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January 4, 2017

Filed Electronically

National Energy Board  
Suite 210, 517 Tenth Avenue SW  
Calgary, AB T2R 0A8

**Attention: Ms. Sheri Young, Secretary of the Board**

Dear Ms. Young:

**Re: TransCanada PipeLines Limited (TransCanada)  
Herbert Long-Term Fixed Price (LTFP) Service Application (Application)  
Board File: File OF-Tolls-Group1-T211-TFGen 01**

TransCanada encloses for filing pursuant to Parts I and IV of the *National Energy Board Act* (Act) and the Board's process established on December 20, 2016,<sup>1</sup> an Application for an order approving a new long-term fixed price service to Herbert, Saskatchewan (Herbert LTFP), the associated tolls for the service, consequential amendments to the Canadian Mainline Gas Transportation Tariff and the Herbert LTFP Contract.

TransCanada negotiated the Herbert LTFP service with TransGas Limited (TransGas) to attract incremental load and associated revenues to the Mainline that would otherwise not be realized with the existing services offered on the TransCanada Mainline. The service is designed to attract incremental load associated with a gas-fired power plant to be constructed near Swift Current, Saskatchewan while ensuring TransGas' existing load on the Mainline is retained.

On November 30, 2016, TransCanada filed with the Board a Notice of Intention to file this Application pursuant to the streamlined regulatory process set out in Appendix IV of the RH-003-2011 Decision (Notice) and served the Notice on all TTF members, Mainline shippers and Parties to the RH-001-2014 and RH-001-2016 proceedings.<sup>2</sup> The Notice was also published in English and French in the National Post on December 1, 2016.

By December 15, 2016, seven parties filed an Application to Participate (ATP) in the streamlined process to consider this Application.<sup>3</sup> On December 20, 2016, the Board issued the Procedural

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<sup>1</sup> See Appendix II (NEB Filing ID: A81100).

<sup>2</sup> NEB Filing ID: A80852-1.

<sup>3</sup> List of Parties who filed ATPs: BP Canada Energy Group ULC (NEB Filing ID: A81000), Centra Gas Manitoba Inc. (NEB Filing ID: A81018), Enbridge Gas Distribution Inc. (NEB Filing ID: A81025), Société en commandite

January 4, 2017

Ms. Young

Page 2

Directives letter setting out specific dates on which the next steps of the streamlined process will take place.<sup>4</sup>

If the Board requires additional information with respect to this filing, please contact me or TransCanada's representatives listed in the Application.

Yours truly,

**TransCanada PipeLines Limited**

*Original Signed By*

Bernard Pelletier

Director, Regulatory Tolls and Tariffs

Canadian Gas Pipelines

Attachments

cc: List of Parties to Herbert LTFP

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Gaz Métro (NEB Filing ID: A81023), Tenaska Marketing Canada (NEB Filing ID: A81045), TransGas Limited (NEB Filing ID: A81018) and Union Gas Limited (NEB Filing ID: A81026).

<sup>4</sup> NEB Filing ID: A81100.

**NATIONAL ENERGY BOARD**

**IN THE MATTER OF** the *National Energy Board Act*, R.S.C. 1985, c. N-7, as amended (NEB Act), and the regulations made thereunder;

**IN THE MATTER OF** an application by TransCanada PipeLines Limited pursuant to Parts I and IV of the NEB Act for approval of a new Herbert Long-Term Fixed Price (Herbert LTFP) service, the associated tolls for the service, the Herbert LTFP Contract, the Herbert LTFP Toll Schedule, and consequential amendments to the Canadian Mainline Gas Transportation Tariff.

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**TRANSCANADA PIPELINES LIMITED**

**HERBERT LTFP SERVICE APPLICATION**

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**January 2017**

To: The Secretary  
National Energy Board  
Suite 210, 517 Tenth Avenue SW  
Calgary, AB T2R 0A8

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## HERBERT LONG-TERM FIXED PRICE SERVICE APPLICATION

### APPLICANT

1. TransCanada PipeLines Limited (TransCanada) hereby applies to the National Energy Board (Board or NEB) under Parts I and IV of the *National Energy Board Act* (Act) for an order approving a new Long-Term Fixed Price service to Herbert, Saskatchewan (Herbert LTFP), the Herbert LTFP Contract, the Herbert LTFP Toll Schedule, and consequential amendments to the Canadian Mainline Gas Transportation Tariff (Tariff).
2. In support of this application (Application), TransCanada provides and relies on the information contained in the Application, including the attached appendices, and any additional information TransCanada has previously or may file, as directed or permitted by the Board.
3. TransCanada is a federally incorporated Canadian corporation and a “company” as that term is defined in the Act.
4. TransCanada owns and operates a high-pressure natural gas transmission system that extends from the Alberta border across Saskatchewan, Manitoba, and Ontario, through a portion of Quebec, and connects to various downstream Canadian and international pipelines (Mainline).
5. The Mainline is subject to regulation by the Board.

### OVERVIEW OF HERBERT LTFP SERVICE

6. TransCanada negotiated the Herbert LTFP service with TransGas Limited (TransGas) to serve incremental load associated with a new gas-fired power plant to be constructed near Swift Current, Saskatchewan (Power Plant). Absent Herbert LTFP service, TransCanada understands that TransGas will serve the Power Plant using a non-Mainline alternative instead of Firm Transportation (FT) service on the Mainline.
7. Herbert LTFP service was designed to attract incremental load and associated revenues that would not otherwise be derived to the benefit of the Mainline and its shippers, while also promoting retention of existing Mainline FT contracts and associated revenues from TransGas. TransGas is the only party entitled to Herbert LTFP service as the service is a case-specific offering.
8. The key terms and conditions of Herbert LTFP service are:
  - a. a contract quantity of 58 TJ/d
  - b. a receipt point of Empress and a delivery point of Herbert, with no diversion or alternate receipt point rights
  - c. a negotiated fixed daily demand toll of \$0.12/GJ/day

- d. an Abandonment Surcharge based on the applicable methodology for FT service on the Mainline that will be reflective of the distance between Empress and Herbert
  - e. a 10-year term with the right to convert to FT service at the end of the term
  - f. a conditional commitment for TransGas to maintain 80 TJ/day of FT service from Empress to the TransGas SSDA during the term, which is the current TransGas FT contract quantity
  - g. termination and conversion conditions if the Power Plant does not operate or the 80 TJ/d of FT service is not maintained
9. TransCanada and TransGas executed a Memorandum of Understanding (MOU) dated October 5, 2016, setting out the terms and conditions of Herbert LTFP service. The MOU is provided as Appendix A.

#### COMMERCIAL THIRD PARTY NOTIFICATION AND CONSULTATION

10. TransCanada held discussions with the Tolls Task Force (TTF) about the proposed Herbert LTFP service. Herbert LTFP service was adopted as an issue for discussion at the TTF on October 13, 2016, in Montreal. The issue was discussed outside the TTF with certain parties and again at the TTF on November 10, 2016 in Toronto. After additional discussions with certain stakeholders outside the TTF, Herbert LTFP service was voted on November 28, 2016 by TTF members.
11. The result of the vote on Herbert LTFP service is categorized as “Supported with Opposition” as per the TTF Procedures previously filed with the NEB.<sup>1</sup> This vote result means that a majority of those members who took a position were in support but at least one TTF member did not support the resolution and intends to present alternatives or actively oppose the matter before the Board. A copy of TTF Resolution 01.2016 is attached as Appendix B.<sup>2</sup>
12. On November 30, 2016, TransCanada filed with the Board a Notice of Intention to file this Application pursuant to the streamlined regulatory process set out in Appendix IV of the RH-003-2011 Decision (Notice) and served the Notice on all TTF members, Mainline shippers and Parties to the RH-001-2014 and RH-001-2016 proceedings.<sup>3</sup> This Notice was also published in English and French in the National Post on December 1, 2016.
13. Applications to Participate (ATP) were filed by seven parties by December 15, 2016.

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<sup>1</sup> NEB Filing ID: A61030.

<sup>2</sup> Attachment A (Tariff Amendments) and Attachment B (MOU) to the Resolution are not included as they are included in the Appendices to this Application.

<sup>3</sup> NEB Filing ID: A80852-1.

## HERBERT LTFP SERVICE ATTRIBUTES

14. TransCanada proposes to offer TransGas service under a new Herbert LTFP Toll Schedule and pursuant to a unique Herbert LTFP Contract, which are all provided as part of Appendix C.
15. The Herbert LTFP Contract will be for 58 TJ/d for a 10-year term. Service will commence once the Power Plant commences commissioning, which is expected to be between November 1, 2018 and June 30, 2019. The Power Plant is targeted to be fully in-service in Q4 of 2019.
16. Herbert LTFP service is substantially different, and more restrictive, than the alternative of Mainline FT service. Table 1 provides a summary and comparison of the various attributes of Mainline FT service with those of Herbert LTFP service.

**Table 1: Comparison of Mainline FT and Herbert LTFP Service Attributes**

Attributes	Mainline FT Service	Herbert LTFP Service
Service Priority	Firm	Firm
Eligible Receipt Points	Any eligible receipt point for FT service	Empress
Eligible Delivery Points	Any eligible delivery point for FT service	Herbert (new proposed delivery point that can only be contracted with Herbert LTFP service)
Term	Minimum term of 1 year	10-year contract term
Toll	Monthly FT demand toll	10-year fixed monthly Herbert LTFP demand toll
Abandonment Surcharge	Monthly abandonment surcharge based on the distance between the receipt point and the delivery point	Monthly abandonment surcharge based on the distance between Empress and Herbert
Fuel	In-kind, applicable monthly fuel ratio	In-kind, applicable monthly fuel ratio
Pressure Charge	Yes, if applicable at the delivery location	Not applicable
Renewal Rights	Renewal minimum term is 1 year 2 years' renewal notice required prior to contract expiry Applicable term-up provision	Not renewable
Conversion Rights	Ability to convert to FT-SN, EMB, or MFP service, and from long-haul to short-haul service	Ability to convert to FT service at the end of the Herbert LTFP contract term, for a minimum term of 1 year 2 years' conversion notice required prior to contract expiry Applicable term-up provision
Daily Nomination Windows	5 nomination windows	5 nomination windows
Assignments	Available	Available
Alternate Receipt Point and Diversion Rights	Available	Not available
Temporary Receipt and Delivery Points	Available	Not available

17. Provision of Herbert LTFP service during the contract term is also subject to the following conditions:
- Herbert LTFP service will not commence if the Power Plant does not commence commissioning, and if the Power Plant ceases to operate during the contract term, TransCanada may terminate Herbert LTFP service or convert it to FT service, and
  - TransGas has agreed to hold at least 80 TJ/d of FT service to the TransGas SSDA during the term of the Herbert LTFP Contract. This commitment is conditioned on FT tolls to the TransGas SSDA not increasing by more than 25% over any two-year period during the contract term. If TransGas does not hold 80 TJ/d of FT service during the term, TransCanada may terminate the Herbert LTFP Contract. TransGas currently holds 80 TJ/d of FT to the TransGas SSDA, which reflects the current needs of TransGas for firm Mainline service.

These provisions were negotiated to prevent the use of Herbert LTFP service to serve existing or new loads in Saskatchewan that may otherwise be served by Mainline FT service. Absent the conditional commitment to hold at least 80 TJ/d of FT service, and given the interconnections with other pipeline systems described below, TransGas would have the ability to replace Mainline FT service with increased receipts from other sources and use Herbert LTFP to serve existing firm requirements. Further, if the Power Plant is not operational, the Herbert LTFP contract quantity would be available to serve incremental Saskatchewan load above 80 TJ/d.

## **BACKGROUND AND ALTERNATIVES**

18. TransGas provides natural gas transmission services in the province of Saskatchewan. To meet the existing needs of its customers, TransGas relies on transportation service from the NOVA Gas Transmission Ltd. (NGTL) System, the Mainline, the Foothills Pipeline Saskatchewan (Foothills) System and the Many Islands Pipelines (Canada) Limited (MIPL) System through various interconnections. MIPL is an NEB-regulated pipeline and an affiliate of TransGas. Both TransGas and MIPL are wholly-owned subsidiaries of SaskEnergy.
19. The Power Plant could be served either through transportation service on the Mainline or Foothills, in addition to transportation on MIPL.
20. In order to serve the Power Plant load, TransCanada understands that TransGas was considering transportation on Foothills from McNeill to a new delivery interconnection at Shaunavon, Saskatchewan, from which gas would be transported on existing and new MIPL facilities to the Power Plant (Shaunavon Option). TransGas cited lower tolls on the Foothills system as the reason for pursuing service via Foothills instead of FT service on the Mainline.

21. In order to attract this new load and maintain existing load, TransCanada sought to develop a competitive service offering as an alternative to the Shaunavon Option that would meet the needs of TransGas for the Power Plant.
22. TransCanada's discussions with TransGas focused on evaluating an option at the Herbert meter station on the Mainline, from which gas would be transported on existing MIPL facilities to the Power Plant (Herbert Option).
23. Through the negotiation process, TransGas indicated it would continue to work with Foothills on the Shaunavon Option in order to protect its project timelines.
24. Figure 1 depicts the location of the Power Plant, existing pipeline facilities, and Herbert and Shaunavon.

