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Our File: 13-4372
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BY E-FILING

National Energy Board
517 Tenth Avenue S.W.
Calgary, AB T2R 0A8

Attention: Sheri Young, Secretary of the Board

Dear Madame:

Re: Alliance Pipeline Ltd. (Alliance) Application Pursuant to Part IV of the National Energy Board Act for Tariff Approval and Changes to Alliance Transportation Access Policy
NEB File Number: OF-Tolls-Group1-A159-2014 01

We are legal counsel to BP Canada Energy Group ULC (BP Canada) in this matter and write on its behalf in response to the Board's letter of April 15, 2016. Please find attached BP Canada's responses to the Board's information requests.

We also write in response to Alliance's most recent tariff compliance filing of April 22, 2016. Alliance claims that its "Alliance Transportation Access Policy" (ATAP) is for the Board's informational purposes only, and there is no obligation to obtain Board approval for either recent or future changes to the ATAP.

BP Canada disagrees, and requests the Board to direct Alliance to continue to file its ATAP for Board approval along with its tariff. As explained below, important parts of the ATAP govern access to the Alliance system and pricing on it. The compliance filing process has delegated content critical to the basic functioning of the New Services Offering toll design to the ATAP. As with the rest of Alliance's tariff, Part IV of the *National Energy Board Act* (Act) requires such content to be filed with and approved by the Board.¹ Transparent and enforceable pricing and access rules are essential to providing fair and non-discriminatory transportation service.

Background and Board Treatment of the ATAP

Alliance filed the ATAP with the Board on October 7, 2015. It was presented as a business policy document filed in response to Board directives from Reasons for

¹ RSC 1985, c N-7. Section 58.5 defines "tariff" as "a schedule of tolls, terms and conditions, classifications, practices or rules and regulations applicable to the provision of a service by a company and includes rules respecting the calculation of tolls."

Decision RH-002-2014. The ATAP was subsequently the subject of significant comments from shippers, and ultimately approval from the Board.

Alliance's April 22 letter now seeks for the Board to differentiate in its treatment of the ATAP and Alliance's proposed tariff. Alliance suggests that the ATAP contains business policies, procedures, and practices only and is not part of the tariff:

Consistent with the Board's prior approvals of Alliance's Tariff, the Alliance Transportation Access Policy (ATAP) does not form part of Alliance's NEB-approved Tariff. Alliance developed the ATAP as an incremental business policy to assist it, and its shippers, in the provision of Alliance's transportation services. The overarching service principles, rights and obligations are all established in Alliance's Tariff. The ATAP, on the other hand, was created to add detail to the necessary business policies, procedures, and practices required to provide transportation service on a day-to-day basis. ... More importantly, the ATAP represents a business document that through shipper consultation and consensus can be enhanced to meet changing shipper needs and market conditions on an expedient and efficient basis. And of course, the ATAP provisions must not conflict with Alliance's NEB-approved Tariff.

Alliance's April 22 interpretation of the status of the ATAP is clearly contrary to the direct findings of the Board cited below and should be rejected.

ATAP is Part of the Tariff and Subject to Board Approval

Alliance presented the ATAP to satisfy the Board's directions in Reasons for Decision RH-002-2014, rather than include comparable content in its tariff. Much of the ATAP satisfies the definition of "tariff" found in the Act: "terms and conditions, classifications, practices or rules and regulations applicable to the provision of a service by a company and includes rules respecting the calculation of tolls...." Sections 60 and 65 of the Act are very clear that material falling within the scope of the definition of "tariff" must be filed with the Board, and that the Board has the power to approve, deny or substitute a tariff. Finally, it is the Board's longstanding practice that rules of access are tariff matters:

Queuing procedures and criteria of acceptance are matters affecting the priority and conditions of access to transportation services. They are, therefore, tariff and traffic matters which fall within the Board's jurisdiction under Part IV of the Act....[I]t is essential that all terms and conditions of access to transportation services of a pipeline company be included in the tariff so that existing and potential shippers know their rights and obligations in advance of contract negotiations with the pipeline company. At the same time, the inclusion of

approved conditions of access in the tariff will ensure that there are no undue service restrictions to access markets the company's pipeline system serves.²

The Board should therefore reject Alliance's assertion that the ATAP is a distinct document that is not subject to Board approval.

The Board has been unequivocal that the ATAP is a matter for Board scrutiny and approval. In its November 26, 2015 letter, the Board ruled as follows on pp. 5-6:

- "The Board therefore approves the ATAP as drafted by Alliance..."
- "The inclusion and exclusion of certain provisions in the interim Tariff and interim ATAP should not be perceived as an indication of how the Board would adjudicate these matters on a final basis."
- "Alliance is directed to file an interim Tariff and an interim ATAP with the Board reflecting these directions as soon as possible."
- "Following these consultations, Alliance is directed to refile its Tariff and Compliance Filing, including the ATAP..."

The Board's letter of April 14 letter treated the ATAP as an outgrowth of the tariff, requiring Board approval and similarly being subject to "interim" treatment:

The Board declines to make interim tariff amendments related to issue 1.11, as proposed by Alliance in its 1 February 2016 filing. Specifically, Alliance may not amend GT&C Articles 14.2 (c), 16.1 (c) (iii), the Toll Schedule Interruptible Full Path Service Article 2.4 and Section 6.3 (a) and (c) of Alliance's ATAP. The Board finds that Alliance must retain its interim tariff related to issue 1.11 as the Board ordered in its letter decision of 26 November 2015 as these matters remain contentious. The remainder of the Tariff and ATAP as filed on 1 February 2016 continues as interim. [emphasis added]

This treatment makes sense because the ATAP largely deals with access to different services (firm, firm rich gas, interruptible), and pricing (in the form of bidding procedures for seasonal and IT services). For example, Alliance's February 1 filing explains that the October 7, 2015 version of the ATAP addressed "[t]he issue of interruptible and seasonal bid mechanics", and following "discussions held within the Alliance Pipeline Shipper Task Force... ATAP Sections 5.2 (B), 6.1, and 6.3 (c) were revised to reflect requested changes to bidding window and award notification timelines."

