT AND TERMINATION OF THE TRUST**

### **7.01 Amendment**

The Company and the Trustee may agree to amend the terms of the Trust, including the terms of this Agreement. No amendment to the terms of the Trust and the terms of this Agreement is binding or effective unless the Tribunal approves the amendment and such amendment does not cause the Trust to not be or cease to be a QET.

### **7.02 Trust Irrevocable**

The Trust, and the schedules thereto, which are hereby incorporated into the Trust, may not be revoked by the Company or Beneficiaries acting as a whole, or the Trustee, except that the Tribunal in its total discretion may direct a termination of the Trust, and order such successive arrangements as are appropriate.

## **ARTICLE 8: NOTICES**

### **8.01 Acting on Written Notice**

The Trustee shall not incur liability for acting upon any written notice, request, consent, certificate, receipt, affidavit, statutory declaration or other paper or document furnished to it by or on behalf of any person authorized to do so by the terms of this Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the verity of any information therein contained, provided the Trustee is acting properly and reasonably in accepting the representations made to it.

### **8.02 Mode of Giving Notice**

Any notice or other document required to be given or delivered hereunder will be valid and effective if given by registered letter (postage prepaid), courier, by personal delivery or by fax addressed by the party to whom such notice is to be given, and will be deemed to have been effectively delivered on:

- (a) the date of actual delivery, if couriered or personally delivered during normal business hours of the party to whom such notice is delivered (and if not, on the next following Business Day); or

- (b) the first Business Day following the date of the fax, if faxed; or
- (c) on the fifth Business Day after effectual posting, if sent by mail.

#### 8.03 Addresses of the Parties

The addresses of the parties for purposes of this section shall be as follows, but may be changed by any party by the delivery of notice of such change in accordance with the notice requirements hereof:

CIBC TRUST CORPORATION  
301 8<sup>th</sup> Avenue S.W. – 3<sup>rd</sup> Floor – Hollingsworth Building  
Calgary, AB T2P 1C5

PLAINS MIDSTREAM CANADA ULC  
1400, 607 8<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 0A7

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:

Attention: Secretary  
National Energy Board  
517 10<sup>th</sup> Avenue S.W.  
Calgary, AB T2R 0A8

### **ARTICLE 9: MISCELLANOUS**

#### 9.01 Assignment and Enurement

This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. No party may assign this Agreement or any benefits or obligations hereunder without the prior written approval of the Tribunal.

#### 9.02 Applicable Law

This 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 Agreement represents the entire agreement amongst the parties respecting the Trust, and supersedes all prior discussions, agreements and understandings of every kind and nature amongst them.

#### 9.05 Right to disclose

The Trustee shall have the right to disclose any information disclosed or released to it if in the opinion of the Trustee, or its legal counsel, it is required to disclose under any applicable laws, court order or administrative directions. The Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred relating to such disclosure.

#### 9.06 Merger, Consolidation, Amalgamation

Any company with which the Trustee may be merged, consolidated or amalgamated will become the successor Trustee hereunder without any further action on the part of the Trustee.

#### 9.07 Review of Agreement

This Agreement shall be reviewed by the parties and the Tribunal at least every five (5) years, or earlier if directed by the Tribunal.

#### 9.08 Residence of the Trust

In furtherance of the intention of the parties that the Trust be considered resident in Alberta for tax purposes, the Trustee shall, where possible and as reasonably necessary, exercise its duties hereunder in Alberta.

**[This space intentionally left blank; execution page to follow.]**

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

**CIBC TRUST CORPORATION**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**PLAINS MIDSTREAM CANADA ULC**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