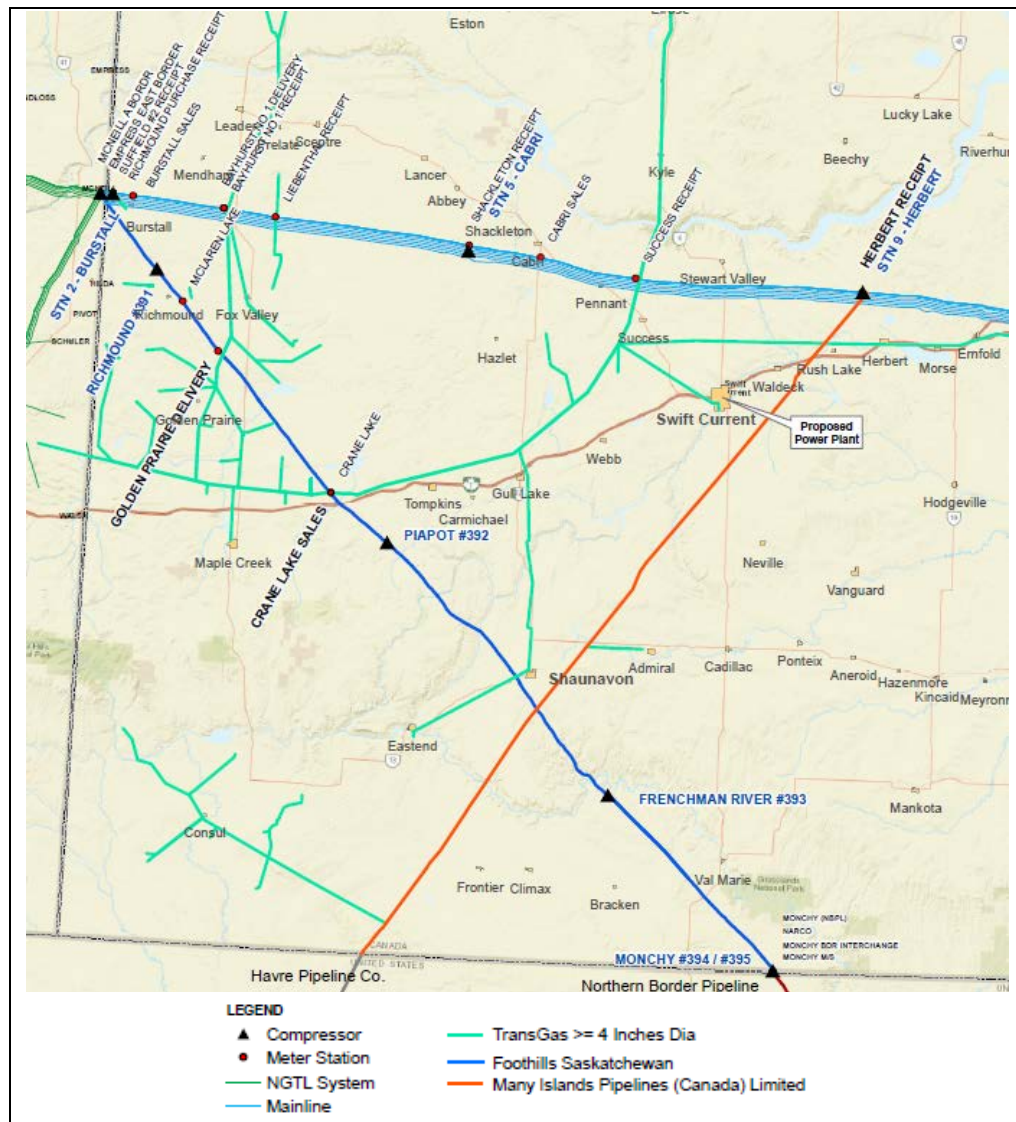


Figure 1: Map of the Herbert and Shaunavon Options



**COMPARISON TO AVAILABLE ALTERNATIVES**

25. The alternative of contracting for FT service on the Mainline was rejected early on by TransGas as this alternative would have resulted in an FT toll from Empress to the TransGas SSDA of \$0.33/GJ/day and a total transportation cost of approximately \$0.38/GJ/day.
26. Absent the proposed Herbert LTFP service, TransGas advised TransCanada that it would opt for the Shaunavon Option, which would involve firm transportation on Foothills from McNeill to Shaunavon. There is no posted firm toll for this path. For comparison purposes, the toll was approximated by using the toll from McNeill to Monchy of \$0.07/GJ/day, which corresponds to a total transportation cost of approximately \$0.10/GJ/day.
27. Table 2 compares the total transportation costs for Herbert LTFP service on the Mainline relative to Mainline FT service from Empress to the TransGas SSDA, and to the Shaunavon Option on Foothills. This comparison is illustrative only, as the Herbert LTFP toll is known for the entire ten-year period, while the other tolls are subject to change over that time period.

**Table 2: Mainline vs. Foothills Total Transportation Cost Comparison**

Service	Receipt	Delivery	Toll <sup>1</sup> (\$/GJ/d)	Abandonment Surcharge <sup>2</sup> (\$/GJ/d)	Fuel <sup>3</sup> %	Fuel Cost <sup>4</sup> (\$/GJ)	Total Cost (\$/GJ/d)	Contract Quantity (GJ/d)	Annual Cost (\$)
Mainline Herbert LTFP Service	Empress	Herbert <sup>5</sup>	0.1200	0.0115	0.46	0.0125	0.1440	58,000	3,048,480
Mainline FT Service	Empress	TransGas SSDA	0.3334	0.0245	0.88	0.0239	0.3818	58,000	8,082,706
Foothills FT Service	McNeill	Shaunavon (interconnect with MIPL) <sup>6</sup>	0.0731	0.0034	0.84	0.0228	0.0993	58,000	2,102,181

**Note:**

- Based on 2016 tolls.
- Based on 2016 Abandonment Surcharges.
- Based on 2015 twelve-month average fuel percentages.
- Assumes an Empress/McNeil gas price of \$2.72/GJ (based on 2015 next day weighted averages).
- Proposed new delivery point for the Herbert LTFP Contract.
- The Foothills interconnect with MIPL is not currently a delivery point on the Foothills system. As an approximation, TransCanada has provided the posted toll for delivery to Monchy, recognizing a distance-based approach would result in a lower toll to Shaunavon.

28. For each of these options, TransGas would also require transportation on the MIPL in order to serve the Power Plant. The associated costs of this transportation would be higher for the Shaunavon Option as a result of the associated MIPL lateral expansion of 1.2 km that would be required near the point of interconnection with Foothills.

29. Each option would also require a new delivery meter station to be installed by either the Mainline or Foothills, at comparable costs. TransCanada estimates that the costs associated with installing a meter station capable of accommodating the contract quantity of 58 TJ/d for the Herbert LTFP service is approximately \$2.3 million.
30. While toll level was a key consideration, TransCanada understands that TransGas considered other factors when comparing the Herbert and Shaunavon Options, including the additional facilities required on the MIPL system, toll certainty, land matters and reliability considerations. Ultimately, the negotiations between TransGas and TransCanada resulted in the execution of the MOU that specified the terms and conditions of Herbert LTFP service.

#### **IMPACTS TO TOLLS AND EXISTING SERVICES**

31. Herbert LTFP service will contribute approximately \$2.5 million in annual demand revenue, and the 10-year average annual cost of service will increase by approximately \$0.3 million due to the \$2.3 million capital addition related to the proposed delivery meter station facilities at Herbert. Herbert LTFP service is therefore expected to result in incremental net revenues of \$2.2 million per year.
32. The increase in Mainline billing determinants, revenues and cost of service resulting from the implementation of Herbert LTFP service will be reflected in the calculation of tolls in subsequent tolls applications.
33. Implementation of Herbert LTFP service will also provide greater assurance that existing firm billing determinants for FT service are maintained, in light of TransGas' conditional commitment to hold a minimum level of FT service during the term of the Herbert LTFP Contract.
34. No other impacts to existing Mainline services are expected as a result of the proposed Herbert LTFP service.

#### **JUST AND REASONABLE TOLLS AND NO UNJUST DISCRIMINATION**

35. TransCanada submits that the proposed toll for Herbert LTFP service is just and reasonable and the service and its tolling will not be unjustly discriminatory.
36. The toll for Herbert LTFP service was not derived based on system average costs like other firm Mainline services. In light of the alternatives available to TransGas to serve the Power Plant, a negotiated service offering was required to attract the incremental load and associated net revenues for the benefit of the Mainline over the long term that would not otherwise be realized.
37. The Board previously held the view that TransCanada should seek the higher of incremental costs or fair market value in all non-Tariff transactions from parties

- wishing to contract with it, and defined fair market value as whatever a competitive market is willing to pay.<sup>4</sup> While Herbert LTFP would be a Tariff service, it is a market-driven solution. The tolling and service structure were negotiated between arm's-length entities. Therefore, the toll represents a fair assessment of the market value of the proposed service, which exceeds the incremental costs of providing the service.
38. While the Herbert LTFP toll is lower than the comparable FT toll, the attributes of these services are different. As outlined in Table 1 above, Herbert LTFP service is more restrictive than FT service. It has been designed to meet the needs of TransGas in serving the Power Plant, while also including provisions that will prevent the use of Herbert LTFP to serve loads in Saskatchewan that may otherwise be served by FT service. As such, gas flowing under Herbert LTFP service will not be traffic of the same description as gas flowing under FT service.
39. Further, TransCanada submits that there is no unjust discrimination in making Herbert LTFP service available only to TransGas. The alternatives available to TransGas to serve the Power Plant in these unique circumstances give rise to the need for this competitive service offering.
40. The proposed Herbert LTFP service has been tailored to the market reality of TransGas and the proposed Power Plant. This approach is consistent with the Board's expectations that TransCanada take an active role by meeting market forces with market solutions<sup>5</sup> and compete for business with services tailored to the market realities of the Mainline's many diverse paths.<sup>6</sup> The Board has recently encouraged TransCanada to continue to identify and propose new and innovative service and pricing proposals to manage the ongoing issues facing the Mainline.<sup>7</sup>

#### **BENEFIT TO THE MAINLINE**

41. Absent Herbert LTFP service, the Mainline would not be able to attract the contract quantities and revenues associated with the service over the long term. In contrast, with Herbert LTFP service, TransCanada is able to attract these volumes, which will result in annual incremental net revenues of \$2.2 million.
42. In addition, TransGas has conditionally committed to maintaining a minimum contract quantity of 80 TJ/d of FT service on the Mainline, which will help ensure that existing load is also retained. In contrast, with the Shaunavon Option in the absence of Herbert LTFP service, existing Mainline load could be lost instead of preserved.

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<sup>4</sup> RH-2-2004-Phase I Decision, page 38.

<sup>5</sup> RH-003-2011 Decision, page 3.

<sup>6</sup> RH-003-2011 Decision, page 135.

<sup>7</sup> RH-001-2016 Decision, page 35.

43. The Mainline and its shippers will be better off as a result of the proposed Herbert LTFP service and associated contractual commitments than they would otherwise be absent the proposed service.
44. These facts further support a conclusion that the proposed service is in the public interest.

#### **TARIFF AMENDMENTS**

45. In addition to the new Herbert LTFP Toll Schedule and Herbert LTFP Contract, TransCanada will require consequential Tariff amendments to the Table of Contents, and General Terms and Conditions. Attached as Appendix C are a summary of Tariff amendments, and black-lined and clean copies of the Tariff amendments required to implement Herbert LTFP service. Given the nature of Herbert LTFP service, the Herbert LTFP Contract will be unique and no pro forma Herbert LTFP Contract will be made part of the Tariff.
46. Prior to implementation, Herbert would be added to the List of Delivery Points attached to the Tariff for use only under Herbert LTFP service, and the List of Tolls would include the toll for Herbert LTFP service.

#### **TIMING**

47. TransGas advised TransCanada that it will renew development of the Shaunavon Option absent approval of Herbert LTFP service as filed or on conditions that are not acceptable to both TransCanada and TransGas. TransGas further advised TransCanada it intends to complete the existing stages of work on the Shaunavon Option related to land and routing so that the Shaunavon Option could be renewed, if necessary.
48. TransCanada understands that TransGas requires a timely decision on this Application in order to preserve the timing of the Shaunavon Option in the alternative. For this reason, approval of this Application is requested as soon as possible.
49. In order to provide Herbert LTFP service, TransCanada will be required to add facilities at or near the Herbert meter station. TransCanada has begun the work necessary to file an application for the facilities in spring/summer 2017, with a targeted in-service date of November 1, 2018, to coincide with the projected commissioning of the Power Plant.

**RESPONSE TO ATP COMMENTS**

50. In their ATPs, parties made comments regarding broader policy issues and the assessment of future service or pricing proposals on other Mainline paths, including comments regarding the creation of criteria or principles to be applied to future discounted toll proposals.<sup>8</sup>
51. Through this Application, TransCanada is not seeking approval of a blanket authority to offer discounted Mainline tolls in the future. Rather, it is seeking approval of a new service, with unique service attributes and tolling designed to respond to a specific situation on the Mainline. As such, TransCanada submits that the Application should be assessed by the Board based on the unique circumstances that justify Herbert LTFP service.
52. To the extent TransCanada proposes new service or pricing proposals in the future, Board approval will be required. The appropriateness of any such future proposals will be assessed on their own merits as part of the regulatory processes established by the Board to consider such applications, if and when they are filed. Therefore, the development of criteria designed to apply to the multitude of possible circumstances across Mainline paths, business conditions, and time, is not necessary or appropriate. TransCanada must retain flexibility to quickly respond to its business environment and develop innovative proposals that are tailored to the market realities of the many diverse Mainline paths.
53. In developing the streamlined regulatory process, the Board recognized the need for TransCanada and its shippers to have the tools to respond quickly to changes in the Mainline's business environment such that new products and services can be developed to better enable the Mainline to compete and serve the need of its shippers. TransCanada submits that broadening the scope of the current proceeding to include broader policy issues that extend beyond the proposed Herbert LTFP service may delay adjudication of the Application and would be inconsistent with the intent of the streamlined regulatory process. Given the narrow scope of the Application and participation by a limited number of Mainline interested parties, TransCanada submits that it would be inappropriate for the Board to consider these matters as part of the current proceeding.

**CONCLUSION**

54. Herbert LTFP service is a reasonable negotiated outcome that is tailored to market realities of TransGas and the Power Plant. Herbert LTFP service represents a necessary and appropriate response to attract incremental Mainline load and reduce

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<sup>8</sup> ATPs of Centra Gas Manitoba Inc.; Enbridge Gas Distribution Inc.; Union Gas Limited; and Société en commandite Gaz Métro.

- the risk of losing existing Mainline load, to the benefit of the Mainline and its shippers.
55. The terms and conditions of the Herbert LTFP service and the associated tolls are just, reasonable, not unjustly discriminatory and in the public interest.
56. TransCanada requests timely approval of the Herbert LTFP service, the associated tolls and charges, and the consequential Tariff amendments.

**RELIEF REQUESTED**

57. TransCanada requests an order of the Board:
- a. approving the proposed Herbert LTFP service and the related toll methodology, as described in the Application,
  - b. approving the Herbert LTFP Contract, Herbert LTFP Toll Schedule and other consequential amendments to the Tariff, as provided in Appendix C, and
  - c. granting such further and other relief as TransCanada may request or the Board may consider appropriate.