Sections 5, 6 and 7 of the ATAP deal with "Access to Seasonal Capacity", "Access to Interruptible Capacity", and "Pricing of Seasonal and IT Capacity", respectively. They

² Reasons for Decision MH-2-88, Re. North Canadian Oils Limited, page 8.

are rules related to access and pricing that demand filing with the Board and patently tariff material.

Likewise, sections 8 and 9 address “Monthly Relocations” and “Operational Temporary Relocations. These sections arguably belong in FFPS and FRS toll schedules, but are in any event tariff content.

For context, Alliance’s February 1 filing stated that “Alliance is proposing to amend its Tariff and ATAP to allow for temporary relocations” by “insert[ing] a new GT&C Article 11.2... Additional procedures are spelled out in a new Section 9 of Alliance’s ATAP business policy (see Attachments #4 and #5).” The redline Attachment 4 to Alliance’s February 1 filing illustrates the detailed content of new section 9 of the ATAP:

9. OPERATIONAL TEMPORARY RELOCATIONS

(a) Operational Temporary Relocations are available only for existing FFPS Shippers and FRS Shippers with Firm Transportation Service Agreements with initial terms of three (3) years (35 months for contracts commencing December 1, 2015) or greater.

(b) Operational Temporary Relocations will be available on a first come, first served basis, granted at Alliance’s sole discretion.

(c) Shipper may request to Relocate all or a portion of their Contracted Capacity from a contracted Receipt Point to an alternate Receipt Point on a temporary basis as a result of upstream operational issues incurred by the Shipper. Shipper must first provide a paper copy request form to Alliance that would include all data elements required in the RFS, along with the reason for the operational event and company verification and, if applicable, a copy of the notice from the affected CSO that is provided to its customers.

(d) Alliance will advise shipper of the granting or denying of an Operational Temporary Relocation by 16:00 CCT within two business days from the time of the shipper request.

(e) Upon Alliance’s approval, Shipper will, through Alliance’s Customer Activity Website, submit a RFS to Relocate all or a portion of their Contracted Capacity from a contracted Receipt Point to an alternate Receipt Point on a temporary basis, upon which the necessary contract amendments will be affected, including the requested term of the Operational Temporary Relocation.

The RFS shall:

(i) state the applicable Firm TSA number;

(ii) state the requested term, which shall be for a period of no more than 30 days;

(iii) state the existing Receipt point;

(iv) state the requested relocated Receipt point; and

(v) state the requested portion of Contract Capacity to be relocated.

(f) Relocation requests will be ranked lower than bids received during any OS or DOS that may be occurring during the same timeframe.

(g) If any request is granted by Alliance, the terms and conditions of such relocation will be as per Article 11 of the General Terms and Conditions.

Alliance’s statement that “the ATAP provisions must not conflict with Alliance’s NEB-approved tariff” and language at Article 10 of the ATAP is not sufficient reassurance to remove it from Board review and approval. If the language of the ATAP is so closely

intertwined with the tariff that the terms of both documents must be considered by shippers and Alliance alike, then the distinction Alliance asserts between “overarching service principles, rights and obligations” and “business policies, procedures, and practices” disappears. The Act targets rules, and not principles.

The scope and content of the ATAP is also very comparable to that of TransCanada’s Transportation Access Policy (TAP), which is subject to Board approval and has been for more than a decade. The TAP is attached as Appendix “A”. Both the ATAP and TAP set forth the processes by which Alliance and TransCanada administer requests for service, and both documents cover matters such as:

- when and how Alliance and TransCanada post information about capacity;
- how open seasons are run, how service applicants bid for service, and when and how decisions are made;
- information posting requirements for other contracts that affect the available capacity;
- pricing;
- allocation of capacity, i.e., bid ranking and priority; and
- details around requirements for notification of allocation, financial assurances, and transportation contracts.

In several areas, the ATAP goes beyond the TAP and covers interruptible (IT) service, seasonal capacity for contract terms of longer than a week and shorter than a week, delivery and full-path service, and monthly relocations. The Board should treat the ATAP like the TAP.

Finally, Alliance’s statement that the ATAP “can be enhanced to meet changing shipper needs and market conditions on an expedient and efficient basis” raises the concern that Alliance can change it at any time without being required to file those amendments with the Board for approval. This presents a real risk to shippers and potential shippers that they are subject to requirements that were not approved by the Board. Giving effect to Alliance’s request would also risk reversing the Board’s decision in proceeding RH-002-2014 to deny pre-approved expedited hearing processes in response to new tariff applications.³

³ Reasons for Decision RH-2-2014, p. 75.

Relief Sought

As demonstrated, the Board's treatment of the ATAP to date has been appropriate under the Act. Rules that govern the terms of access, service and pricing on the Alliance Pipeline should be filed with the Board and explicitly approved or rejected. Likewise, starting to treat the ATAP as an informational document only, not subject to Board approval, would be inappropriate and inconsistent.

BP Canada accordingly requests the Board to order Alliance to file any changes to the ATAP with the Board for approval and to refrain from implementing any changes to the ATAP absent Board approval. In short, to treat the ATAP as an extension of the tariff as the Board has in its recent directives.

Please contact the undersigned if you have any questions.

Yours truly,

Bull, Housser & Tupper LLP



For: R. Brian Wallace, Q.C.