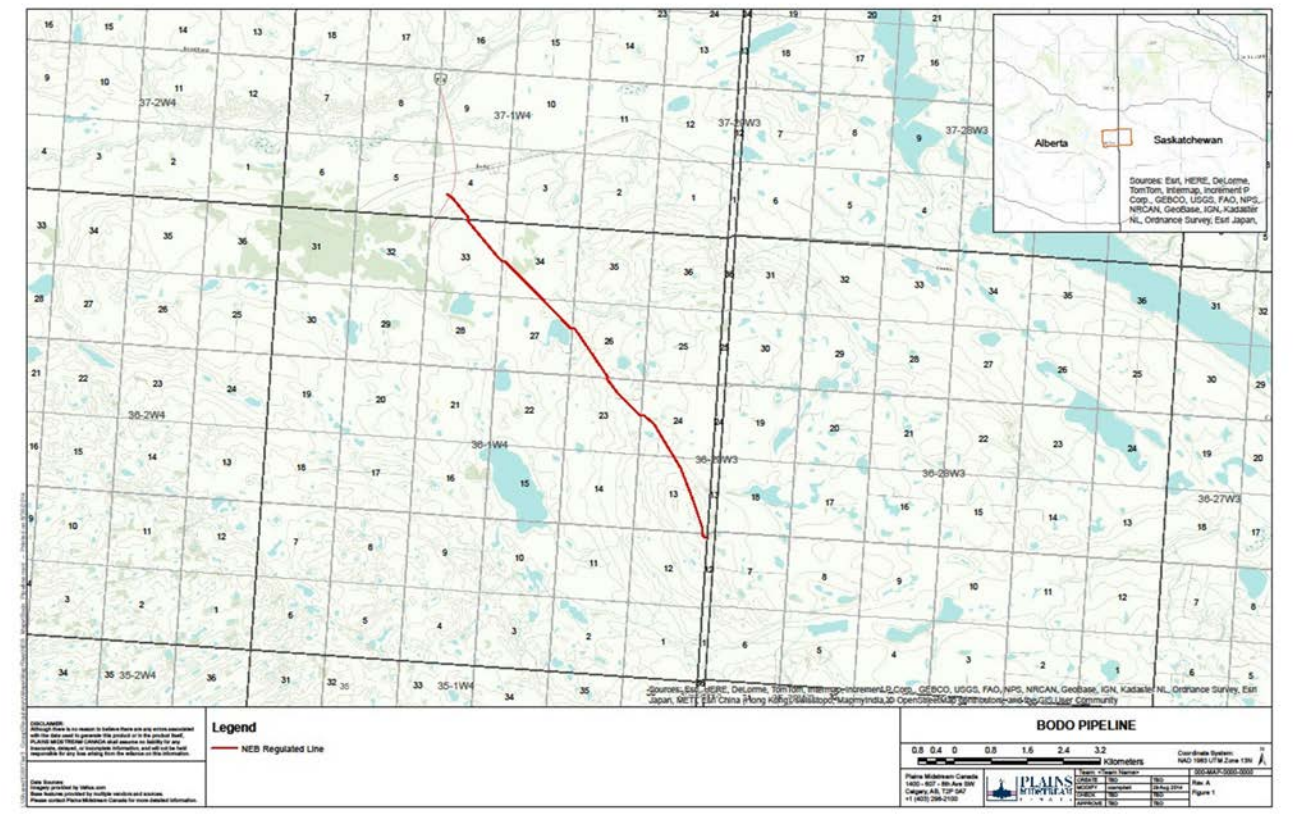
# Schedule "A"

## Plains Midstream Canada ULC - Pipeline Systems

### Bodo Pipeline System

Order XO-2-85 (as amended by AO-1-XO-2-85; AO-2-XO-2-85; AO-3-XO-2-85)