Respectfully submitted,

Calgary, Alberta  
January 4, 2017

**TransCanada PipeLines Limited**

*Original Signed By*

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Bernard Pelletier  
Director, Regulatory Tolls and Tariffs  
Canadian Gas Pipelines

Communications related to this Application should be directed to:

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## **Appendix A**

### **Executed Memorandum of Understanding**

MEMORANDUM OF UNDERSTANDING  
HERBERT LTFP

Dated October 5, 2016

**1. Introduction**

- (a) The purpose of this Memorandum of Understanding ("MOU") is to summarize the general scope and principles which have been agreed to between TransGas Limited ("TransGas") and TransCanada Pipelines Limited ("TransCanada") (collectively, the "Parties") regarding TransCanada Mainline transportation service required for TransGas to serve the needs of the new power plant near Swift Current, Saskatchewan expected to commence commissioning between November 1, 2018 and June 30, 2019 and to be fully operational and in-service in Q4, 2019 (the "Power Plant").
- (b) The Parties enter into this MOU in recognition that absent the new and distinct Herbert LTFP Service described herein on the TransCanada Mainline system, TransGas would serve the Power Plant with another credible alternative, such that no revenue would be realized on the TransCanada Mainline system.

**2. Binding Agreement**

In executing this MOU, the Parties intend to create a binding contract. The Parties undertake to forthwith negotiate in good faith and to execute and deliver all necessary formal agreements, applications and other documents required to carry out the terms hereof.

**3. Application to the NEB for Herbert LTFP Service**

On or before January 16, 2017, TransCanada will file either (a) an application with the National Energy Board (the "NEB"), for approval of the firm gas transportation service substantially on the terms, conditions and tolls set out in Schedule A hereto (such service, terms, conditions and tolls are collectively hereinafter referred to as the "Herbert LTFP Service"), or (b) a Notice of Intention to File an Application to be followed by an application for Herbert LTFP Service in accordance with the streamlined process outlined in Appendix IV to the RH-003-2011 Decision (collectively, the "Herbert LTFP Application"). The NEB's decision in respect of the Herbert LTFP Application is referred to as the "NEB LTFP Decision".

**4. Application to the NEB for Herbert Facilities**

- (a) Provision of Herbert LTFP Service requires the modification of, or addition of new facilities at or near, the existing Herbert meter station to accommodate deliveries to TransGas (such modified or new facilities referred to as the "Herbert Facilities").
- (b) Provided that by January 16, 2017 both (i) the Herbert LTFP Application is filed with the NEB and (ii) the Backstopping Agreement (defined below) is executed, TransCanada will file an application (the "Herbert Facilities Application") with the NEB on or before September 1,



2017, for approval of the Herbert Facilities. The NEB's decision in respect of the Herbert Facilities Application is referred to as the "NEB Facilities Decision".

5. Backstopping Agreement

In connection with the Herbert Facilities Application, the Parties shall enter into a backstopping agreement (the "Backstopping Agreement"), which, in addition to standard provisions, shall include the following terms:

- a. it shall be an "Event of Cancellation" if the Power Plant has not commenced commissioning by June 30, 2019; and
- b. In the event that (i) there is an Unacceptable NEB LTFP Decision, but (ii) there is an Acceptable NEB Facilities Decision, then TransGas shall either, in its discretion, (iii) pay all costs and obligations as to be provided for in the Backstopping Agreement, including the "Cancellation Costs", or (iv) execute a Mainline FT contract to the TransGas SSDA for at least one year's term in the amount that would have been contracted for Herbert LTFP Service.

6. Deemed Acceptance

- (a) Each Party shall be deemed to have accepted the NEB LTFP Decision or NEB Facilities Decision, as applicable, (in each case, "Deemed Acceptance") unless a Party provides written notice (a "Rejection Notice") to the other Party within 10 days from either the date of issuance of the NEB LTFP Decision or the NEB Facilities Decision that it believes, acting reasonably, either that:
  - (i) the NEB LTFP Decision or NEB Facilities Decision, as applicable, to be inconsistent with this MOU, the Herbert LTFP Application or the Herbert Facilities Application in some material respect; or
  - (ii) the NEB LTFP Decision or NEB Facilities Decision, as applicable, imposes any new or revised term or condition which is not materially the same as this MOU, the Herbert LTFP Application or the Herbert Facilities Application, including without limitation, any term or condition relating to the toll, treatment of revenue, term, volume of gas entitled to the toll, or terms and conditions of service.
- (b) Deemed Acceptance of the NEB LTFP Decision or the NEB Facilities Decision shall be referred to as an "Acceptable NEB LTFP Decision" or "Acceptable NEB Facilities Decision", respectively. Where a Rejection Notice is issued in respect of the NEB LTFP Decision or the NEB Facilities Decision, it shall be referred to as an "Unacceptable NEB LTFP Decision" or "Unacceptable NEB Facilities Decision", respectively.

**7. Regulatory Approvals Efforts**

- (a) Each of TransGas and TransCanada shall use reasonable efforts to obtain (i) the NEB LTFP Decision on or before August 1, 2017, or as soon as possible thereafter and (ii) the NEB Facilities Decision on or before March 1, 2018, or as soon as possible thereafter.
- (b) TransGas shall assist TransCanada in all regulatory proceedings in support of the Herbert LTFP Application and the Herbert Facilities Application, and shall respond to any reasonable requests for information, prepare any necessary evidence to be filed by TransGas, and provide TransGas witnesses, if required to obtain regulatory approvals. TransGas and TransCanada agree to not take or support any action which would be inconsistent with this MOU and TransCanada's efforts to obtain regulatory approval for the Herbert LTFP Application and the Herbert Facilities Application.

**8. Herbert LTFP Service**

TransCanada shall provide TransGas the Herbert LTFP Service (as may be modified by the NEB LTFP Decision) upon the satisfaction, in TransCanada's sole discretion, or waiver of the following conditions precedent:

- (a) an Acceptable NEB LTFP Decision has occurred;
- (b) an Acceptable NEB Facilities Decision has occurred;
- (c) TransGas has executed FT contracts to the TransGas SSDA totaling 80 TJ/d with a remaining term of at least 1 year, as contemplated by Section 3 of Schedule A;
- (d) TransGas providing written notice to TransCanada advising that the Power Plant has commenced commissioning or will commence commissioning, and providing 2 days' notice of when it will require Herbert LTFP Service to begin; and
- (e) execution of a Herbert LTFP contract consistent with the terms of the Herbert LTFP Service described in this MOU.

**9. FT Commitment To TransGas SSDA**

Provided all conditions precedent in Section 8 have been satisfied or waived as provided therein, TransGas shall maintain a contract level of no less than 80 TJ/d to the TransGas SSDA for the entire term of the Herbert LTFP Service. TransGas shall be relieved of this commitment only in the event that FT tolls to the TransGas SSDA increase by more than 25% over any two year period during such term.

**10. Daily Balancing**

For daily balancing purposes, nominations and deliveries to Herbert under Herbert LTFP Service will remain part of the balance for the TransGas SSDA Interconnection Area in accordance with the Limited Balancing Agreement between TransCanada and TransGas dated October 1, 1996, which agreement will be modified or supplemented as necessary to incorporate Herbert LTFP Service.

**11. Future Services**

- (a) The Parties will discuss additional service solutions, similar to those addressed in this MOU, in future instances where incremental load can be attracted to the TransCanada Mainline system in the presence of a viable alternative to the TransCanada Mainline system.
- (b) The Parties agree that at the end of the term for the Herbert LTFP Service, a similar service may be negotiated to serve the Power Plant based on circumstances at that time.

**12. No Liability**

Subject to the Backstopping Agreement, a Party shall not be liable to the other Party, its affiliates and each of their representatives, directors, officers, subcontractors and agents for or from any claims, demands, losses, costs, expenses (including, without limitation, all legal fees on a solicitor and his own client-basis), damages, suits or proceedings, including all claims for consequential, indirect and special loss or damage, (collectively referred to as "Claims") that may arise out of or may be directly or indirectly attributable to the (a) failure to obtain an Acceptable NEB LTFP Decision or an Acceptable NEB Facilities Decision, and (b) termination of this MOU in accordance with Section 13.

**13. Termination and Survival**

- (a) This MOU shall immediately terminate and be of no further force and effect if:
  - i. there is an Unacceptable NEB LTFP Decision;
  - ii. there is an Unacceptable NEB Facilities Decision;
  - iii. an Herbert LTFP Contract is executed by both Parties; or
  - iv. TransGas does not receive final Board of Directors approval by November 30, 2016.
- (b) Notwithstanding anything else in this MOU, the Parties acknowledge and agree that the termination of this MOU shall not cause the termination of, or affect the respective obligations of the Parties under, the Backstopping Agreement.
- (c) Sections 9 and 12 shall survive termination of this MOU and continue in full force and effect, and do not merge.

14. Miscellaneous

- (a) Each of the Parties severally represent and warrant that it has full corporate authority to execute this MOU and to perform all of its obligations under this MOU and that the execution and performance by such Party will not result in a breach of any agreement or authorization to which it is bound or of any objection binding on such Party.
- (b) All media releases in respect to this MOU and the transactions contemplated hereby will require the prior written consent of each of the Parties, such consent shall not be unreasonably withheld.
- (c) Whenever possible, each provision of this MOU shall be interpreted in such manner as to be valid and effective under applicable law, but if any provision of this MOU or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, (i) such provision shall be deemed to be automatically amended to the extent necessary to comply with applicable laws and permit enforcement and (ii) such finding shall not affect the binding effect of the other provisions of this MOU, unless, in either case, such amendment or finding (after giving effect to any permitted amendment) materially impairs the economic benefit or protections to be derived by a Party from the transactions contemplated hereby, taken as a whole.
- (d) This MOU contains the entire agreement between the Parties and supersedes all prior or contemporaneous discussions, negotiations, representations or verbal agreements relating to the subject matter of this MOU.
- (e) No Party to this MOU shall assign or otherwise dispose of an interest in this MOU without prior written consent of the other Party such consent not to be unreasonably withheld.
- (f) The following Schedules are attached hereto and made part of this MOU:

Schedule "A" – Description of Herbert LTFP Service

- (g) This MOU shall be governed by and construed in accordance with the laws of the Province of Alberta.
- (h) Any capitalized terms not defined herein shall have the meanings ascribed thereto in Schedule "A". Capitalized terms not defined in either the MOU or in Schedule "A" hereto shall have the meanings ascribed thereto in the Canadian Mainline Transportation Tariff (the "Tariff").

- (i) This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. The exchange of copies of this MOU and of signature pages by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall constitute effective execution and delivery of this MOU as to the Parties and may be used in lieu of an original MOU for all purposes. Signatures of the Parties transmitted by facsimile or other electronic transmission shall be deemed to be original signatures for all purposes.

IN WITNESS WHEREOF the Parties have executed this MOU by their duly authorized officers.

## TRANSCANADA PIPELINES LIMITED

**Stephen M. V. Clark**

Senior Vice President & General Manager

Per:                      Canadian Natural Gas Pipelines

Name:                     

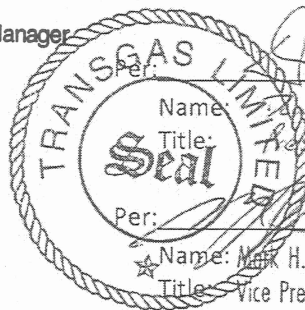
Title:                     

Per:                     

Name:                     

Title:                     

## TRANSGAS LIMITED



Name:                     

Title:                     

Per:                     

Name: Mark H.J. Guillet, Q.C.

Title: Vice President, General Counsel & Corporate Secretary

Approved as to Form and Content:	
Business	<u>                    </u>
Legal	<u>                    </u>

Schedule A  
to the Memorandum of Understanding  
Dated October 5, 2016  
Between  
TransCanada PipeLines Limited  
And  
TransGas Limited  
Herbert LTFP Service

38 b.w.  
est.  
JH.

1. Contract Volume

The contract volume will be that selected by TransGas in order to meet the needs of the Power Plant. This volume is expected to range from 40 TJ/d to 60 TJ/d. This volume will be selected by TransGas by at least one month prior to filing the Herbert LTFP Application.

2. Contract Term

The contract term will be 10 years, subject to early termination pursuant to Section 3 (the "Term"). The contract is expected to commence between November 1, 2018 and June 30, 2019, or as soon as possible thereafter.

3. Provision of Service

Provision of Herbert LTFP Service is subject to the following conditions being satisfied during the entire Term:

- (a) The Power Plant shall be commissioning, or fully operating and in-service. If the Power Plant does not commence commissioning, Herbert LTFP Service shall not commence.
- (b) TransGas shall hold at least 80 TJ/d of FT Service to the TransGas SSDA; provided that if FT tolls to the TransGas SSDA increase more than 25% over any two year period during the Term then TransGas may hold less than 80 TJ/d of FT Service.

TransCanada may terminate the Herbert LTFP Service upon 3 months written notice, if, at any time during the Term, either (x) the Power Plant is not commissioning or fully operating and in-service, or (y) TransGas holds less than 80 TJ/d of FT Service to the TransGas SSDA pursuant to Section 3(b) or otherwise.

In addition to the above termination right, if, after it has been declared in-service, the Power Plant ceases operation for a period exceeding 5 consecutive months during the Term, Herbert LTFP Service may be converted to FT in the sole discretion of TransCanada for the remainder of the Term. TransCanada shall not exercise such discretion until the expiry of 2 months' advance written notice to TransGas of its intention to convert Herbert LTFP Service to FT.

**4. Renewal and Term-Up**

At the end of the term, Herbert LTFP Service can be converted to FT. This will require two years prior notice before the end of the contract term.

There may also be discussions prior to the end date to continue or modify the Herbert LTFP Service, as per the MOU, subject to agreement and NEB approval.

If the Term-Up Provision is invoked by TransCanada, Herbert LTFP Service may either terminate on its existing termination date, or be converted to FT for additional contract term beyond the existing termination date.

**5. Receipt Point**

The only receipt point for Herbert LTFP Service will be Empress.

**6. Delivery Point**

The only eligible delivery point for Herbert LTFP Service will be Herbert.

**7. Toll**

The demand toll will be 12 cents/GJ/day (or \$3.65/GJ/month) for the entire Term.

**8. Abandonment Surcharge**

The Abandonment Surcharge is not included in the toll, will be provided in accordance with the Tariff, and will be the same as if FT service was contracted from the Receipt Point to the Delivery Point.

**9. Fuel**

Fuel is not included in the toll, will be provided in-kind in accordance with the Tariff, and will be the same as if FT service was contracted from the Receipt Point to the Delivery Point.