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TRANSPORTATION ACCESS PROCEDURE

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1. DEFINITIONS

- 1.1 For the purposes of the Transportation Access Procedures the following terms shall be defined as follows:
- (a) "Accepted Bid" shall be as defined in sub-section 5.4(c);
 - (b) "Bid Form" shall mean the DECOS Bid Form, ECOS Bid Form, NCOS Bid Form, LH to SH Conversion ECOS or NCOS Bid Form or LH to SH Conversion DECOS Bid Form, as applicable;
 - (c) "Daily Existing Capacity" shall mean the Existing Capacity not allocated pursuant to sub-section 4.4 that is made available for the DECOS pursuant to sub-section 4.6;
 - (d) "Date of Commencement" for service shall be as defined in the FT, FT-NR, FT-SN, SNB, STS, STS-L, MFP or EMB Contracts as the case may be;
 - (e) "DECOS" shall be as defined in sub-section 4.6(a);
 - (f) "DECOS Bid Form" shall mean the Bid Form and Transportation Contract set out in Appendix "B";
 - (g) "Deposit" shall mean, for the purposes of an ECOS, shall be as determined in sub-section 4.2(f) and for the purposes of an NCOS, shall be as determined in sub-section 5.2(c);
 - (h) "ECOS" shall be as defined in sub-section 4.2(a);
 - (i) "ECOS Bid Form" shall mean the Bid Form set out in Appendix "A";
 - (j) "Existing Capacity" shall mean all or a portion of System Capacity that is available on System Segments that TransCanada determines in its sole discretion to be available for an Open Season;
 - (k) "Existing Service Applicant" shall mean a Shipper or another party that submits a Bid Form and at the time of submission of such Bid Form is receiving gas transportation service pursuant to a Transportation Service Contract from TransCanada;
 - (l) "Facilities Application" shall mean an application pursuant to Part III of the National Energy Board Act for authorization to construct facilities or otherwise obtain New Capacity;
 - (m) "Financial Assurances Agreement" shall mean the agreement which sets forth the financial assurances which the Successful Bidder will be required to provide to TransCanada prior to TransCanada's execution of the Transportation Contract for service;
 - (n) "LH Contracts" shall be as defined in sub-section 10.2 of the FT Toll Schedule;

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- (o) "LH to SH Conversion" shall be as defined in sub-section 10.2 of the FT Toll Schedule;
- (p) "Minimum Term" shall mean the minimum term of service required by TransCanada;
- (q) "NCOS" shall be as defined in sub-section 5.1(a);
- (r) "NCOS Bid Form" shall mean the Bid Form set out in Appendix "A";
- (s) "New Capacity" shall be as defined in sub-section 5.1(a);
- (t) "New Service Applicant" shall mean a party that submits a Bid Form and at the time of submission of such Bid Form is not receiving gas transportation service pursuant to a Transportation Service Contract from TransCanada;
- (u) "New Service Start Date" shall mean the date the New Capacity may be first offered for service;
- (v) "Notice" shall mean the notice posted on TransCanada's website, or provided by fax or email;
- (w) "Other Pipelines" shall be as defined in Section I of the General Terms and Conditions;
- (x) "Partial Month" shall be as defined in sub-section 4.2(a).
- (y) "Precedent Agreement" shall be as defined in sub-section 5.4(c) (i);
- (z) "Rejected Offer" shall be defined as in sub-section 5.5(a);
- (aa) "Return Period" shall be as defined in sub-section 5.4(c);
- (ab) "Service Applicant" shall mean either a New Service Applicant or an Existing Service Applicant;
- (ac) "Service Applicant's Acceptance" shall be as defined sub-section 5.4(c);
- (ad) "SH Contract" shall be as defined in sub-section 10.2 of the FT Toll Schedule;
- (ae) "Successful Bidder" shall mean a Service Applicant who has been allocated any New Capacity;
- (af) "System Capacity" shall mean TransCanada's pipeline facilities and TransCanada's contractual entitlement on Other Pipelines that TransCanada relies on to provide firm service;
- (ag) "System Segment" shall mean the segment of the System Capacity, referred to in a Notice, which is defined by reference to the receipt point and the export delivery point or delivery area specified;
- (ah) "TAPs" shall mean this Transportation Access Procedure;
- (ai) "TransCanada's Offer" shall be as defined in sub-section 5.4(c) (i); and

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- (aj) "Transportation Contract" shall mean the pro-forma transportation service contract for the Existing Capacity or New Capacity allocated to the Service Applicant, or in the case of SNB a pro-forma SNB service contract.

2. PURPOSE

- 2.1 The purpose of the TAPs is to set forth the process by which TransCanada shall administer requests for service to ensure fair and equitable treatment to all Service Applicants seeking FT, FT-NR, FT-SN, SNB, STS-L, STS, MFP and EMB service or LH to SH Conversion with TransCanada for the transportation of natural gas utilizing TransCanada's System Capacity.

3. APPLICABILITY

- 3.1 TAPs is applicable to all requests for:

- (a) FT, FT-NR, FT-SN, SNB, STS-L, STS, MFP and EMB transportation services;
- (b) for any increases to the Contract Demand under existing FT, FT-SN, STS-L, STS, MFP and EMB Contracts or Contract Quantity under existing SNB Contracts; and
- (c) LH to SH Conversion

provided however Section 5 shall not be applicable to any request for FT-NR or MFP transportation service.

4. ACCESS TO EXISTING CAPACITY

4.1 Posting of Existing Capacity

If at any time prior to or during an open season TransCanada determines it has Existing Capacity, TransCanada may at any time, notify Service Applicants and prospective Service Applicants by posting a Notice of:

- (a) the Existing Capacity for each of the available System Segments;
- (b) the Date of Commencement for such Existing Capacity, provided that TransCanada is not obligated to offer a Date of Commencement two (2) or more years from the date of the notice. In the case of MFP, the Date of Commencement shall occur within the MFP Commencement Period;
- (c) the type of service available;

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- (d) in the case of FT-NR the term the service will be available for;
- (e) in the case of MFP, the MFP Blocks and System Segments that TransCanada determines may be available, if any; and
- (f) the date(s) the ECOS will commence and end.

4.2 The Existing Capacity Open Season

- (a) TransCanada shall hold an open season for the Existing Capacity ("ECOS") commencing on or about July 15 in each calendar year (unless it has no Existing Capacity). The ECOS shall be for a period of time determined by TransCanada which shall not be less than two (2) full Banking Days after the commencement of such ECOS. TransCanada may hold an additional ECOS at any time it determines necessary. Service Applicant may during the ECOS submit by fax or mail or by electronic means an ECOS Bid Form for all or a portion of the Existing Capacity for a minimum term of one (1) year consisting of twelve (12) consecutive months. The date of commencement shall, subject to sub-section 3.2 of the MFP Toll Schedule and sub-section 10.3(b)(i) of the FT Toll Schedule, be the first day of the month provided however, Service Applicant may specify a date of commencement other than the first day of the month, for the same month in which the Service Applicant submits an ECOS Bid Form ("Partial Month"). The service termination date shall, subject to sub-section 4.2(a)(iii), sub-section 3.2 of the MFP Toll Schedule and sub-section 10.3(b)(ii) of the FT Toll Schedule, be the last day of the month.