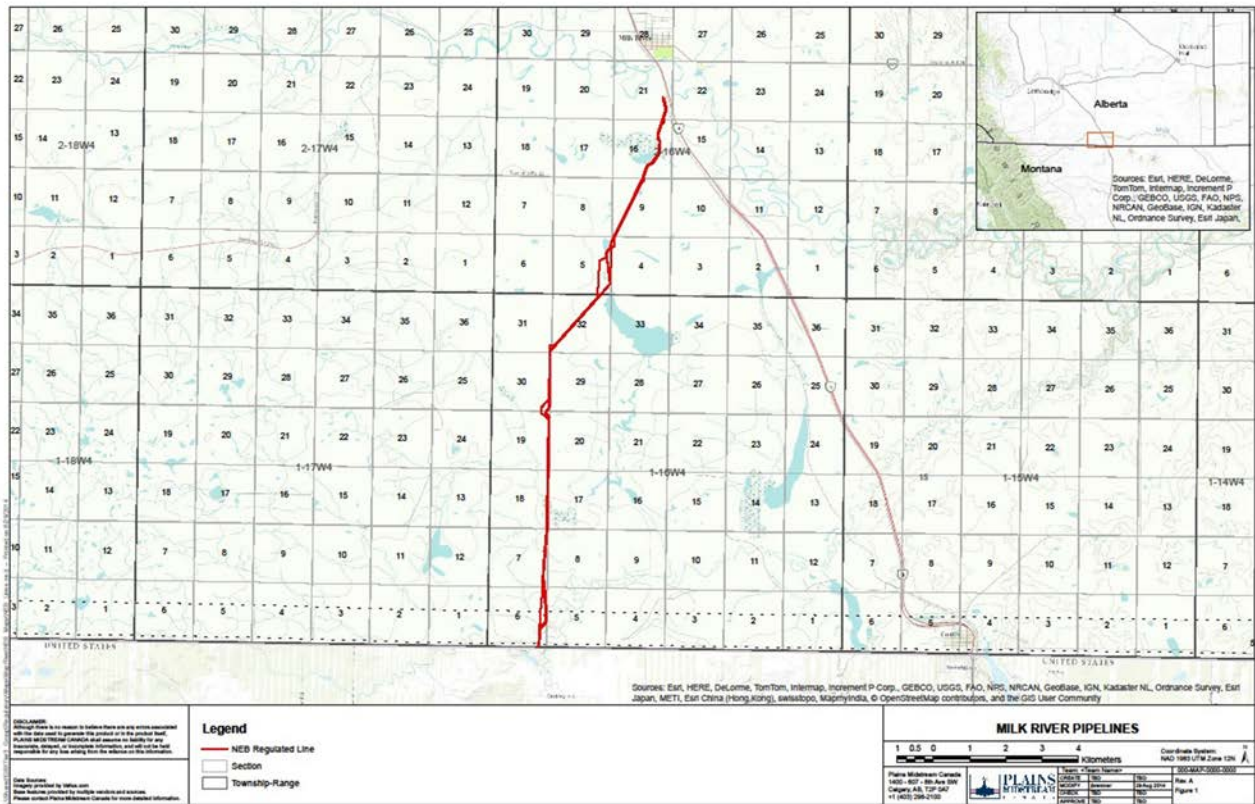
Parallel 3” and 6” pipelines located between 16-27-035-28W3M (Saskatchewan) and 05-04-037-01W4M (Alberta) and parallel 3” and 6” pipelines located between 05-04-037-01W4M (Alberta) and 01-19-037-01W4M (Alberta). The pipelines include one pump station/terminal facility and one block valve/trap riser site. The total length of pipe is 45.7 km.