**10. Change in Law**

Toll is subject to change based on changes in applicable laws, rules or regulations, including any future surcharges developed to recover additional costs, provided that such future surcharges (or similar comparable means to recover such costs) are not applied exclusively to Herbert LTFP Service.

**11. Taxes**

Sales taxes are not included in the toll.

**12. Diversions and Alternate Receipt Points**

Diversions and Alternate Receipt Points are not available for Herbert LTFP Service.

13. Temporary Receipt and Delivery Points (Shifts)

Receipt or Delivery Point shifts are not available for Herbert LTFP Service.

14. Other terms equivalent to FT service

Nomination Windows, Priority of Service, Assignments, Financial Assurances, Force Majeure credits, and other terms not listed herein will be in accordance with the Tariff for FT service.

*[remainder of page left blank]*



## **Appendix B**

### **Tolls Task Force Resolution 01.2016**

2016 TOLLS TASK FORCE ISSUE	
<b>Resolution:</b> 01.2016	<b>Date Issue Adopted:</b> October 13, 2016
<b>Date of Vote:</b> November 28, 2016	<b>Issue:</b> 2016.01
<b>Issue Sponsors:</b> TransCanada and TransGas	

## **ISSUE:** Herbert LTFP

The purpose of this issue is to seek TTF support for this new service negotiated with TransGas. The service is targeted at a particular new load and, if approved by the NEB, would generate incremental Mainline revenue that would not otherwise be realized.

---

## **RESOLUTION**

To implement the new Herbert LTFP Service as described below.

---

## **VOTE RESULT**

Supported with Opposition.

---

## **BACKGROUND**

TransGas seeks gas supply for a new power plant near Swift Current, Saskatchewan, and was actively pursuing a new interconnection with Foothills Pipeline to serve this incremental load.

In the face of this credible alternative, TransGas and TransCanada negotiated a new service, Herbert LTFP, to serve this new load using the Mainline. If approved, Herbert LTFP will result in incremental Mainline revenue that would not otherwise be achieved, and reduced risk of losing future SSDA deliveries as a result of greater connectivity to Foothills.

Now that the MOU for this service is signed, TransGas is wrapping up work on the land and routing associated with the Foothills connection, and seeks a timely determination that Herbert LTFP service will be approved by the NEB. If Herbert

LTFP is not approved, or is approved with unacceptable conditions, TransGas plans to re-commence work on the new Foothills interconnection.

The support of or non-opposition to this issue does not restrict the ability of any party to take any position with respect to any existing or new service(s) on the Mainline. Any other or future competitive or market-based services or related matters that are brought to the TTF and/or the NEB will be assessed by all parties on their own merits based on the unique facts and circumstances of that case.

Herbert LTFP is being offered on a path with unsubscribed capacity. TransCanada and the TTF acknowledge that offering a similar service as Herbert LTFP with a toll lower than FT on the same path may also be appropriate in certain future circumstances. Offering services similar to Herbert LTFP on a path that is largely subscribed would induce different consequences and would therefore need to be examined on a different basis in order to determine the appropriateness.

TransGas and TransCanada seek TTF support for the Herbert LTFP service as defined by the Tariff amendments included as Attachment A for the service agreed to in the MOU included as Attachment B.

## **Appendix C**

### **Mainline Tariff Amendments**

### **List of Tariff Amendments**

The following table provides a summary of the Mainline Tariff Amendments required to implement the Application.

This summary does not form part of the Mainline Tariff.

A black-lined copy of the affected pages of the Mainline Tariff, illustrating the proposed amendments and a clean copy of the affected sections of the Mainline Tariff incorporating the proposed amendments are provided in Tabs 1 and 2 respectively.

<b>Tariff Document</b>	<b>Revisions</b>
Herbert LTFP Toll Schedule	<ul style="list-style-type: none"><li>• Added to Mainline Tariff</li></ul>
General Terms and Conditions	<p>Section I - Definitions:</p> <ul style="list-style-type: none"><li>• Added Herbert LTFP to definitions of "Abandonment Charge", "Shipper's Maximum Hourly Flow Rate", "Transportation Service Contract"</li></ul> <p>Section III - Tolls:</p> <ul style="list-style-type: none"><li>• Added Herbert LTFP to subsection (iv)</li></ul> <p>Section XV – Impaired Deliveries:</p> <ul style="list-style-type: none"><li>• Added Herbert LTFP to subsection (e) with other firm services.</li></ul> <p>Section XVI – Determination of Daily Deliveries:</p> <ul style="list-style-type: none"><li>• Added Herbert LTFP as item (d)</li></ul>

### **Herbert LTFP Contract**

In addition, a copy of the Herbert LTFP Contract is provided in Tab 3.

## **Appendix C**

### **Tab 1**

#### **Mainline Tariff Amendments - Blackline**

- Table of Contents
- General Terms and Conditions

## TABLE OF CONTENTS

TAB	VERSION DATE
<b>MAPS</b> .....	[•]
<b>TRANSPORTATION ACCESS PROCEDURE</b> .....	January 1, 2015
<b>PROCEDURE FOR ADDING RECEIPT AND DELIVERY POINTS</b> .....	November 29, 2005
<b>LIST OF APPROVED TOLLS</b> .....	January 1, 2016
<b>TOLL SCHEDULES</b>	
Firm Transportation Service .....	January 1, 2015
Storage Transportation Service .....	January 1, 2015
Storage Transportation Service – Linked .....	January 1, 2015
Interruptible Transportation Service .....	January 1, 2015
Short Term Firm Transportation Service .....	January 1, 2015
Non Renewable Firm Transportation.....	January 1, 2015
Energy Deficient Gas Allowance Service .....	January 1, 2015
Firm Transportation Short Notice Service .....	January 1, 2015
Short Notice Balancing Service .....	January 1, 2015
Short Term Short Notice Service .....	January 1, 2015
Multi-Year Fixed Price Service.....	January 1, 2015
Enhanced Market Balancing Service.....	May 1, 2015
Summer Storage Service.....	May 1, 2015
Herbert Long Term Fixed Price Service.....	[•]
<b>GENERAL TERMS AND CONDITIONS</b> .....	<del>January 1, 2015</del> [•]
<b>RECEIPT AND DELIVERY POINTS</b> .....	November 1, 2016
<b>PRO FORMA TRANSPORTATION CONTRACTS</b>	
Firm Transportation Service .....	January 1, 2015
Storage Transportation Service .....	July 1, 2013
Storage Transportation Service – Linked .....	July 1, 2013
Interruptible Transportation Service .....	July 19, 2007
Short Term Firm Transportation Service .....	November 8, 2013
Non Renewable Firm Transportation.....	November 8, 2013
Energy Deficient Gas Allowance Service .....	December 23, 2005
Firm Transportation Short Notice Service .....	January 1, 2015
Short Notice Balancing Service .....	January 1, 2015
Short Term Short Notice Service .....	July 1, 2013
Multi-Year Fixed Price Service.....	July 1, 2013
Enhanced Market Balancing Service.....	May 1, 2015
Summer Storage Service.....	May 1, 2015
<b>PARKING AND LOAN SERVICE</b> .....	November 8, 2013
<b>TURNBACK PROCEDURE</b> .....	November 8, 2013
<b>CONTRACT DEMAND ENERGY</b> .....	November 1, 2010

(new location) <http://www.transcanada.com/customerexpress/891.html>

**GENERAL TERMS AND CONDITIONS****INDEX**

I	DEFINITIONS.....	2
II	APPLICABILITY AND CHARACTER OF SERVICE.....	9
III	TOLLS .....	10
IV	SHIPPER PROVISION OF FUEL REQUIREMENTS .....	11
V	QUALITY .....	<u>13</u> 12
VI	MEASUREMENTS .....	<u>16</u> 15
VII	DELIVERY POINT .....	<u>17</u> 16
VIII	POSSESSION OF GAS .....	17
IX	MEASURING EQUIPMENT .....	<u>17</u> 17
X	BILLING .....	<u>20</u> 19
XI	PAYMENTS.....	<u>20</u> 20
XII	DELIVERY PRESSURE .....	23
XIII	WARRANTY OF TITLE TO GAS .....	24
XIV	FORCE MAJEURE.....	24
XV	IMPAIRED DELIVERIES.....	25
XVI	DETERMINATION OF DAILY DELIVERIES.....	<u>28</u> 27
XVII	DEFAULT AND TERMINATION .....	<u>28</u> 28
XVIII	NON-WAIVER AND FUTURE DEFAULT .....	<u>29</u> 29
XIX	DELIVERY AREAS .....	<u>29</u> 29
XX	DELIVERY AREA BOUNDARIES.....	<u>29</u> 29
XXI	INCORPORATION IN TOLL SCHEDULES AND CONTRACTS .....	31
XXII	NOMINATIONS AND UNAUTHORIZED QUANTITIES .....	31
XXIII	FINANCIAL ASSURANCES .....	<u>40</u> 40
XXIV	TITLE TRANSFERS.....	<u>42</u> 42
XXV	LIABILITY AND LIMITATION OF LIABILITY .....	<u>42</u> 42



**I DEFINITIONS**

Except where the context expressly states another meaning, the following terms, when used in these General Terms and Conditions, in any Contract and in any Toll Schedule into which these General Terms and Conditions are incorporated, shall be construed to have the following meanings:

- “Abandonment Charge” shall mean the charge payable by Shipper to TransCanada pursuant to the FT, FT-SN, FT-NR, MFP, Herbert LTFP, IT, STS, STS-L, STFT, ST-SN, EMB and SSS Contracts.
- “Alternate Receipt” shall mean the receipt of quantities of gas at a receipt point not specified in Shipper’s FT, FT-SN, FT-NR, or MFP Contract.
- “Banking Day” shall mean any day that the Royal Bank of Canada, Main Branch, Calgary, Canada or other financial institutions agreed to by TransCanada for payment pursuant to Section XI herein, conducts business.
- “CCT” shall mean Central Clock Time, representing the time in effect in the Central Time Zone of Canada at the time a transaction occurs, regardless of whether that time may be Standard Time or Daylight Savings Time as those terms are commonly known and understood.
- “Contract” shall mean a transportation service contract or a contract pursuant to the SNB Toll Schedule and shall also mean an Order of the NEB pursuant to Section 71(2) of the National Energy Board Act, as amended from time to time requiring TransCanada to provide transportation service.
- “Contract Demand” shall mean:
  - (i) with respect to transportation service contracts entered into prior to November 1, 1998, the contract demand, maximum daily quantity, annual contract quantity or maximum quantity as stated in a transportation service contract, converted to GJ by multiplying such contract demand, maximum daily quantity, annual contract quantity or maximum quantity by GHV-97 for the relevant delivery point as more particularly set out in the HV-97 Schedule attached to these General Terms and Conditions subject to variance pursuant to a Shipper election to restate its contract demand within the range from 99%

- “Monthly Abandonment Surcharge” shall mean the monthly surcharge, as approved by the NEB and set forth in the List of Tolls referred to in Section III hereof, for service from a particular receipt point to a particular delivery point.
- “Monthly Demand Toll” shall mean the toll for transportation service as approved by the NEB and set forth in the List of Tolls referred to in Section III hereof.
- “Natural Gas Interchangeability Indices” shall have the meaning ascribed in section 5(iv).
- “NEB” shall mean the National Energy Board or any regulatory or government authority hereafter having a similar jurisdiction in substitution therefor.
- “Other Pipelines” shall mean the natural gas pipelines of Great Lakes Gas Transmission Limited Partnership, Union Gas Limited, Enbridge Gas Distribution Inc. and Trans Quebec & Maritimes Pipeline Inc.
- “Shipper” shall mean a customer of transportation service.
- “Shipper's Authorized Quantity” shall be as defined in subsection 1 of Section XXII.
- “Shipper's Maximum Hourly Flow Rate” shall mean, on any Day, the maximum hourly rate of flow of Gas Shipper may receive at a delivery point or area and which shall be equal to the sum of:
  - a) 5% of the aggregate daily Contract Demand for all of Shipper's service pursuant to, FT, FT-NR, STFT, STS, STS-L, MFP, Herbert LTFP and EMB Contracts which specify delivery of gas to such delivery point or area (excluding deliveries pursuant to STS, STS-L and EMB Contracts that are on a best efforts basis) minus all Diversions under such Contracts on such Day; and
  - b) 5% of the aggregate Shipper's Authorized Quantity for deliveries to such delivery point or area under all of Shipper's IT and SSS Contracts, STS Overrun, Diversions on such Day and deliveries which are on a best effort basis pursuant to STS, STS-L and EMB Contracts.
- “Short Notice Service” shall mean service pursuant to a FT-SN Toll Schedule, SNB Toll Schedule or ST-SN Toll Schedule.

- “Storage Injection Point” shall have the meaning ascribed in Exhibit “A” of the STS Contract or the STS-L Contract as the case may be.
- “Storage Withdrawal Point” shall have the meaning ascribed in Exhibit “A” of the STS Contract or the STS-L Contract as the case may be.
- "Subsidiary" shall mean a company in which 50% or more of the issued share capital (having full voting rights under all circumstances) is owned or controlled directly or indirectly by another company, by one or more subsidiaries of such other company, or by such other company and one or more of its subsidiaries.
- “TAPs” shall be as defined in sub-section 1.1 of the Transportation Access Procedure.
- “Title Transfer” shall mean the transfer of title to gas between two (2) Shippers at a Title Transfer Point.
- “Title Transfer Point” shall be those points and areas where the quantity of gas allocated to each Shipper is established each day and is not subject to reallocation.
- "TransCanada" shall mean "TransCanada PipeLines Limited" and its successors.
- "Transportation Service Contract" shall mean "Firm Transportation Service Contract", "FT Contract", "Firm Transportation Short Notice Contract", "FT-SN Contract", "Non Renewable Firm Transportation Contract", "FT-NR Contract", "Herbert Long Term Fixed Price Contract", "Herbert LTFP Contract", "Interruptible Service Transportation Contract", "IT Contract", "Storage Transportation Service Contract", "STS Contract", "STS-L Contract", "Short Term Firm Transportation Service Contract", "STFT Contract", "Short Term Short Notice Service Contract", "ST-SN Contract", "Multi-Year Fixed Price Service Contract", "MFP Contract", "Enhanced Market Balancing Service Contract", "EMB Contract", "Summer Storage Service Contract", "SSS Contract",
- "Union Dawn Receipt Point Daily Demand Toll" shall mean the toll determined by multiplying the Union Dawn Receipt Point Monthly Demand Toll by twelve (12) and dividing the result by the number of days in the Year.