ECOS Bid Forms (except ECOS Bid Forms for MFP service which shall be subject to sub-section 3.2 of the MFP Toll Schedule) with a term more than twelve (12) consecutive full months or an ECOS Bid Form with a Partial Month with a term more than twelve (12) consecutive full months plus the Partial Month shall be in:

- (i) annual periods of twelve (12) consecutive full months; or
- (ii) consecutive full monthly periods if Service Applicant requests a service termination date of October 31; or
- (iii) in the case of FT-NR service, consecutive full monthly periods if Service Applicant requests a service termination date that is the same date specified by TransCanada in the Existing Capacity Notice for FT-NR service or any October 31 prior to the date specified by TransCanada in the Existing Capacity Notice for FT-NR service.

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TransCanada must receive all ECOS Bid Forms before the end of such ECOS.

- (b) Service Applicant shall submit a separate ECOS Bid Form for all or a portion of the Existing Capacity for each System Segment. TransCanada shall accept an ECOS Bid Form for the purposes of evaluation and allocation in accordance with sub-Section 4.4 hereof for:
 - (i) capacity from a specified receipt point to a specified delivery point or area within the System Segment;
 - (ii) a different Date of Commencement;
 - (iii) a different type of service;
 - (iv) an ECOS Bid Form which is subject to the condition that another specified ECOS Bid Form(s) has been accepted; and/or
 - (v) an ECOS Bid Form for service pursuant to the SNB Toll Schedule.
- (c) If TransCanada determines in its sole discretion that an ECOS Bid Form is incomplete or does not conform to the requirements herein, such ECOS Bid Form shall be rejected by TransCanada.
- (d) TransCanada shall advise Service Applicant whether or not its ECOS Bid Form has been rejected within two (2) Banking Days of its receipt.
- (e) Information on the ECOS Bid Forms will be kept confidential by TransCanada, however, TransCanada shall provide the information to the NEB if required or requested to do so by the NEB.
- (f) The Deposit for an ECOS shall be determined as follows, if Service Applicant submits:
 - A. one ECOS Bid Form, the Deposit shall be equal to the lesser of:
 - (i) two (2) months demand charges for the maximum capacity set out on the ECOS Bid Form; or
 - (ii) \$25,000.
 - B. more than one ECOS Bid Form on the same System Segment, the Deposit shall be equal to the lesser of:
 - (i) two (2) months demand charges for the maximum capacity set out on each ECOS Bid Form; or
 - (ii) \$50,000 for each ECOS Bid Form.

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New Service Applicant shall provide to TransCanada the applicable Deposit within two (2) Banking Days of the end of the ECOS for each ECOS Bid Form.

- (g) Notwithstanding sub-section 4.2 (e), if any of the ECOS Bid Forms received by TransCanada is for service pursuant to the SNB Toll Schedule, TransCanada shall notify all Service Applicants within two (2) Banking Days following the end of the ECOS.

4.3 Pricing of Existing Capacity

The toll applicable to the Existing Capacity shall be the toll approved by the NEB and set forth in the List of Tolls in the TransCanada Tariff, or a toll determined by a methodology approved by the NEB.

4.4 Allocation of Existing Capacity

- (a) At the close of the ECOS, TransCanada shall rank the submitted ECOS Bid Forms and TransCanada shall, subject to sub-Section 4.4(b), allocate the Existing Capacity among Service Applicants in the following priority:

- (i) First by the demand toll multiplied by the Contract term for each ECOS Bid Form or combination of ECOS Bid Forms, with the bid(s) yielding the highest overall product having the highest priority;

- (I) If an ECOS Bid Form is for FT-SN, MFP or EMB Service, the applicable demand toll for the purpose of determining such product shall be the demand toll for FT Service from the receipt point to the delivery point or area each specified in the ECOS Bid Form;

- (II) If an ECOS Bid Form is for service pursuant to the SNB Toll Schedule then the product of demand toll and Contract term will be adjusted by multiplying such product by the requested maximum capacity and dividing such amount by the actual impact on Posted Capacity as determined by TransCanada;

- (ii) Then by the requested Date of Commencement, with the earliest requested Date of Commencement having the highest priority, provided that TransCanada will have no obligation to award any Existing Capacity to an ECOS Bid Form with a service to commence two or more years from the close of the ECOS.

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- (b) If two (2) or more ECOS Bid Forms or combinations of ECOS Bid Forms have the same ranking, determined in accordance with sub-Sections 4.4(a) and the Existing Capacity is not sufficient to provide service for the quantities requested in those ECOS Bid Forms or combination of ECOS Bid Forms, then the Existing Capacity shall be allocated (rounded to the nearest GJ) on a pro-rata basis based on the maximum capacity requested in each ECOS Bid Form.
- (c) If the pro-rata share of the remaining Existing Capacity allocated to an ECOS Bid Form pursuant to sub-Section 4.4(b) is less than the minimum capacity specified in such ECOS Bid Form, that ECOS Bid Form shall be deemed to be rejected by TransCanada and the remaining Existing Capacity shall be reallocated under sub-Section 4.4(b) excluding such ECOS Bid Form.
- (d) TransCanada shall allocate Existing Capacity to the ECOS Bid Forms with the highest rankings until all the ECOS Bid Forms have been processed or until all Existing Capacity has been allocated. If an offer of Existing Capacity is withdrawn, pursuant to sub-Section 4.5(d) then this Existing Capacity will be reallocated sequentially to the remaining ECOS Bid Forms according to the procedures in sub-Sections 4.4(a), (b), and (c).