# Milk River Pipe Line System

Orders XO-4-68 (AO-1-XO-4-68; AO-2-XO-4-68); XO-5-92 (AO-1-XO-5-92); XO-W23-18-95; GPLO-P384-017-2012

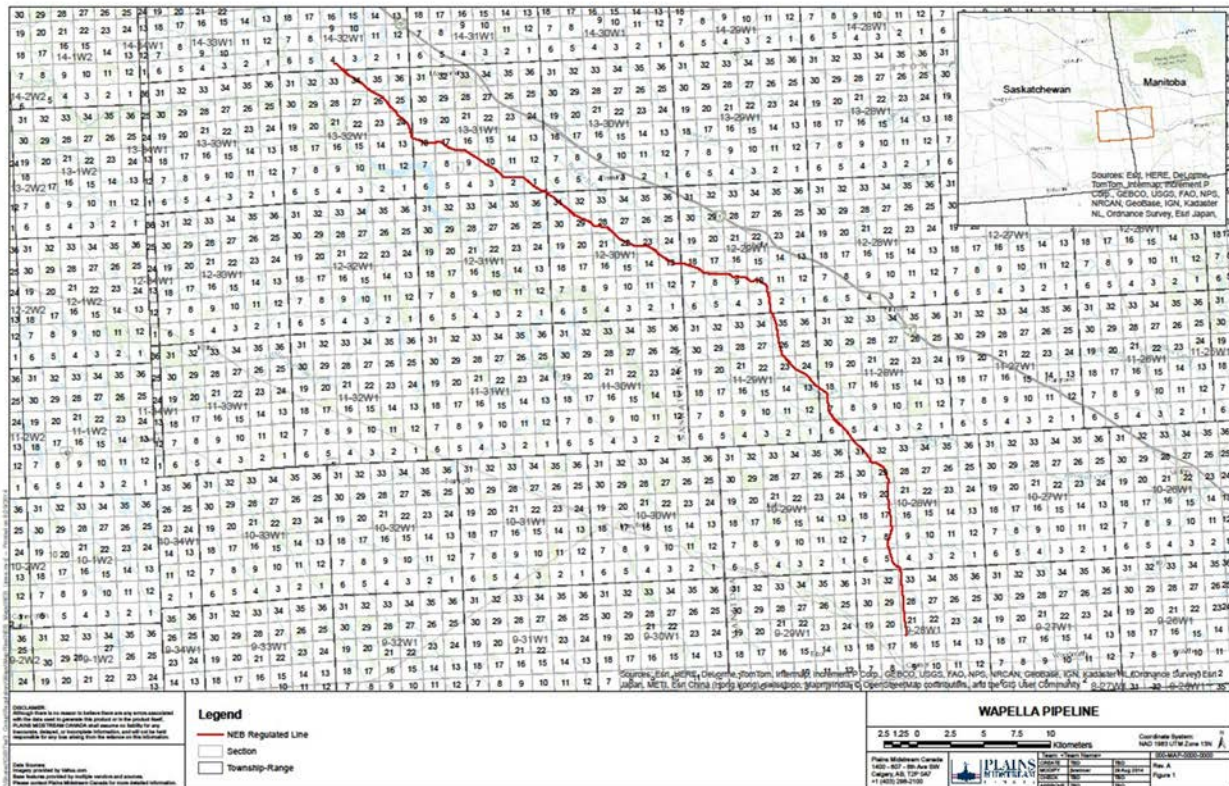
Parallel 6", 12" and two 10" pipelines located between 08-21-002-16W4M (Alberta) and 01-06-001-16W4M (Alberta-USA border) and a 10" pipeline located between 16-07-001-16W4M (Alberta) and 01-06-001-16W4M (Alberta-USA border). The pipelines include one pump station/terminal facilities and 3 block valve/riser sites. The total length of pipe is 69.1 km.



# Wapella Pipe Line System

## Certificate OC-46 (AO-1-OC-46)

An 8" pipeline located between 14-16-009-28W1M (Manitoba) and 07-04-014-32W1M (Saskatchewan). The pipeline includes two pump station/terminal facilities and two block valve/trap riser sites. The total length of pipe is 64.0 km.