- (iii) in the case of STS and STS-L contracts and contracts providing receipt and delivery points within one province of Canada, as fixed and approved by the NEB, on the basis of the receipt point and delivery points set out therein; or
  - (iv) in the case of service pursuant to the SNB Toll Schedule ~~or the MFP Toll Schedule~~ or the Herbert LTFP Toll Schedule using a methodology approved by the NEB.
2. The tolls applicable to services provided pursuant to the Toll Schedules of TransCanada's Transportation Tariff are set out in the List of Tolls of TransCanada's Transportation Tariff as same may be amended from time to time upon approval of the NEB.

#### IV SHIPPER PROVISION OF FUEL REQUIREMENTS

##### 1. Daily Operations

- (a) For each and every day in respect of which Shipper's Authorized Quantity is accepted by TransCanada for transportation, Shipper shall, in addition to Shipper's Authorized Quantity, nominate, pursuant to the provisions of Section 2 hereof, and make available to TransCanada at any receipt point specified in the contract and/or Alternate Receipt point for FT, FT-NR, FT-SN or MFP Contracts the Fuel Quantity ("Qf"), which quantity shall be determined as follows:

$$Qf = Qd \times FR\% / 100 + \sum (Qd_i \times fr_i\% / 100) + \sum (Qd_{Dawn} \times fr_{Dawn}\% / 100)$$

Where:

"FR%" is the applicable monthly fuel ratio respecting transportation service from the nominated receipt point to the nominated delivery point;

"fr<sub>i</sub>%" is the applicable monthly fuel ratio for delivery pressure in excess of a gauge pressure of 4000 kilopascals at delivery point "i", both as set out in TransCanada's notice to Shipper delivered pursuant to Section 2 hereof;

"fr<sub>Dawn</sub>%" is the applicable monthly fuel ratio respecting transportation service from the nominated Union Dawn Receipt Point to the nominated delivery point;

"Qd" is the Shipper's Authorized Quantity;

(d) Fourth, quantities to be delivered on a best efforts basis under EMB Contracts during the period of April 1 of a year to October 31 of the same year and quantities to be delivered on a best efforts basis under STS and STS-L Contracts.

(e) Fifth proportionately under:

(i) FT, FT-SN, FT-NR, STFT, ST-SN, SNB, STS, STS-L, MFP, Herbert LTFP, and EMB Contracts (other than, quantities to be delivered on a best efforts basis under EMB Contracts during the period of April 1 of a year to October 31 of the same year and quantities to be delivered on a best efforts basis under STS and STS-L Contracts) in amounts proportional to the Operating Demand Quantities minus the quantities to be delivered pursuant to an Alternate Receipt or a Diversion of such Contracts.

(ii) Alternate Receipts made pursuant to FT, FT-SN, FT-NR or MFP Contracts and/or Diversions made pursuant to FT, FT-SN, FT-NR, and MFP Contracts not already curtailed pursuant to subsection, (c) above in amounts to be delivered pursuant to such Alternate Receipt and/or Diversion.

(For the purpose of this subsection, the Operating Demand Quantity shall be:

(A) under FT Contracts, the Contract Demand;

(B) under FT-SN Contracts, the Contract Demand;

(C) under FT-NR Contracts, the Contract Demand;

(D) under MFP Contracts, the Contract Demand;

(E) under Herbert LTFP Contracts, the Contract Demand;

~~(E)~~ under EMB Contracts, the Contract Demand;

~~(F)~~ under STS Contracts, the Daily Injection Quantity or the Daily Withdrawal Quantity, as the case may be;

~~(G)~~ under STS-L Contracts, the Daily Contract Injection Quantity and the Daily Contract Withdrawal Quantity;

(~~H~~I) under STFT Contracts, the Maximum Daily Quantity;

(~~I~~J) under ST-SN Contracts, the Maximum Daily Quantity; and

(~~J~~K) under SNB Contracts, the Contract Quantity.

## XVI DETERMINATION OF DAILY DELIVERIES

1. A Shipper taking delivery of gas under contracts and/or toll schedules for more than one class of service in one delivery area or one Export Delivery Point shall be deemed on any day to have taken delivery of Shipper's Authorized Quantity under the applicable contract and/or toll schedule in accordance with such agreement as may exist between TransCanada and the downstream operator(s). Absent such agreement, shipper shall be deemed to have taken delivery of Shipper's Authorized Quantities sequentially as follows:

(a) FT and MFP Contracts

(b) FT-SN Contract

(c) FT-NR Contract

(d) Herbert LTFP Contract

(~~de~~) STFT and ST-SN Contracts

(~~ef~~) EMB Contract

(~~fg~~) STS and STS-L Contracts

(~~gh~~) IT Contract, Delivery Quantity

(~~hi~~) SSS Contract, Delivery Quantity

## XVII DEFAULT AND TERMINATION

Subject to the provisions of Section XI, Section XIV, Section XV and Section XXIII of these General Terms and Conditions, if either TransCanada or Shipper shall fail to perform any of the covenants or obligations imposed upon it under any Contract into which these General Terms and Conditions are incorporated, then in such event the other party may, at its option, terminate such Contract by proceeding as follows: the party not in default shall cause a written notice to be served on the party in default stating

## **Appendix C**

### **Tab 2**

#### **Mainline Tariff Amendments - Clean**

- Table of Contents
- Herbert LTFP Toll Schedule
- General Terms and Conditions

## TABLE OF CONTENTS

TAB	VERSION DATE
<b>MAPS</b> .....	[•]
<b>TRANSPORTATION ACCESS PROCEDURE</b> .....	January 1, 2015
<b>PROCEDURE FOR ADDING RECEIPT AND DELIVERY POINTS</b> .....	November 29, 2005
<b>LIST OF APPROVED TOLLS</b> .....	January 1, 2016
<b>TOLL SCHEDULES</b>	
Firm Transportation Service .....	January 1, 2015
Storage Transportation Service .....	January 1, 2015
Storage Transportation Service – Linked .....	January 1, 2015
Interruptible Transportation Service .....	January 1, 2015
Short Term Firm Transportation Service .....	January 1, 2015
Non Renewable Firm Transportation.....	January 1, 2015
Energy Deficient Gas Allowance Service .....	January 1, 2015
Firm Transportation Short Notice Service .....	January 1, 2015
Short Notice Balancing Service .....	January 1, 2015
Short Term Short Notice Service .....	January 1, 2015
Multi-Year Fixed Price Service.....	January 1, 2015
Enhanced Market Balancing Service.....	May 1, 2015
Summer Storage Service.....	May 1, 2015
Herbert Long Term Fixed Price Service.....	[•]
<b>GENERAL TERMS AND CONDITIONS</b> .....	[•]
<b>RECEIPT AND DELIVERY POINTS</b> .....	November 1, 2016
<b>PRO FORMA TRANSPORTATION CONTRACTS</b>	
Firm Transportation Service .....	January 1, 2015
Storage Transportation Service .....	July 1, 2013
Storage Transportation Service – Linked .....	July 1, 2013
Interruptible Transportation Service .....	July 19, 2007
Short Term Firm Transportation Service .....	November 8, 2013
Non Renewable Firm Transportation.....	November 8, 2013
Energy Deficient Gas Allowance Service .....	December 23, 2005
Firm Transportation Short Notice Service .....	January 1, 2015
Short Notice Balancing Service .....	January 1, 2015
Short Term Short Notice Service .....	July 1, 2013
Multi-Year Fixed Price Service.....	July 1, 2013
Enhanced Market Balancing Service.....	May 1, 2015
Summer Storage Service.....	May 1, 2015
<b>PARKING AND LOAN SERVICE</b> .....	November 8, 2013
<b>TURNBACK PROCEDURE</b> .....	November 8, 2013
<b>CONTRACT DEMAND ENERGY</b> .....	November 1, 2010

(new location) <http://www.transcanada.com/customerexpress/891.html>



**HERBERT LONG-TERM FIXED PRICE SERVICE**

**HERBERT LTFP TOLL SCHEDULE**

**INDEX**

<b>Section</b>	<b>Sheet No.</b>
1. DEFINITIONS.....	1
2. AVAILABILITY .....	2
3. APPLICABILITY AND CHARACTER OF SERVICE .....	2
4. MONTHLY BILL.....	3
5. MINIMUM BILL .....	4
6. DEMAND CHARGE ADJUSTMENTS.....	4
7. ASSIGNMENT .....	4
8. CONVERSION RIGHTS.....	5
9. MISCELLANEOUS PROVISIONS .....	7

**1. DEFINITIONS**

1.1 Capitalized terms utilized herein, but not otherwise defined, shall have the meanings attributed to such terms in the General Terms and Conditions. For the purpose of this Toll Schedule, the following terms shall be defined:

- (a) “Conversion Option” shall have the meaning attributed to it in Section 8.1;
- (b) “Conversion Provisions” shall have the meaning attributed to it in Subsection 8.1(c);
- (c) “Date of Commencement” shall mean the date that service under Shipper’s Herbert LTFP Contract begins, as set out in Section 1.1 of Shipper’s Herbert LTFP Contract;
- (d) “Default” shall have the meaning attributed to it in Section 3.1;
- (e) “Default Quantity” shall have the meaning attributed to it in Section 3.1;
- (f) “Early Conversion and Term-up Notice” shall have the meaning attributed to it in Section 8.3;
- (g) “Expansion Facilities” shall have the meaning attributed to it in Section 8.3;
- (h) “FT Contract” shall mean a Firm Transportation Service Contract;
- (i) “FT Service” shall mean firm transportation service provided pursuant to the FT Toll Schedule;
- (j) “General Terms and Conditions” means the General Terms and Conditions of TransCanada’s Canadian Mainline Gas Transportation Tariff;
- (k) “Herbert LTFP Contract” shall mean a contract for Herbert LTFP Service;
- (l) “Herbert LTFP End Date” shall mean the date Shipper’s Herbert LTFP Contract ends, as set out in Section 2.1 of Shipper’s Herbert LTFP Contract;
- (m) “Herbert LTFP Service” shall mean transportation service provided pursuant to the Herbert LTFP Toll Schedule;
- (n) “List of Tolls” means the List of Tolls of TransCanada’s Canadian Mainline Gas Transportation Tariff; and
- (o) “Shipper” shall have the meaning attributed to it in Section 2.1.

**2. AVAILABILITY**

- 2.1 Subject to Section 7.1, Herbert LTFP Service is only available to TransGas Limited ("Shipper") for the purpose of supplying the gas-fired power generation facility located near Swift Current, Saskatchewan.
- 2.2 Shipper shall be eligible to receive service pursuant to this Toll Schedule provided that Shipper:
- (a) has entered into a Herbert LTFP Contract with TransCanada; and
  - (b) has pipeline facilities interconnecting with TransCanada's facilities at the delivery point specified in the Contract, or which has provided TransCanada with adequate assurances that arrangements have been made to have an authorized gas distribution or transmission company act as Shipper's agent in receiving from TransCanada the gas to be delivered pursuant to this Toll Schedule; and
  - (c) has provided TransCanada with financial assurances as required by TransCanada pursuant to Section XXIII of the General Terms and Conditions.

**3. APPLICABILITY AND CHARACTER OF SERVICE**

- 3.1 On each day during the term of the Herbert LTFP Contract, Shipper shall be entitled to request service hereunder. Nominations for service shall be made pursuant to Section XXII of the General Terms and Conditions. Service hereunder shall not be subject to curtailment or interruption except as provided in Section XI, XIV, and XV of the General Terms and Conditions; PROVIDED HOWEVER, that if Shipper fails to provide on an ongoing and timely basis to TransCanada satisfactory evidence of its right to remove from the province of production all or any part of the quantities of gas to be transported by TransCanada under the Herbert LTFP Contract, Shipper shall be in default hereunder (the "Default") to the extent of the daily quantity not authorized for removal from the province of production as aforesaid (the "Default Quantity"), and TransCanada shall be entitled to immediately suspend service for a quantity up to, and including, the Default Quantity until such time as Shipper remedies the Default. TransCanada shall terminate any such suspension and resume service as to that part of the Default Quantity in respect of which the Default has been remedied.

3.2 Herbert LTFP Service is for a term of 120 consecutive months. The term of the Shipper's Herbert LTFP Contract shall start on the Date of Commencement and shall end on the Herbert LTFP End Date.

3.3 Herbert LTFP Service is only available from the Empress receipt point to the Herbert delivery point.

#### **4. MONTHLY BILL**

4.1 The monthly bill payable to TransCanada for service hereunder shall include the aggregate of the demand charge for Herbert LTFP Service in effect during the billing month for transportation service and the Abandonment Charge and shall be calculated by applying, as follows, the applicable tolls as approved by the NEB (as set forth in the List of Tolls):

(a) **Demand Charge**

For each month, the demand charge for transportation service shall be equal to the applicable Monthly Demand Toll for Herbert LTFP Service multiplied by Shipper's Contract Demand. If Shipper's Contract Demand changes during a month, then a weighted average daily Contract Demand shall be determined for such month and shall be used to calculate the demand charge for such month. The said demand charge is payable by Shipper notwithstanding any failure by Shipper during such month, for any reason whatsoever including force majeure or a default by Shipper under Section 3.1 hereof, to deliver Shipper's Authorized Quantity to TransCanada at the receipt point.

(b) **Fuel**

For each month, a Shipper shall provide, on a daily basis, a quantity of fuel in accordance with Section IV (1)(a) of the General Terms and Conditions.

(c) **Abandonment Charge**

Each month, Shipper shall pay to TransCanada an Abandonment Charge determined by multiplying Shipper's Contract Demand by the applicable Monthly Abandonment Surcharge. If Shipper's Contract Demand changes during a month, then a weighted average daily Contract Demand shall be determined for such month and shall be used to calculate the Abandonment Charge for such month. The Abandonment Charge is payable by Shipper notwithstanding any failure by Shipper during such month, for any reason whatsoever including force

majeure or a default by Shipper under Section 3.1 hereof, to deliver Shipper's Authorized Quantity to TransCanada at the receipt point.

## **5. MINIMUM BILL**

- 5.1 The minimum monthly bill for service hereunder shall be the sum of the charges determined in Subsections 4.1 (a), and 4.1 (c) hereof, after giving effect to any adjustment pursuant to Section 6 hereof.