4.5 Notification to Service Applicants

- (a) TransCanada will use reasonable efforts to notify, as soon as possible but in no event longer than two (2) Banking Days after the close of the ECOS, by telephone, fax or otherwise, all Service Applicants who have been allocated any Existing Capacity. Provided however if TransCanada receives an ECOS Bid Form for service pursuant to the SNB Toll Schedule, TransCanada shall be entitled to notify all Service Applicants within ten (10) Banking Days after the close of the ECOS.
- (b) Service Applicant shall provide TransCanada with financial assurances as required by TransCanada pursuant to Section XXIII of the General Terms and Conditions of TransCanada's Tariff, within one (1) Banking Day from the time TransCanada sends notice to Service Applicant pursuant to subsection 4.5(a). Such assurances would cover the transportation agreement resulting from the successful ECOS Bid Form, as well as all other transportation agreements between TransCanada and Service Applicant (including those provided in relation to Existing Capacity, and those which were used to backstop TransCanada New Capacity expansions.) TransCanada may, at any time in its

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sole discretion, waive the requirement for Service Applicant to provide financial assurances or extend the period for providing such financial assurances.

- (c) Upon satisfaction of the financial assurances requirements in sub-Section 4.5(b), TransCanada shall forward to Service Applicant for execution a Transportation Contract. Service Applicant shall, within three (3) Banking Days from the Day TransCanada sends the Transportation Contract to the Service Applicant, execute and return to TransCanada for execution by TransCanada, the Transportation Contract.
- (d) If a New Service Applicant does not execute and return to TransCanada the Transportation Contract within the three (3) Banking Day period referred to in sub-section 4.5(c), or if a New Service Applicant fails to provide financial assurances as required in sub-Section 4.5 (b), the offer to the New Service Applicant for the Existing Capacity allocated to the New Service Applicant shall be withdrawn and TransCanada shall keep the Deposit. If the Transportation Contract is signed, then the Deposit will be credited by TransCanada to the bill for the first month(s) of service or returned to the New Service Applicant, if requested.
- (e) If an Existing Service Applicant does not execute and return to TransCanada the Transportation Contract within the three (3) Banking Days referred to in sub-section 4.5(c), or if an Existing Service Applicant fails to provide financial assurances as required in sub-Section 4.5 (b), the offer to the Existing Service Applicant for the Existing Capacity allocated to the Existing Service Applicant shall be withdrawn and TransCanada shall add the Deposit amount to Existing Service Applicant's invoice and Existing Service Applicant shall pay TransCanada in accordance with Section XI of the General Terms and Conditions of TransCanada's Tariff.
- (f) TransCanada may in its sole discretion extend the three (3) Banking Days referred to in sub-section 4.5(c) for which Service Applicant can execute the Transportation Contract.
- (g) TransCanada will return the Deposit provided by an unsuccessful New Service Applicant within five (5) Banking Days from the date the Transportation Contracts are executed for all Existing Capacity for that ECOS.

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4.6 Daily Existing Capacity Open Seasons

- (a) TransCanada will post on each Banking Day on its website an open season for the Daily Existing Capacity for FT, FT-NR, FT-SN, STS-L, STS, MFP or EMB service ("DECOS"). Provided however, if TransCanada gives notice that it will hold either an ECOS pursuant to sub-section 4.2 hereof or an NCOS pursuant to sub-section 5.1 hereof, the Daily Existing Capacity made available in the DECOS shall be reduced by capacity TransCanada determines in its sole discretion will affect capacity requirements offered in the ECOS and/or NCOS until capacity has been allocated pursuant to such ECOS and/or NCOS as the case may be.
- (b) TransCanada shall post the Daily Existing Capacity on its website, including an explanation of why changes are made to the Daily Existing Capacity, by 16:00 hours CCT on each Day prior to the Day that a DECOS is held. Daily Existing Capacity will be awarded according to DECOS Bid Forms received by 09:00 hours CCT.
- (c) TransCanada shall post on its website a summary of all new operating FT, FT-NR, FT-SN, STS-L, STS, MFP or EMB Contracts entered into that reduce the Daily Existing Capacity.
- (d) Service Applicants will bid in a DECOS by submitting a signed DECOS Bid Form, as well as any financial assurances required by TransCanada. Service Applicant may bid for all or a portion of the Daily Existing Capacity for a minimum term of one (1) year consisting of twelve (12) consecutive months. The date of commencement shall, subject to sub-section 3.2 of the MFP Toll Schedule and sub-section 10.3(b)(i) of the FT Toll Schedule, be the first day of the month provided however, Service Applicant may specify a date of commencement other than the first day of the month, for the same month in which the Service Applicant submits a DECOS Bid Form ("Partial Month"). The service termination date shall, subject to sub-section 4.6(d)(iii), sub-section 3.2 of the MFP Toll Schedule and sub-section 10.3(b)(ii) of the FT Toll Schedule, be the last day of the month.

DECOS Bid Forms (except DECOS Bid Forms for MFP service which shall be subject to sub-section 3.2 of the MFP Toll Schedule) with a term more than twelve (12) consecutive full months or a DECOS Bid Form with a Partial Month with a term more than twelve (12) consecutive full months plus the Partial Month shall be in:

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- (i) annual periods of twelve (12) consecutive months; or
 - (ii) consecutive full monthly periods if Service Applicant requests a service termination date of October 31; or
 - (iii) in the case of FT-NR service, consecutive full monthly periods if Service Applicant requests a service termination date that is the same date specified by TransCanada in the posting for Daily Existing Capacity for FT-NR service or any October 31 prior to the date specified by TransCanada in the posting for Daily Existing Capacity for FT-NR service.
- (e) Each DECOS Bid Form shall be deemed to be binding on Service Applicant and is irrevocable and cannot be withdrawn or amended by Service Applicant after the close of the DECOS.
- (f) TransCanada shall not be obligated to accept any DECOS Bid Form if the Service Applicant has not provided Financial Assurances requested by TransCanada on any other transportation agreements between TransCanada and that Service Applicant (including those provided from Existing Capacity, and those which were used to backstop TransCanada New Capacity expansions).
- (g) TransCanada is not obligated to offer a Date of Commencement two (2) or more years from the date posted in the DECOS. In the case of MFP, the Date of Commencement shall occur within the MFP Commencement Period.
- (h) TransCanada shall not be obligated to accept any DECOS Bid Form for service to start within five (5) Banking Days of the date on which the DECOS Bid Form is submitted.
- (i) The DECOS Bid Forms will be evaluated according to the criteria as set out in sub-Section 4.4.
- (j) If a DECOS Bid Form is accepted by TransCanada, and TransCanada allocates capacity pursuant to sub-section 4.4 and sub-section 4.6(i), the Transportation Contract for the service allocated to the Service Applicant shall be incorporated into and by reference made part of the DECOS Bid Form.