# Wascana Pipeline System

## Certificate OC-26 (AO-2-OC-26; AO-3-OC-26)

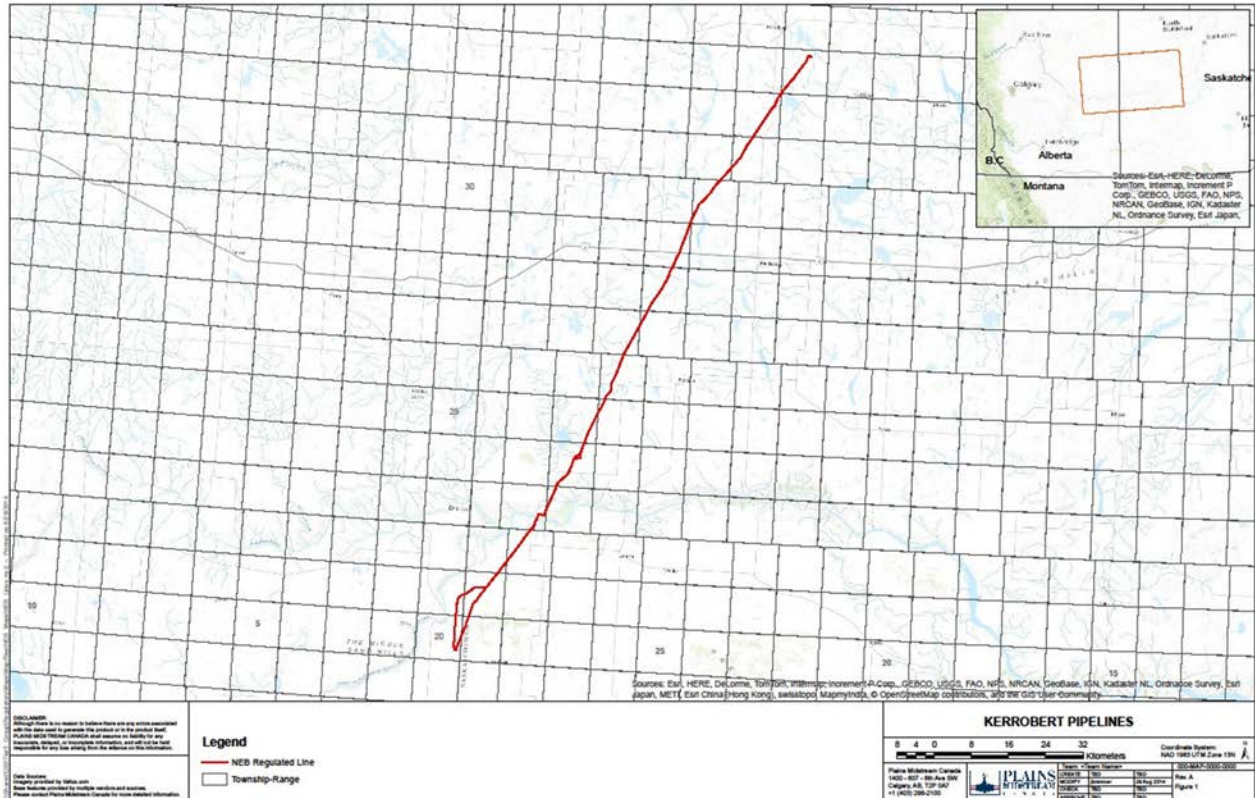
A 12" pipeline located between NW-33-017-18W2M (Regina, Saskatchewan) and 03-02-001-21W2 (Saskatchewan-USA border) and a short 24" connector line located in Regina. The total length of pipe is 212.0 km.



# Kerrobert Pipeline System

## Certificates GC-39, and OC-44

Two pipelines, 10” and 8”, running from the Empress Straddle plants in Alberta, to the Kerrobert, Saskatchewan storage terminal. Total length of pipe is 309.7 km.