## **6. DEMAND CHARGE ADJUSTMENTS**

- 6.1 If during any day, TransCanada fails to deliver the quantity of gas requested by Shipper up to the Contract Demand, for any reason related solely to TransCanada's operations, including an event of force majeure occurring on any of the pipeline systems of TransCanada and Other Pipelines, then the monthly demand charge shall be reduced by an amount equal to the applicable Daily Demand Toll multiplied by the difference between the quantity of gas which TransCanada actually delivered to Shipper on such day, and the quantity of gas which such Shipper in good faith nominated hereunder on such day. If TransCanada refuses to accept deliveries of Shipper's gas or curtails receipts from or deliveries to Shipper pursuant to Paragraph 8 (Energy Imbalance Recovery) of Section XXII of the General Terms and Conditions, then there shall be no corresponding reduction in the monthly demand charge to Shipper.
- 6.2 For any day on which transportation service charges are adjusted pursuant to Section 6.1 above, the Abandonment Charge payable by Shipper pursuant to Subsection 4.1(c) hereof shall also be adjusted.

The Abandonment Charge shall be reduced by an amount equal to the applicable Daily Abandonment Surcharge multiplied by the difference between the quantity of gas which TransCanada actually delivered to Shipper on such day, and the quantity of gas which such Shipper in good faith nominated hereunder on such day.

## **7. ASSIGNMENT**

- 7.1 Any company which shall succeed by purchase, merger or consolidation to the properties, substantially or in entirety, of Shipper or of TransCanada, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under any Herbert LTFP Contract into which this Toll Schedule is incorporated and any related contracts. Further, either Shipper or TransCanada may, without relieving itself

of its obligations under any Herbert LTFP Contract into which this Toll Schedule is incorporated (unless consented to by the other party which consent shall not be unreasonably withheld), assign any of its rights and obligations thereunder to another party. Nothing herein shall in any way prevent either party to such Herbert LTFP Contract from pledging or mortgaging its rights thereunder as security for its indebtedness. Such Herbert LTFP Contract shall be binding upon and shall inure to the benefit of the respective successors and assignees of the parties thereto.

- 7.2 Assignments at a discount negotiated between assignors and assignees are permitted, provided that the approved toll continues to be paid to TransCanada.
- 7.3 Save as herein provided, assignment of a Herbert LTFP Contract into which this Toll Schedule is incorporated is expressly prohibited and is void.

## **8. CONVERSION RIGHTS**

- 8.1 Subject to Sections 8.3 and 8.4, Shipper shall have the option of converting the Herbert LTFP Contract to an FT Contract with a receipt point of Empress and a delivery area that includes Herbert (the "Conversion Option") provided that:
- (a) the conversion shall be effective the first day after the Herbert LTFP End Date for a period of either: i) one or more annual periods ending on the same calendar date as the Herbert LTFP End Date or ii) if Shipper requests a service termination date of October 31, one or more annual periods of twelve (12) consecutive full months plus the number of consecutive days necessary to the requested October 31;
  - (b) the requested FT Service Contract Demand shall be at a level no greater than the Contract Demand set out in the Herbert LTFP Contract;
  - (c) TransCanada receives written notice from Shipper of Shipper's election to exercise the Conversion Option which sets out the term and Contract Demand of such conversion (the "Conversion Provisions") no less than twenty-four (24) consecutive months before the Herbert LTFP End Date;
  - (d) Shipper supplies TransCanada at the time of such notice with evidence satisfactory to TransCanada that Shipper will meet the availability provisions of the FT Toll Schedule in respect of the Conversion Provisions prior to the commencement of FT Service; and

- (e) TransCanada may accept late notice of Shipper's election to exercise the Conversion Option if TransCanada, in its sole discretion, determines that TransCanada will have the required capacity available after providing capacity for all of TransCanada's obligations pursuant to prior outstanding requests from Shipper and/or others, that such conversion will not adversely impact TransCanada's system operations and that all of the costs for providing this service will be covered by TransCanada's tolls.

8.2 All conversions shall be stated in GJ.

8.3 If at any time TransCanada determines, acting reasonably, that:

- (a) new or additional pipeline facilities are required to increase the Combined Capacity or capabilities of the system ("Expansion Facilities"); and
- (b) the estimated cost of such Expansion Facilities will exceed \$20 million;

TransCanada will provide an early conversion and term-up notice ("Early Conversion and Term-up Notice") to Shipper entitled to the Conversion Option if TransCanada determines Shipper's Herbert LTFP Contract may impact the design of the Expansion Facilities.

8.4 Upon receipt of the Early Conversion and Term-up Notice, Shipper may elect, within sixty (60) days of receipt of the Early Conversion and Term-up Notice, to exercise its Conversion Option for all or a portion of the Contract Demand set out in the Herbert LTFP Contract subject to the FT Contract having a termination date no earlier than five (5) years after the expected New Service Start Date (as defined in Subsection 1.1 of TAPs) of the Expansion Facilities. If Shipper does not elect to exercise its Conversion Option for the required term set out in the Early Conversion and Term-up Notice within such sixty (60) day period, then Shipper shall no longer be entitled to a Conversion Option and Shipper's Herbert LTFP Contract shall expire on the Herbert LTFP End Date.

**9. MISCELLANEOUS PROVISIONS**

- 9.1 The General Terms and Conditions and the List of Tolls, as amended from time to time, are applicable to this Toll Schedule and are hereby made a part hereof. If there is any conflict between the provisions of this Toll Schedule and the General Terms and Conditions, the provisions of this Toll Schedule shall prevail.
- 9.2 This Toll Schedule, the List of Tolls and the General Terms and Conditions are subject to the provisions of the National Energy Board Act or any other legislation passed in amendment thereof or substitution therefor.
- 9.3 This Toll Schedule together with the provisions of the General Terms and Conditions supercedes and replaces all previous Toll Schedules applicable to the Herbert LTFP Contract.



**GENERAL TERMS AND CONDITIONS****INDEX**

I	DEFINITIONS.....	2
II	APPLICABILITY AND CHARACTER OF SERVICE.....	9
III	TOLLS .....	10
IV	SHIPPER PROVISION OF FUEL REQUIREMENTS.....	11
V	QUALITY.....	13
VI	MEASUREMENTS .....	16
VII	DELIVERY POINT.....	17
VIII	POSSESSION OF GAS .....	17
IX	MEASURING EQUIPMENT .....	17
X	BILLING .....	20
XI	PAYMENTS.....	20
XII	DELIVERY PRESSURE .....	23
XIII	WARRANTY OF TITLE TO GAS .....	24
XIV	FORCE MAJEURE.....	24
XV	IMPAIRED DELIVERIES.....	25
XVI	DETERMINATION OF DAILY DELIVERIES.....	28
XVII	DEFAULT AND TERMINATION .....	28
XVIII	NON-WAIVER AND FUTURE DEFAULT .....	29
XIX	DELIVERY AREAS .....	29
XX	DELIVERY AREA BOUNDARIES.....	29
XXI	INCORPORATION IN TOLL SCHEDULES AND CONTRACTS .....	31
XXII	NOMINATIONS AND UNAUTHORIZED QUANTITIES .....	31
XXIII	FINANCIAL ASSURANCES .....	40
XXIV	TITLE TRANSFERS.....	42
XXV	LIABILITY AND LIMITATION OF LIABILITY .....	42

**I DEFINITIONS**

Except where the context expressly states another meaning, the following terms, when used in these General Terms and Conditions, in any Contract and in any Toll Schedule into which these General Terms and Conditions are incorporated, shall be construed to have the following meanings:

- “Abandonment Charge” shall mean the charge payable by Shipper to TransCanada pursuant to the FT, FT-SN, FT-NR, MFP, Herbert LTFP, IT, STS, STS-L, STFT, ST-SN, EMB and SSS Contracts.
- “Alternate Receipt” shall mean the receipt of quantities of gas at a receipt point not specified in Shipper’s FT, FT-SN, FT-NR, or MFP Contract.
- “Banking Day” shall mean any day that the Royal Bank of Canada, Main Branch, Calgary, Canada or other financial institutions agreed to by TransCanada for payment pursuant to Section XI herein, conducts business.
- “CCT” shall mean Central Clock Time, representing the time in effect in the Central Time Zone of Canada at the time a transaction occurs, regardless of whether that time may be Standard Time or Daylight Savings Time as those terms are commonly known and understood.
- “Contract” shall mean a transportation service contract or a contract pursuant to the SNB Toll Schedule and shall also mean an Order of the NEB pursuant to Section 71(2) of the National Energy Board Act, as amended from time to time requiring TransCanada to provide transportation service.
- “Contract Demand” shall mean:
  - (i) with respect to transportation service contracts entered into prior to November 1, 1998, the contract demand, maximum daily quantity, annual contract quantity or maximum quantity as stated in a transportation service contract, converted to GJ by multiplying such contract demand, maximum daily quantity, annual contract quantity or maximum quantity by GHV-97 for the relevant delivery point as more particularly set out in the HV-97 Schedule attached to these General Terms and Conditions subject to variance pursuant to a Shipper election to restate its contract demand within the range from 99%

of GHV-97 to 101% of GHV-97, which was received by TransCanada on or before February 13, 1998; and,

- (ii) with respect to transportation service contracts entered into on or after November 1, 1998, that quantity of gas expressed in GJ specified in Shipper's transportation service contract as Shipper's daily or seasonal entitlement, as the case may be, to transportation capacity.
- "Contract Year" shall mean a period of 12 consecutive months beginning on a first day of November.
- "Cubic Metre" or "m<sup>3</sup>" shall mean the volume of gas which occupies one cubic metre when such gas is at a temperature of fifteen degrees (15°) Celsius, and at a pressure of 101.325 kilopascals absolute.
- "Cumulative Storage Balance" for a Shipper's STS or STS-L Contract on any Day shall be equal to: **A + B + C + D – E**

Where:

"A" = the cumulative Daily Injection Quantity on such Day;

"B" = the cumulative Daily STFT Quantity on such Day;

"C" = the cumulative Daily IT Quantity on such Day;

"D" = the cumulative Daily Diversion Quantity on such Day; and

"E" = the cumulative Daily Withdrawal Quantity on such Day;

all as defined in subsection 3.1(e) of the STS Toll Schedule for STS Contracts or 3.1(b) of the STS-L Toll Schedule for STS-L Contracts.

- "Daily Abandonment Surcharge" shall mean the daily surcharge, as approved by the NEB and as set forth in the List of Tolls referred to in Section III hereof, determined by multiplying the applicable Monthly Abandonment Surcharge by twelve (12) and dividing the result by the number of days in the Year.

- “Daily Contract Injection Quantity” shall, for the purposes of the STS-L Contracts, mean the quantity of gas specified in the STS-L Contract for delivery from the Market Point to the Storage Injection Point(s).
- “Daily Contract Withdrawal Quantity” shall, for the purposes of the STS-L Contracts, mean 75% of the Daily Contract Injection Quantity, for delivery from the Storage Withdrawal Point to the Market Point.
- “Daily Demand Toll” shall mean the toll determined by multiplying the Monthly Demand Toll for the applicable transportation service, as approved by the NEB (as set forth in the List of Tolls referred to in Section III hereof), by twelve (12) and dividing the result by the number of days in the Year.
- “Daily Diversion Quantity” shall have the meaning ascribed in subsection 3.1(e)(i) of the STS Toll Schedule.
- “Daily Excess Withdrawal Quantity” shall be as defined in subsection 3.1(e) of the STS Toll Schedule for STS Contracts and subsection 3.1(b) of the STS-L Toll Schedule for STS-L Contracts.
- “Daily Injection Quantity” shall be as defined in subsection 2.2(a) of the STS Toll Schedule for STS Contracts or STS-L Toll Schedule for STS-L Contracts.
- “Daily IT Quantity” shall be as defined in subsection 3.1(e) of the STS Toll Schedule for STS Contracts and in subsection 3.1(b) of the STS-L Toll Schedule for STS-L Contracts.
- “Daily Operational Injection Quantity” shall, for the purposes of STS-L Contracts, mean the least of the aggregate of the Contract Demand(s) of the Linked FT Contract(s) and the Daily Contract Injection Quantity from the Market Point to the Storage Injection Point(s).
- “Daily STFT Quantity” shall be as defined in subsection 3.1 (e) of the STS Toll Schedule for STS Contracts and in subsection 3.1(b) of the STS-L Toll Schedule for STS-L Contracts.
- “Daily Withdrawal Quantity” shall be as defined in subsection 2.2(b) of the STS Toll Schedule for STS Contracts and subsection 2.2(b) STS-L Toll Schedule for STS-L Contracts.

## GENERAL TERMS and CONDITIONS

- "Day" shall mean a period of 24 consecutive hours, beginning and ending at 09:00 hours Central Clock Time, or at such other time as may be mutually agreed upon by Shipper and TransCanada. The reference date for any day shall be the calendar date upon which the 24 hour period shall commence.
- "Delivery Areas" shall mean the delivery areas set out in Section XX of the General Terms and Conditions.
- "Delivery Pressure Daily Demand Toll" shall mean the toll determined by multiplying the Delivery Pressure Monthly Demand Toll, as approved by the NEB (as set forth in the List of Tolls referred to in Section III hereof), by twelve (12) and dividing the result by the number of days in the Year.
- "Diversion" shall mean the delivery of quantities of gas at a delivery point and/or delivery area not specified in Shipper's FT, FT-SN, FT-NR, or MFP Contract.
- "EDI" means Electronic Data Interchange being the direct computer-to-computer transfer of information using ANSI ASC X12 protocol and a specific definition assigned by TransCanada under standards agreed to by a consensus of the natural gas industry (through standard-setting committees).
- "EDI format" shall mean a file format compliant with the ANSI ASC X12 protocol used for EDI and according to the specific definition assigned by TransCanada under standards agreed to by a consensus of the natural gas industry (through standard-setting committees).
- "Financial Assurance" shall have the meaning attributed to it in subsection XXIII(1) hereof.
- "Fuel Quantity" shall mean the quantity of gas expressed in gigajoules which is to be used by TransCanada as fuel for transporting Shipper's Authorized Quantity.
- "GJ" shall mean gigajoule being 1,000,000,000 joules and include the plural as the context requires.
- "GHV-97" shall mean the gross heating value for each delivery point as set out in the HV-97 Schedule attached to these general terms and conditions as adjusted in accordance with any Shipper election given to TransCanada prior to February 13, 1998.