5. ACCESS TO NEW CAPACITY

5.1 The New Capacity Open Season

- (a) When TransCanada determines, in its sole discretion, that there is a reasonable expectation of a long term requirement for an expansion of TransCanada's

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System Capacity (the "New Capacity") and that TransCanada intends to prepare and to submit to the NEB a Facilities Application, TransCanada shall place a notice on its website and otherwise notify potential Service Applicants by fax or email that it will hold an open season for New Capacity ("NCOS"). Such notice shall:

- (i) identify the Minimum Term, which shall be fifteen (15) years from the New Service Start Date, for NCOS bids in support of the Facilities Application;
- (ii) request that Service Applicants provide to TransCanada;
 - A. NCOS Bid Form(s) by the end of the NCOS; and
 - B. By the date referred to in sub-Section 5.4(c)(i), all applicable supporting documentation set out in the National Energy Board's Filing Manual, determined by TransCanada to be necessary for submission to the NEB in support of TransCanada's Facilities Application and which evidence supports the Service Applicant's need for transportation service in the timeframe contemplated in the Service Applicant's NCOS Bid Form;
- (iii) identify the New Service Start Date;
- (iv) identify the dates on which the NCOS will commence and end;
- (v) indicate the System Segments which are being offered; and
- (vi) identify any System Segments where TransCanada determines in its sole discretion that TransCanada may be limited as to the total New Capacity that may be made available and the time such New Capacity may be available.

5.2 Bidding in the New Capacity Open Season

- (a) Service Applicant shall submit a separate NCOS Bid Form, and other documentation as described in sub-Section 5.1(a)(ii) for each separate request. TransCanada shall accept an NCOS Bid Form and documentation for the purposes of evaluation and allocation in accordance with sub-Section 5.3 hereof for:
 - (i) capacity from a specified receipt point to a specified delivery point or area within the System Segment; or
 - (ii) a different Date of Commencement; or

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- (iii) a different service; or
- (iv) an NCOS Bid Form which is subject to the condition that another specified NCOS Bid Form(s) has been accepted.

Each NCOS Bid Form once received by TransCanada shall be irrevocable.

- (b) TransCanada shall not be obligated to accept any Bid Form if Service Applicant has not provided financial assurances requested by TransCanada on any other transportation agreements between TransCanada and Service Applicant.
- (c) Information on the NCOS Bid Forms and in the supporting documentation provided pursuant to sub-Section 5.4(c)(i) will be kept confidential. However, TransCanada shall provide the information to the NEB if required or requested to do so by the NEB, including as needed to support a Facilities Application. Any information submitted by a Service Applicant who has not been allocated New Capacity pursuant to sub-Section 5.3 shall be destroyed by TransCanada.
- (d) The Deposit for an NCOS shall be determined as follows, if Service Applicant submits:

A. one NCOS Bid Form, the Deposit shall be equal to the lesser of:

- (i) two (2) months demand charges for the maximum capacity set out on the NCOS Bid Form, calculated based on the tolls in place when the NCOS Bid Form was submitted; or
- (ii) \$50,000.

B. more than one NCOS Bid Form to the same export delivery point or delivery area, Deposit shall be equal to the lesser of:

- (i) two (2) months demand charges for the maximum capacity set out on each NCOS Bid Form; or
- (ii) \$100,000 for each NCOS Bid Form.

New Service Applicant shall provide to TransCanada the applicable Deposit within two (2) Banking Days of the end of the NCOS for each NCOS Bid Form.

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5.3 Allocation of Capacity

- (a) At the close of the NCOS TransCanada shall rank the accepted NCOS Bid Forms and TransCanada shall, subject to sub-Section 5.3(b), allocate the New Capacity among Service Applicants in the following priority:
- (i) First by the demand toll in effect for the service at the time the NCOS closes, multiplied by the Contract term for each NCOS Bid Form or combination of NCOS Bid Forms, with the bid(s) resulting in the highest overall total product having the highest priority;
- (I) If an NCOS Bid Form is for FT-SN or EMB Service the applicable demand toll for the purpose of determining such product shall be the demand toll for FT Service from the receipt point to the delivery point or area each specified in the NCOS Bid Form;
- (II) If an NCOS Bid Form is for service pursuant to the SNB Toll Schedule then the product of demand toll and Contract term will be adjusted by multiplying such product by the requested maximum capacity and dividing such amount by the actual impact on capacity as determined by TransCanada;
- (ii) Then by the requested Date of Commencement, with the earliest requested Date of Commencement having the highest priority, provided that such commencement date is not earlier than the New Service Start Date.
- (b) If two (2) or more NCOS Bid Forms or combinations of NCOS Bid Forms have the same ranking, as determined by the procedure set in sub-Section 5.3(a) and the New Capacity is not sufficient to provide service for the quantities requested in those NCOS Bid Forms or combination of NCOS Bid Forms, then the New Capacity shall be allocated (rounded to the nearest GJ) on a pro-rata basis based on the maximum capacity requested in each NCOS Bid Form.
- (c) If the pro-rata share of remaining New Capacity allocated to an NCOS Bid Form pursuant to sub-Section 5.3(b) is less than the minimum capacity specified in such NCOS Bid Form, that NCOS Bid Form shall be deemed to be rejected by TransCanada and the remaining New Capacity shall be reallocated under sub-Section 5.3(b) excluding such NCOS Bid Form.

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- (d) TransCanada shall allocate New Capacity to the NCOS Bid Forms with the highest rankings until all the NCOS Bid Forms have been processed or until all New Capacity has been allocated. If an offer of New Capacity is deemed to be withdrawn or rejected, pursuant to sub-Sections 5.4(c) or 5.5, then this New Capacity will be reallocated sequentially to the remaining NCOS Bid Forms according to the procedures in sub-Sections 5.3(a), (b), and (c).