## Windsor Storage Facility

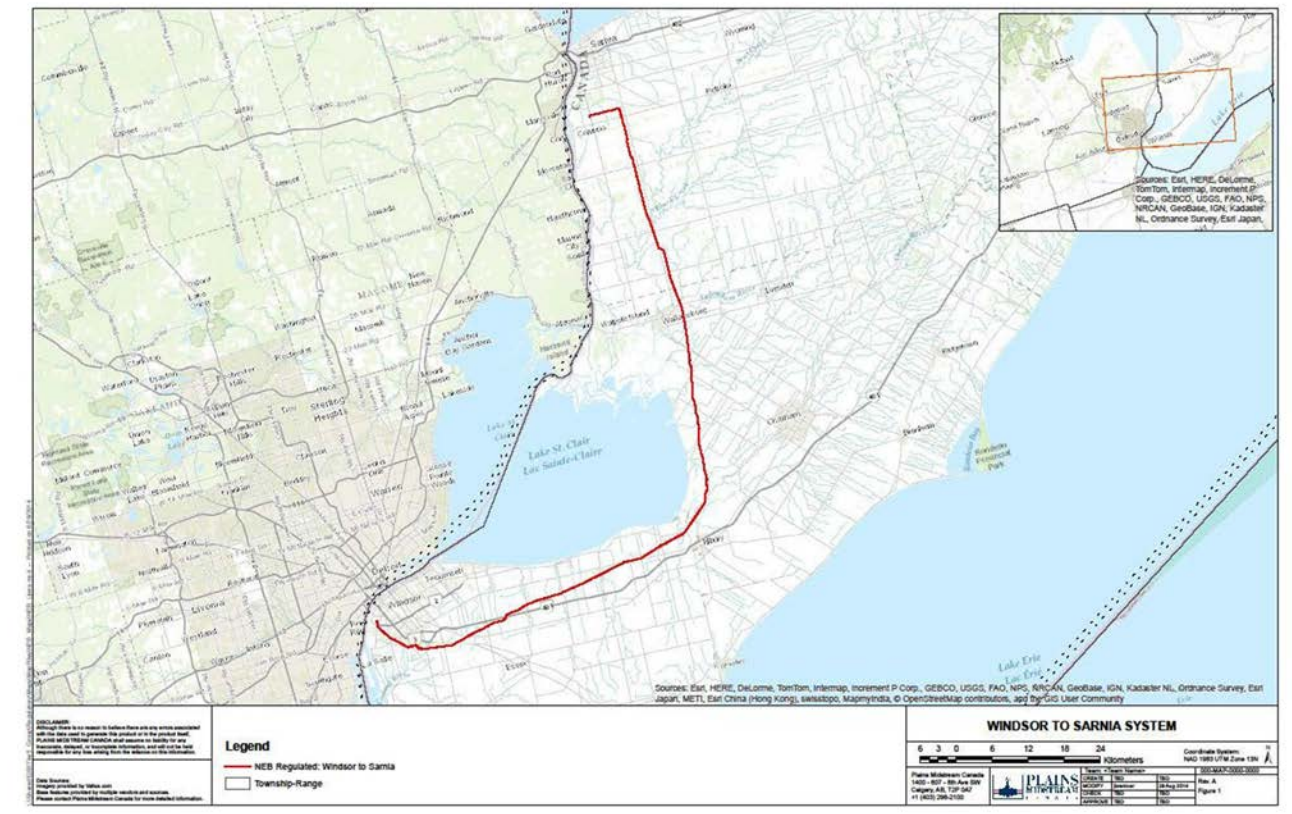
### *Certificate OC-29, and Order MO-25-86*

Four natural gas liquids underground storage caverns with associated brine ponds, piping, metering, and piping equipment located in Windsor, Ontario.