- "GHV" shall mean gross heating value.
- "Gas" shall mean: (i) any hydrocarbons or mixture of hydrocarbons that, at a temperature of 15° C and a pressure of 101.325 kPa, is in a gaseous state, or (ii) any substance designated as a gas product by regulations made under section 130 of the National Energy Board Act.
- "Gross Heating Value" shall mean the total joules expressed in megajoules per cubic metre (MJ/m<sup>3</sup>) produced by the complete combustion at constant pressure of one (1) cubic metre of gas with air, with the gas free of water vapour and the temperature of the gas, air and products of combustion to be at standard temperature and all water formed by combustion reaction to be condensed to the liquid state.
- "Joule" (J) shall mean the work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force.
- "Linked FT Contract" or "Linked MFP Contract" shall mean the FT or MFP Contract(s) identified in Exhibit "B" of Shipper's STS-L Contract and such FT or MFP Contract shall satisfy the following:
  - i. the delivery point shall be the same as the Market Point specified in Exhibit "A" of Shippers STS-L Contract;
  - ii. is not identified in any other STS Contract or any Exhibit "B" of any other STS-L Contract;
  - iii. has a minimum Linked Term of 1 month, and shall commence on the first day of a month and shall end on the last day of a month;
  - iv. has a receipt point that is Empress or in the province of Saskatchewan.
- "Linked Term" shall have the meaning ascribed in Exhibit "B" of the STS-L Toll Schedule
- "Market Point" shall have the meaning ascribed in Exhibit "A" of the STS Contract or STS-L Contract as the case may be.
- "Month" shall mean the period beginning on the first day of the calendar month and ending at the beginning of the first day of the next succeeding calendar month.

- “Monthly Abandonment Surcharge” shall mean the monthly surcharge, as approved by the NEB and set forth in the List of Tolls referred to in Section III hereof, for service from a particular receipt point to a particular delivery point.
- “Monthly Demand Toll” shall mean the toll for transportation service as approved by the NEB and set forth in the List of Tolls referred to in Section III hereof.
- “Natural Gas Interchangeability Indices” shall have the meaning ascribed in section 5(iv).
- “NEB” shall mean the National Energy Board or any regulatory or government authority hereafter having a similar jurisdiction in substitution therefor.
- “Other Pipelines” shall mean the natural gas pipelines of Great Lakes Gas Transmission Limited Partnership, Union Gas Limited, Enbridge Gas Distribution Inc. and Trans Quebec & Maritimes Pipeline Inc.
- “Shipper” shall mean a customer of transportation service.
- “Shipper's Authorized Quantity” shall be as defined in subsection 1 of Section XXII.
- “Shipper's Maximum Hourly Flow Rate” shall mean, on any Day, the maximum hourly rate of flow of Gas Shipper may receive at a delivery point or area and which shall be equal to the sum of:
  - a) 5% of the aggregate daily Contract Demand for all of Shipper's service pursuant to, FT, FT-NR, STFT, STS, STS-L, MFP, Herbert LTFP and EMB Contracts which specify delivery of gas to such delivery point or area (excluding deliveries pursuant to STS, STS-L and EMB Contracts that are on a best efforts basis) minus all Diversions under such Contracts on such Day; and
  - b) 5% of the aggregate Shipper's Authorized Quantity for deliveries to such delivery point or area under all of Shipper's IT and SSS Contracts, STS Overrun, Diversions on such Day and deliveries which are on a best effort basis pursuant to STS, STS-L and EMB Contracts.
- “Short Notice Service” shall mean service pursuant to a FT-SN Toll Schedule, SNB Toll Schedule or ST-SN Toll Schedule.

- “Storage Injection Point” shall have the meaning ascribed in Exhibit “A” of the STS Contract or the STS-L Contract as the case may be.
- “Storage Withdrawal Point” shall have the meaning ascribed in Exhibit “A” of the STS Contract or the STS-L Contract as the case may be.
- "Subsidiary" shall mean a company in which 50% or more of the issued share capital (having full voting rights under all circumstances) is owned or controlled directly or indirectly by another company, by one or more subsidiaries of such other company, or by such other company and one or more of its subsidiaries.
- “TAPs” shall be as defined in sub-section 1.1 of the Transportation Access Procedure.
- “Title Transfer” shall mean the transfer of title to gas between two (2) Shippers at a Title Transfer Point.
- “Title Transfer Point” shall be those points and areas where the quantity of gas allocated to each Shipper is established each day and is not subject to reallocation.
- "TransCanada" shall mean "TransCanada PipeLines Limited" and its successors.
- "Transportation Service Contract" shall mean "Firm Transportation Service Contract", "FT Contract", "Firm Transportation Short Notice Contract", "FT-SN Contract", "Non Renewable Firm Transportation Contract", "FT-NR Contract", "Herbert Long Term Fixed Price Contract", "Herbert LTFP Contract", "Interruptible Service Transportation Contract", "IT Contract", "Storage Transportation Service Contract", "STS Contract", "STS-L Contract", "Short Term Firm Transportation Service Contract", "STFT Contract", "Short Term Short Notice Service Contract", "ST-SN Contract", "Multi-Year Fixed Price Service Contract", "MFP Contract", "Enhanced Market Balancing Service Contract", "EMB Contract", "Summer Storage Service Contract", "SSS Contract",
- "Union Dawn Receipt Point Daily Demand Toll" shall mean the toll determined by multiplying the Union Dawn Receipt Point Monthly Demand Toll by twelve (12) and dividing the result by the number of days in the Year.



- “Union Dawn Receipt Point Surcharge” shall mean a charge payable by Shipper for service from the Union Dawn Receipt Point determined as follows:
  - (a) for service under FT, FT-NR, FT-SN, MFP and EMB Transportation Service Contracts, by multiplying the Union Dawn Receipt Point Monthly Demand Toll by Shipper’s Contract Demand; provided however that if Shipper’s Contract Demand changes during a month, then a weighted average daily Contract Demand shall be determined for such month and shall be used to calculate the demand charge for such month; and
  - (b) for service under all other Transportation Service Contracts, by multiplying the Union Dawn Receipt Point Daily Demand Toll by Shipper’s Authorized Quantity.
- “Wobbe Index” shall mean a measure of the thermal input through a fixed orifice, calculated by dividing the natural gas Gross Heating Value in mega joules per cubic meter by the square root of the natural gas specific gravity with respect to air, based on a gross or higher heating value (HHV) at standard conditions 14.73 psi/60° F, 101.325Kpa/15° C real, dry basis.
- “Year” shall mean a period of 365 consecutive days commencing January 1<sup>st</sup> of any year; PROVIDED HOWEVER, that any such year which contains a date of February 29 shall consist of 366 consecutive days.

## **II APPLICABILITY AND CHARACTER OF SERVICE**

1.
  - (a) Subject to the provisions of the applicable Toll Schedule and these General Terms and Conditions, on each day for which service is requested by Shipper, and authorized by TransCanada pursuant to Section XXII hereof, Shipper shall deliver and TransCanada shall receive, at the receipt point set out in Shipper’s Contract (the “receipt point”), the Shipper’s Authorized Quantity and TransCanada shall transport for Shipper and Shipper shall receive, at the delivery point set out in Shipper’s Contract (the “delivery point”), a quantity of gas equal thereto; PROVIDED HOWEVER, that under no circumstances shall TransCanada be obligated to deliver to Shipper in any one day, at the delivery point, a quantity of gas in excess of the Contract Demand.
  - (b) If on any day Shipper fails to accept all or any portion of the gas delivered at the delivery point by TransCanada pursuant to the applicable Toll Schedule, TransCanada shall have

the right to curtail further receipts of gas from Shipper at the receipt point in a quantity equal to that which Shipper failed to accept from TransCanada. If on any day Shipper requests service hereunder but fails, for whatever reason, to deliver gas to TransCanada at the receipt point, then TransCanada shall have the right to curtail further deliveries of gas to Shipper at the delivery point in a quantity equal to that which Shipper failed to deliver to TransCanada.

2. Shipper's Authorized Quantity shall, where applicable, be delivered on such day by Shipper to TransCanada at the receipt point or taken on such day by Shipper from TransCanada at the delivery point or area, as the case may be, at hourly rates of flow as nearly constant as possible; PROVIDED HOWEVER, that Shipper may not, without TransCanada's consent, take delivery of such gas at the delivery point or area at an hourly rate of flow in excess of the Shipper's Maximum Hourly Flow Rate.
3. Departures from scheduled daily deliveries due to the inability of TransCanada or Shipper to maintain precise control shall be kept to the minimum permitted by operating conditions.
4. From the time gas is delivered into the possession of TransCanada at the receipt point TransCanada shall have the unqualified right to commingle such gas with other gas in TransCanada's pipeline system.

### **III TOLLS**

1. The tolls applicable to service provided under any Contract into which these General Terms and Conditions are incorporated shall be determined:
  - (i) in the case of all transportation services, except Storage Transportation Service ("STS") and Storage Transportation Service-Linked ("STS-L"), within Canada where the receipt and delivery points are located in different provinces, on the basis of the tolls approved by the NEB in which the delivery point is located for gas which is delivered for consumption in Canada under a Contract in which the principal delivery point(s) specified therein do not include any export delivery points for gas destined for export to the United States; or
  - (ii) as fixed and approved by the NEB, on the basis of the receipt and delivery points for delivery of gas destined for export to the United States; or

- (iii) in the case of STS and STS-L contracts and contracts providing receipt and delivery points within one province of Canada, as fixed and approved by the NEB, on the basis of the receipt point and delivery points set out therein; or
  - (iv) in the case of service pursuant to the SNB Toll Schedule, the MFP Toll Schedule or the Herbert LTFP Toll Schedule using a methodology approved by the NEB.
2. The tolls applicable to services provided pursuant to the Toll Schedules of TransCanada's Transportation Tariff are set out in the List of Tolls of TransCanada's Transportation Tariff as same may be amended from time to time upon approval of the NEB.

#### IV SHIPPER PROVISION OF FUEL REQUIREMENTS

##### 1. Daily Operations

- (a) For each and every day in respect of which Shipper's Authorized Quantity is accepted by TransCanada for transportation, Shipper shall, in addition to Shipper's Authorized Quantity, nominate, pursuant to the provisions of Section 2 hereof, and make available to TransCanada at any receipt point specified in the contract and/or Alternate Receipt point for FT, FT-NR, FT-SN or MFP Contracts the Fuel Quantity ("Qf"), which quantity shall be determined as follows:

$$Qf = Qd \times FR\% / 100 + \sum (Qd_i \times fr_i\% / 100) + \sum (Qd_{Dawn} \times fr_{Dawn}\% / 100)$$

Where:

"FR%" is the applicable monthly fuel ratio respecting transportation service from the nominated receipt point to the nominated delivery point;

"fr<sub>i</sub>%" is the applicable monthly fuel ratio for delivery pressure in excess of a gauge pressure of 4000 kilopascals at delivery point "i", both as set out in TransCanada's notice to Shipper delivered pursuant to Section 2 hereof;

"fr<sub>Dawn</sub>%" is the applicable monthly fuel ratio respecting transportation service from the nominated Union Dawn Receipt Point to the nominated delivery point;

"Qd" is the Shipper's Authorized Quantity;

" $Qd_i$ " is the quantity to be delivered at delivery point "i", for which point a toll for delivery pressure services has been approved by the NEB (as set forth in the List of Tolls referred to in Section III hereof);

" $Qd_{Dawn}$ " is the quantity to be transported by Shipper from the Union Dawn Receipt Point, for which a toll has been approved by the NEB (as set forth in the List of Tolls referred to in Section III hereof);

" $\sum (Qd_i \times fr_i \% / 100)$ " represents the sum of the fuel quantities required for delivery pressure in excess of a gauge pressure of 4000 kilopascals at all points applicable to Shipper's Authorized Quantity; and

" $\sum (Qd_{Dawn} \times fr_{Dawn} \% / 100)$ " is the sum of the fuel quantities required for the Union Dawn Receipt Point applicable to Shipper's Authorized Quantity.

- (b) TransCanada shall not be required to accept or deliver gas on any day if the appropriate Fuel Quantity has not been nominated by Shipper, or if TransCanada is unable to confirm that a quantity of gas equal to Shipper's Authorized Quantity plus the appropriate Fuel Quantity will, in fact, be made available on such day.

## 2. Nominations and Authorizations

Concurrent with nominating for transportation service for a given day, pursuant to Section XXII hereof, Shipper shall also nominate the Fuel Quantity to be made available to TransCanada on such day (the "fuel tender"). In the event TransCanada is not prepared to authorize Shipper's nomination or if TransCanada determines that Shipper's fuel tender is incorrect, TransCanada shall, by 14:00 hours CCT of the day immediately preceding the day for which service has been requested, advise Shipper to revise its fuel tender, and Shipper shall nominate such revised fuel tender by 15:00 hours CCT on such day. All fuel tenders shall be stated to the nearest one (1) GJ.

Shipper's fuel tender shall be determined by Shipper pursuant to the formula set out in subsection 1(a) hereof. On or before the twenty-fifth day of each month, TransCanada shall provide Shipper with written notice of the monthly fuel ratio to be applied during the next succeeding month. In the absence of any notice as aforesaid Shipper shall determine the fuel tender on the basis of the fuel ratio used in the immediately preceding month.

**V QUALITY**

1. The gas to be delivered hereunder shall be natural gas; provided however, that helium, natural gasoline, butane, propane and any other hydrocarbons except methane may be removed prior to delivery. TransCanada may subject, or permit the subjection of the natural gas to compression, cooling, cleaning and other processes.
2. **Heating Value:** The minimum gross heating value of the gas to be received and delivered by TransCanada shall be  $36.00 \text{ MJ/m}^3$ . The maximum Gross Heating Value of the gas to be received and delivered by TransCanada shall be  $41.34 \text{ MJ/m}^3$ . TransCanada shall have the right to refuse to accept Shipper's gas if the Gross Heating Value of such gas remains below  $36.00 \text{ MJ/m}^3$  or above  $41.34 \text{ MJ/m}^3$ .

In the event that the Gross Heating Value of the gas to be delivered by TransCanada is below  $36.00 \text{ MJ/m}^3$  or above  $41.34 \text{ MJ/m}^3$  the Shipper shall have the option to refuse to accept such gas so long as the Gross Heating Value remains below  $36.00 \text{ MJ/m}^3$  or above  $41.34 \text{ MJ/m}^3$ .