5.4 Notification to Service Applicants

- (a) TransCanada will use reasonable efforts to notify, as soon as possible but in no event longer than fifteen (15) Banking Days of the close of the Open Season, by telephone, fax or otherwise, all Successful Bidders.
- (b) TransCanada shall return the Deposit to each New Service Applicant not offered any New Capacity.
- (c) TransCanada shall prepare and forward to each Successful Bidder:
 - (i) a binding transportation service precedent agreement for the service requested pursuant to their NCOS Bid Form ("TransCanada's Offer"), which precedent agreement shall set forth the terms and conditions, including the conditions precedent, upon which the service is offered to Service Applicant (the "Precedent Agreement"). TransCanada's Offer shall be subject to the following condition:

The Successful Bidder has provided the supporting documentation, referred to in sub-Section 5.1(a)(ii), to TransCanada within 5 Banking Days (or such longer period agreed to by TransCanada) of receipt of the Precedent Agreement and such supporting documentation is complete, conforms to the requirements herein and is in a form satisfactory to TransCanada.

If TransCanada determines in its sole discretion that the condition is not satisfied, TransCanada shall notify in writing the Successful Bidder. The Successful Bidder shall have 5 Banking Days following receipt of such notification to satisfy the condition, or TransCanada's Offer shall be deemed to be withdrawn. TransCanada will have the option of allocating any New Capacity arising from withdrawn offers to any accepted NCOS Bid Forms that were not allocated New Capacity, pursuant to sub-Section 5.3; and

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- (ii) The Financial Assurances Agreement.

Service Applicant may accept TransCanada's Offer by executing and returning the Precedent Agreement, and the Financial Assurances Agreement within thirty (30) calendar Days of Service Applicant's receipt thereof (the "Return Period") and Service Applicant's service request (the "Accepted Bid") shall then be included in support of TransCanada's Facilities Application ("Service Applicant's Acceptance"). The Return Period may be extended at TransCanada's discretion, if so requested by Service Applicant.

- (d) Upon inclusion of an Accepted Bid in support of TransCanada's Facilities Application, Service Applicant shall then be obligated to provide to TransCanada any additional information that the NEB may require in accordance with NEB procedural orders and information requests in respect of TransCanada's Facilities Application.
- (e) Upon a New Service Applicant's Acceptance, if TransCanada provides service as set out in the Precedent Agreement (as it may be amended), the Deposit will be credited to the New Service Applicant in the first month(s) bill(s) for service, or returned to the New Service Applicant if the New Service Applicant so requests. If TransCanada is unable to provide the service as set out in the Precedent Agreement the Deposit will be returned to the New Service Applicant by TransCanada.

5.5 Non-Acceptance of Offers

- (a) If Service Applicant does not execute and return both the Precedent Agreement and Financial Assurances Agreement, and such other documents that TransCanada determines to be necessary within the Return Period, Service Applicant will have been deemed to have rejected TransCanada's offer (the "Rejected Offer"). In such case for a New Service Applicant, TransCanada shall retain the Deposit and will have no obligation to return the Deposit , and for Existing Service Applicant, TransCanada shall add the Deposit amount to Existing Service Applicant's invoice and Existing Service Applicants shall pay TransCanada in accordance with Section XI of the General Terms and Conditions of TransCanada's Tariff.
- (b) TransCanada will have the option of allocating any New Capacity arising from Rejected Offers to any accepted NCOS Bid Forms that were not allocated New Capacity, pursuant to sub-Section 5.3.

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5.6 Inclusion of Existing Capacity

(a) If TransCanada's determines in its sole discretion that prior to or during the NCOS Existing Capacity is or becomes available, TransCanada shall:

- (i) include such Existing Capacity in the NCOS; or
- (ii) change the NCOS to include such Existing Capacity;

provided that such change is made no less than 5 Banking Days prior to the end of an NCOS;

(b) If TransCanada includes such Existing Capacity in a NCOS, Service Applicant can apply for service pursuant to Section 4 or Section 5; and

(c) If TransCanada includes such Existing Capacity in the NCOS, TransCanada shall allocate such Existing Capacity to all Service Applicants for New Capacity and Existing Capacity pursuant to sub-section 4.4. If there remain Service Applicants for New Capacity whose requests were not satisfied, or only satisfied in part, such Service Applicants for New Capacity will be allocated New Capacity for such unsatisfied or partially satisfied requests pursuant to sub-section 5.3.

(d) If such Existing Capacity is allocated to New Capacity requests with Dates of Commencement in the future such Existing Capacity shall be made available to Shippers, firstly as service under the FT-NR Toll Schedule, and secondly as service under the STFT Toll Schedule, during the period commencing on the date such Existing Capacity is available or becomes available and ending on the Day immediately prior to the requested Date(s) of Commencement.

6. MISCELLANEOUS PROVISIONS

a) This Procedure is subject to the provisions of the National Energy Board Act and any other legislation passed in amendment thereof or substitution therefore.

b) Any upper cased term not defined herein shall have the meaning attributed thereto in the General Terms & Conditions of TransCanada's Tariff as amended from time to time.

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APPENDIX "A"

ECOS BID FORM OR NCOS BID FORM (excluding MFP and FT-NR)*

System Segment: _____

The Delivery Point: _____ The Receipt Point: _____

Date of Commencement: _____

Service Termination Date/MFP End Date: _____

Maximum Capacity: _____ GJ/Day Minimum Capacity: _____ GJ/Day

Type of Service Requested: FT _____ FT-NR _____ FT-SN _____ SNB _____ STS-L _____
STS _____ MFP _____ EMB _____

Allocated Capacity: _____ GJ's/Day

Service Applicant _____

Contact: _____

Address: _____

Telephone: _____ Telecopy: _____

Is this ECOS Bid Form or NCOS Bid Form conditional upon another Bid Form(s)?

Yes ___ **No** ___ If **Yes**, the ECOS Bid Form(s) or NCOS Bid Form(s), upon which this ECOS Bid Form or NCOS Bid Form is conditional must be attached. Indicate number of Bid Forms attached: _____.

The ECOS Bid Form or NCOS Bid Form shall be subject to the General Terms and Conditions, the applicable Toll Schedule and List of Tolls of TransCanada's Tariff.