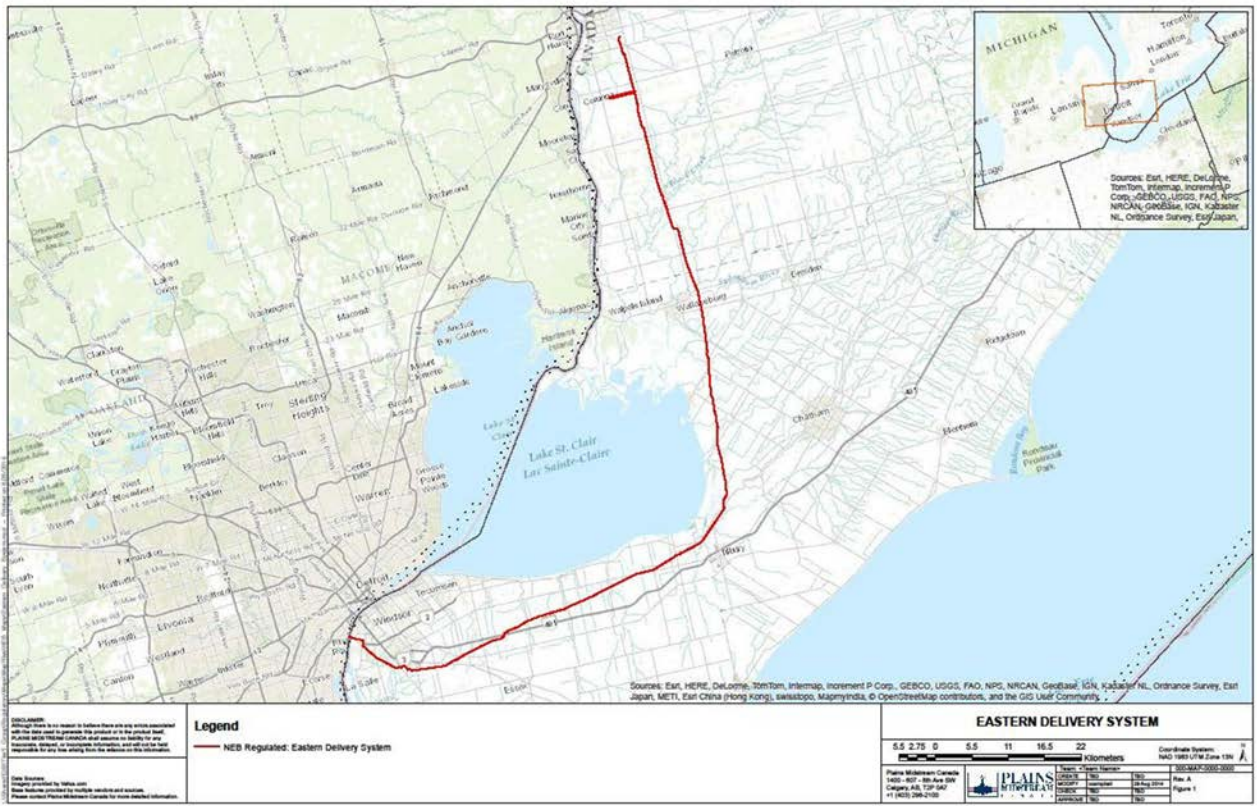
## Windsor Sarnia Pipeline (WSP), Kalkaska Pipeline, and the Eastern Delivery Pipeline System (EDS-S and EDS-N)

### *Order XO-1-73, and Certificates OC-28, OC-29*

Four pipelines running from the international border near Windsor, Ontario in the Detroit River to the Windsor Storage Facility, continuing on to various other facilities in the Sarnia, Ontario area and the international border near Sarnia in the St. Clair River. Total length of pipe is 293 km.







# Sarnia Downstream System

## Certificate OC-28, and Order XO-3-71

Three 8” pipelines originating at Plains’ Sarnia Fractionation Facility and ending at the international border near Sarnia, Ontario in the St. Clair River. Total length of pipe is 29.4 km.



## Schedule "B"

**The relevant paragraphs of the definition of "qualified investment" in section 204 of the Tax Act 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 of subsection 149(1) of the Tax Act read as follows:

(d) [**corporations owned by the Crown**] - a corporation, commission or association all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;

(d.1) [**corporations 90% owned by the Crown**] - a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a Province;

(d.2) [**wholly-owned [by Crown corporation] corporations**] - a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or paragraph (d) applies for the period;

(d.3) [**90% [Crown] owned corporations**] - a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by:

- (i) one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (d) or (d.2) applies for the period, or

- (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) one or more municipalities in Canada in combination with one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (d) or (d.2) applies for the period;

*(d.4) [combined [Crown] ownership]* - a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or any of paragraphs (d) to (d.3) applies for the period;

*(d.5) [municipally-owned corporation earning] income with boundaries of entities]* – subject to subsections (1.2) and (1.3), a corporation, commission or association not less than 90% of the capital of which was owned by one or more entities each of which is a municipality in Canada, or a municipal or public body performing a function of government in Canada, if the income for the period of the corporation, commission or association from activities carried on outside the geographical boundaries of the entities does not exceed 10% of its income for the period;

*(d.6) [subsidiaries of municipal corporations]* - subject to subsections (1.2) and (1.3), a particular corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more entities (referred to in this paragraph as "qualifying owners") each of which is, for the period, 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-imp/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.



- (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,
- (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

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<sup>3</sup> See previous footnote. 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:

"foreign bank", subject to Section 12, means an entity incorporated or formed by or under the laws of a country other than Canada that

- (a) 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 [of Finance] 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> See previous footnote.

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
- (e) ...
- (f) 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) of the Tax Act 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

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<sup>7</sup> See footnote 2.

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 or 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.