Dated this _____ Day of _____, _____.

Service Applicant:

By: _____ By: _____

Title: _____ Title: _____

Signed: _____ Signed: _____

* New Capacity is not available for service under MFP and FT-NR Transportation Contracts.

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APPENDIX "B"

DECOS BID FORM AND TRANSPORTATION CONTRACT

1. Service Applicant submits this DECOS Bid Form for the following transportation service:

- (a) System Segment: _____
- (b) Receipt Point: _____
- (c) Delivery Point: _____
- (d) Date of Commencement: _____
- (e) Service Termination Date: _____
- (f) Number of other Bid Forms this DECOS Bid Form is conditional on: _____ (see attached);
- (g) Maximum Capacity: _____
- (h) Minimum Capacity: _____

2. TransCanada and Service Applicant agree that if TransCanada accepts this DECOS Bid Form and allocates capacity to Service Applicant pursuant to Sections 4.6(i) and 4.4 of TransCanada's Transportation Access Procedures ("**Allocated Capacity**"), the following shall apply:

- (a) TransCanada's pro forma _____ Transportation Contract as amended or approved from time to time by the NEB is incorporated into and shall by reference be made part of this Appendix "B";
- (b) For the purposes of the applicable Transportation Contract, the following shall apply:
 - (i) For the purposes of Section 2.1, the Contract Demand shall be the Allocated Capacity of _____;
 - (ii) For the purposes of Section 2.1 and Section 5.1, the service termination date shall be _____;
 - (iii) For the purposes of Section 3.1, the Delivery Point shall be _____;

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(iv) For the purposes of Section 3.2, the Receipt Point, shall be _____; and

(v) For the purposes of Section 6.1, Notices shall be directed to Service Applicant/Shipper as follows:

(i) Mailing Address: _____

(ii) Delivery Address: _____

(iii) Nominations: Attention: _____
Telecopy: _____

(iv) Bills: Attention: _____
Telecopy: _____
Email Address: _____

(i) Other Matters: Attention: _____
Telecopy: _____

Dated this _____ Day of _____, 20_____.

SERVICE APPLICANT/SHIPPER

TRANSCANADA PIPELINES LIMITED

By: _____

By: _____

Title: _____

Title: _____

Signed: _____

Signed: _____

By: _____

By: _____

Title: _____

Title: _____

Signed: _____

Signed: _____

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APPENDIX "C"

LH TO SH CONVERSION NCOS (excluding FT-NR)* OR ECOS BID FORM

Existing LH Contract Number: _____

Existing LH Contract Delivery Point: _____ Existing LH Contract Receipt Point: _____

Date of Commencement of LH to SH Conversion: _____ (must comply with sub-section 10.3(b)(i) of the FT Toll Schedule for Existing Capacity and sub-section 10.4(b)(i) of the FT Toll Schedule for New Capacity)

Service Termination Date: _____ (Must comply with sub-section 10.3(b)(ii) of the FT Toll Schedule for Existing Capacity and sub-section 10.4(b)(ii) of the FT Toll Schedule for New Capacity.)

Maximum Capacity to convert: _____ GJ/Day Minimum Capacity to convert: _____ GJ/Day

Requested SH Contract Receipt Point: _____ (must be located in the EOT as defined in sub-section 10.2 of the FT Toll Schedule)

SH Contract Delivery Point must be the same as the Existing LH Contract Delivery Point.

Type of Service Requested: FT___ FT-NR___ FT-SN___ EMB___

Allocated Capacity: _____ GJs/Day

Service Applicant Contact

Name: _____

Address: _____

Telephone: _____ Telecopy: _____

Is this Bid Form conditional upon another Bid Form(s)?

Yes ___ **No** ___ If **Yes**, the Bid Form(s), upon which this Bid Form is conditional must be attached. Indicate number of Bid Forms attached: _____.

The Bid Form shall be subject to the General Terms and Conditions, the applicable Toll Schedule and List of Tolls of TransCanada's Tariff.

Dated this _____ Day of _____.

Service Applicant:

By: _____

By: _____

Title: _____

Title: _____

* New Capacity is not available for service under FT-NR Transportation Contract

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TRANSPORTATION ACCESS PROCEDURE

APPENDIX "D"
LH TO SH CONVERSION DECOS BID FORM

Existing LH Contract Number: _____

Existing LH Contract Delivery Point: _____ Existing LH Contract Receipt Point: _____

Date of Commencement of LH to SH Conversion: _____ (must comply with sub-section 10.3(b)(i) of the FT Toll Schedule)

Service Termination Date: _____ (Must comply with sub-section 10.3(b)(ii) of the FT Toll Schedule)

Maximum Capacity to convert: _____ GJ/Day Minimum Capacity to convert: _____ GJ/Day

Requested SH Contract Receipt Point: _____ (must be located in the EOT as defined in sub-section 10.2 of the FT Toll Schedule)

SH Contract Delivery Point must be the same as the Existing LH Contract Delivery Point.

Type of Service Requested: FT___ FT-NR___ FT-SN___ EMB___

Allocated Capacity: _____ GJs/Day

Service Applicant Contact

Name: _____

Address: _____

Telephone: _____ Telecopy: _____

Is this Bid Form conditional upon another Bid Form(s)? **Yes** ___ **No** ___ If **Yes**, the Daily Existing Capacity Open Season Bid Form(s), upon which this Daily Existing Capacity Open Season Bid Form is conditional must be attached. Indicate number of Daily Existing Capacity Open Season Bid Forms attached: _____.

Service Applicant agrees that:

1. This Bid Form once received by TransCanada shall be irrevocable and cannot be withdrawn or amended by Service Applicant unless such Daily Existing Capacity Open Season Bid Form is subject to the condition that another Daily Existing Capacity Open Season Bid Form as set out in the Daily Existing Capacity Open Season Bid Form has been accepted and shall be subject to the General Terms and Conditions, the applicable Toll Schedule and List of Tolls of TransCanada's Tariff; and
2. Service Applicant shall execute the SH Contract within 1 Banking Day from the Day TransCanada provides such SH Contract.

Dated this _____ Day of _____.

Service Applicant:

By: _____

By: _____

Title: _____

Title: _____