3. **Freedom from Objectionable Matter:** The gas to be received by TransCanada from Shipper and to be delivered by TransCanada hereunder:
  - (a) Shall be commercially free (at prevailing pressure and temperature in TransCanada's pipeline) from sand, dust, gums, oils, hydrocarbons liquefiable at temperatures in excess of minus ten degrees ( $-10^{\circ}$ ) Celsius at five thousand five hundred (5500) kPa absolute, impurities, other objectionable substances which may become separated from the gas, and other solids or liquids which will render it unmerchantable or cause injury to or interference with proper operations of the lines, regulators, meters or other appliances through which it flows; and shall not contain any substance not contained in the gas at the time the same was produced other than traces of those materials and chemicals necessary for the transportation and delivery of the gas and which do not cause it to fail to meet any of the quality specifications herein set forth.
  - (b) Shall contain no more than twenty-three (23) milligrams of hydrogen sulphide per cubic metre nor more than one hundred and fifteen (115) milligrams of total sulphur per cubic metre of gas as determined by standard methods of testing.
  - (c) Shall not contain more than two per cent (2%) by volume of carbon dioxide.

- (d) Shall have been dehydrated, if necessary, for removal of water present therein in a vapour state, and in no event contain more than sixty-five (65) milligrams of water vapour per cubic metre of gas.
  - (e) Shall not exceed a temperature of fifty degrees (50°) Celsius.
  - (f) Shall be as free of oxygen as practicable and shall not in any event contain more than four tenths of one percent (0.4%) by volume of oxygen.
  - (g) Shall not have a total inert gas content in excess of 4% when used as a diluent to meet Natural Gas Interchangeability Indices.
  - (h) Shall be free of any microbiological organisms, active bacteria or bacterial agents, including but not limited to sulphate reducing bacteria, iron oxidizing bacteria, and/or acid producing bacteria.
4. **Failure to Conform to Specifications Re Objectionable Matter:** If the gas being received by TransCanada from Shipper or transported by TransCanada to Shipper fails at any time to conform to any of the specifications set forth in subsection 3 of this Section, then the party receiving such gas (the "First Party") shall notify the party delivering such gas (the "Second Party") of such deficiency and thereupon the First Party may at the First Party's option refuse to accept delivery pending correction by the Second Party. Upon the Second Party's failure promptly to remedy any deficiency in quality as specified in subsection 3 of this Section, the First Party may accept delivery of such gas and may make changes necessary to bring such gas into conformity with such specifications, and the Second Party shall reimburse the First Party for any reasonable expense incurred by the First Party in effecting such changes.
5. **Natural Gas Interchangeability Indices:** The natural gas received by TransCanada shall conform to the following specifications (the "Natural Gas Interchangeability Indices");
- i) Weaver Incomplete Combustion Index less than or equal to 0.05;
  - ii) AGA Yellow Tipping Index greater than or equal to 0.86;
  - iii) The minimum Wobbe Index of the gas shall be  $47.23 \text{ MJ/m}^3$ ;
  - iv) The maximum Wobbe Index of the gas shall be  $51.16 \text{ MJ/m}^3$ ; and
  - v) Shall not contain greater than 1.5 mole percent (%) Butanes Plus.

The Natural Gas Interchangeability Indices are based on the following historical supply gas composition:

<b><u>Compound</u></b>	<b><u>Mole %</u></b>
Methane	95.6734
Ethane	1.6241
Propane	0.1410
I-Butane	0.0180
N-Butane	0.0173
I-Pentane	0.0034
N-Pentane	0.0034
N-Hexane	0.0014
N-Heptane	0.0007
N-Octane	0.0002
Nitrogen	1.8419
Carbon Dioxide	0.6411
Helium	0.0339

6. Refined Biogas received at the following Receipt Point(s) shall also comply with the BNQ Standard gas quality requirements.

i. Lachenaie Receipt Point

- Refined Biogas shall mean gas obtained from the purification of Biogas that meets the technical specifications required by TransCanada.
- Biogas shall mean gas produced through the fermentation of organic material in the absence of oxygen.
- BNQ Standard shall mean Bureau of normalisation du Quebec – BNQ 3672 – 100 Biomethane – Quality Specifications for Injection into Natural Gas Distribution and Transmissions Systems, as may be amended from time to time.

**VI MEASUREMENTS**

1. **Unit of Volume and Unit of Quantity:** The unit of volume for the purpose of reporting shall be one thousand (1000) cubic metres ( $10^3 \text{ m}^3$ ) of gas and the unit of quantity shall be GJ.
2. **Determination of Volume and Gross Heating Value:** The volume and the gross heating value of the gas received by TransCanada from Shipper and delivered to Shipper shall be determined as follows:
  - (a) The gas volumes shall be computed in accordance with the methodology prescribed in the Electricity and Gas Inspection Act (Canada) (R.S.C. 1985, c.E-4) as amended from time to time including all regulations and specifications promulgated pursuant to such Act (collectively, the "Electricity and Gas Inspection Act").
  - (b) For the purpose of measurement of gas received into and delivered from the TransCanada system, the parties agree that the average absolute atmospheric (barometric) pressure at such points shall be assumed to be constant during the term thereof, regardless of variations in actual barometric pressure from time to time, and shall be calculated based on the elevation of the measurement point. The formula used to calculate the atmospheric pressure shall be in accordance with the methodology prescribed in the Electricity and Gas Inspection Act (Canada) (R.S.C. 1985, c.E-4) amended from time to time including all regulations and specifications promulgated pursuant to such Act.
  - (c) The determination of the gross heating value of the gas received or delivered shall be performed in a manner approved under the Electricity and Gas Inspection Act or, if such specification is not set out in such Act, in accordance with industry accepted standards, and, in any event, in such manner as to ensure that the gross heating values so determined are representative of the gas received or delivered at the receipt or delivery point.
  - (d) The determination of the relative density of the gas received or delivered shall be performed in a manner approved under the Electricity and Gas Inspection Act or, if such specification is not set out in such Act, in accordance with industry accepted standards, and, in any event, in such manner as to ensure that the relative densities so determined are representative of the gas received or delivered at the receipt or delivery point.



## VII DELIVERY POINT

1. For the purpose of Section VIII hereunder, unless otherwise specified in the Contract, the delivery point or points for all gas to be delivered by TransCanada to Shipper pursuant to any Contract into which these General Terms and Conditions are incorporated shall be on the outlet side of TransCanada's measuring stations located at or near the point or points of connection with the facilities of Shipper or Shipper's agent in receiving the gas, as specified in the Contract.
2. If the total quantity of gas delivered at any delivery point is less than 3750 GJ during any contract year, then Shipper shall pay TransCanada at the end of such contract year, in addition to any amounts otherwise payable, an amount equal to:

$$\frac{(\text{3750 GJ minus "X"}) \text{ times "Y"}}{3750 \text{ GJ}}$$

Where "X" is the total quantity (expressed in GJ) actually delivered by TransCanada to all Shippers at such delivery point during such contract year; and

Where "Y" is 18% of TransCanada's actual original costs of installation of the delivery facilities at such delivery point.

## VIII POSSESSION OF GAS

TransCanada shall be deemed to be in control and possession of, and responsible for, all gas transported under the Contract from the time that such gas is received by it at the receipt point until such gas is delivered at the delivery point.

## IX MEASURING EQUIPMENT

1. All meters and measuring equipment for the determination of gross heating value and/or relative density shall be approved pursuant to, and installed and maintained in accordance with, the Electricity and Gas Inspection Act.

Notwithstanding the foregoing, all installation of equipment applying to or affecting deliveries of gas shall be made in such manner as to permit an accurate determination of the quantity of gas delivered and ready verification of the accuracy of measurement. Care shall be exercised by both parties in the installation, maintenance and operation of pressure regulating equipment so as to

prevent any inaccuracy in the determination of the volume or quantity of gas delivered under the Contract.

- (a) **Measuring Station:** In accordance with the above, TransCanada will install, maintain and operate, or will cause to be installed, maintained and operated, at or near each delivery point, a measuring station equipped with a meter or meters and other necessary equipment for accurate measurement of the gas delivered under the Contract.

2. **Calibration and Test of Measuring Equipment:** The accuracy of measuring equipment shall be verified by TransCanada at reasonable intervals, and if requested, in the presence of representatives of Shipper, but TransCanada shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period. In the event either party shall notify the other that it desires a special test of any measuring equipment the parties shall co-operate to secure a prompt verification of the accuracy of such equipment. The expense of any such special test, if called for by Shipper, shall be borne by Shipper if the measuring equipment is found to be in error by not more than the limits set out as follows:

- (a) 2% for measuring equipment utilized to determine volume,
- (b) 1% for any instrument utilized to determine relative density,
- (c) 0.5% for any instrument utilized to determine gross heating value.

If upon test, any measuring equipment is found to be in error by not more than the limits specified above, the previous readings of such equipment shall be considered accurate in computing deliveries or receipts of gas but such equipment shall be adjusted at once to register accurately.

If, for the period since the last preceding test, it is determined that:

- (a) any measuring equipment, except for those instruments specified in (b) and (c) below, shall be found to be inaccurate by an amount exceeding 2% at a recording corresponding to the average hourly rate of flow for such period, and/or
- (b) any instrument utilized to determine the relative density shall be found to be inaccurate by an amount exceeding 1%, and/or
- (c) any instrument utilized to determine the gross heating value shall be found to be inaccurate by an amount exceeding 0.5%, then the previous readings of measurement equipment and/or instruments utilized to determine the relative density or gross heating

value, as the case may be, shall be corrected to zero error for any period which is known definitely but in any case where the period is not known or agreed upon such correction shall be for a period extending over 50% of the time elapsed since the date of the last test.

Notwithstanding the foregoing, when TransCanada and Shipper mutually agree that a measurement instrument inaccuracy occurred at a definite point in time, a quantity correction shall be made even though said inaccuracy is less than the limits specified in (a), (b) and (c) above.

3. **Correction of Metering Errors:** Failure of Meters: In the event a meter is out of service, or registering inaccurately, the volume or quantity of gas delivered shall be determined by the most equitable method. Such methods shall include but not be limited to:
  - (a) mathematical calculations and comparisons including prevailing ratio with a parallel meter,
  - (b) the use of Shipper's check measuring equipment, and
  - (c) comparison to deliveries under similar conditions when the meter was registering accurately.
4. **Preservation of Metering Records:** TransCanada and Shipper shall each preserve for a period of at least six (6) years all test data, charts and other similar records. Microfilms of the original documents shall be considered true records.
5. **Check Measuring Equipment:** Shipper may install, maintain and operate at its own expense, such check measuring equipment as desired, provided that such equipment shall be so installed as not to interfere with the operation of TransCanada's measuring equipment. Any pressure or volume control regulators installed by Shipper shall be operated so as not to interfere with TransCanada's measuring facilities.
6. **Rights of Parties:** The measuring equipment so installed by either party together with any building erected by it for such equipment, shall be and remain its property. However, TransCanada and Shipper shall have the right to have representatives present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting done in connection with the other's measuring equipment used in measuring or checking the measurement of the delivery of gas under the Contract. The records from such measuring

equipment shall remain the property of their owner, but upon request each will submit to the other its records and charts, together with calculations therefrom, for inspection and verification, subject to return within ten days after receipt thereof.

## **X BILLING**

1. **Monthly Billing Date:** For all contracts in effect prior to the effective date of the NEB's Decision in the RH-2-95 proceeding, TransCanada shall render bills on or before the tenth (10th) day of each month for all transportation services provided by TransCanada within Canada ("Domestic Service") and on or before the fifteenth (15th) day of each month for all transportation services provided by TransCanada to any Export Delivery Point ("Export Service"). For gas taken by Shipper in excess of the total daily quantity authorized by TransCanada, TransCanada shall also render bills for charges made pursuant to Section XXII on or before the tenth (10th) day of each month, in respect of Domestic Service, and on or before the fifteenth (15th) day of each month, in respect of Export Service.

For all Export Service Contracts coming into effect after the effective date of the NEB's Decision in the RH-2-95 proceeding, including the renewal of any Export Service Contracts which existed prior to such date, the billing date shall be the tenth (10th) day of each month.

2. **Information:** Shipper hereby undertakes to provide TransCanada with all the information and material required by TransCanada to calculate and verify the quantity of gas actually received by TransCanada from Shipper, and the quality specifications and components thereof.

If such information is not received by TransCanada in sufficient time prior to TransCanada rendering bills to Shipper pursuant to this Section X, such bills shall be calculated based on TransCanada's best estimate of the quantity and quality of gas actually received by TransCanada from Shipper. Any overcharges or undercharges resulting from any differences between the above estimates and the actual amounts shall be adjusted in the subsequent bill without any interest thereon.

## **XI PAYMENTS**

1. **Monthly Payment Date:** For all contracts in effect prior to the effective date of the NEB's Decision in the RH-2-95 proceeding, Shipper shall pay to TransCanada, at its address designated in the Contract, or shall pay to the Royal Bank of Canada, Main Branch, Calgary, Alberta, or at

other institutions if agreed to by TransCanada for deposit to the account of TransCanada so that TransCanada shall receive payment from Shipper on or before the twentieth (20th) day of each month for Domestic Service, and by the twenty-fifth (25th) day of each month for Export Service (the "Payment Date") provided by TransCanada to Shipper pursuant to the applicable toll schedules and for any charges made pursuant to Section XXII herein during the preceding month and billed by TransCanada in a statement for such month according to the nominated and/or measured deliveries, computations, prices and tolls provided in the Contract. If the Payment Date is not a Banking Day, then payment must be received by TransCanada on Shipper's account or before the first (1st) Banking Day immediately prior to the Payment Date.

For all Export Service Contracts coming into effect after the effective date of the NEB's Decision in the RH-2-95 proceeding, including the renewal of any Export Service Contracts which existed prior to such date, the payment date shall be the twentieth (20th) day of each month; provided however, if the Payment Date is not a Banking Day, then payment must be received by TransCanada on Shipper's account on or before the first (1st) Banking Day immediately prior to the Payment Date.

2. **Remedies for Non-Payment:** **Notwithstanding Section XVII**, if Shipper fails to pay the full amount of any bill when payment is due, TransCanada may upon four (4) Banking Days written notice immediately suspend any or all service being or to be provided to Shipper provided however that such suspension shall not relieve Shipper from any obligation to pay any rate, toll, charge or other amount payable to TransCanada. If at any time during such suspension Shipper pays the full amount payable to TransCanada, TransCanada shall within two (2) Banking Days recommence such suspended service.

**Notwithstanding Section XVII** following suspension, TransCanada may, in addition to any other remedy that may be available to it, upon four (4) Banking Days written notice to Shipper immediately:

- (a) terminate any or all service being or to be provided to Shipper; and
- (b) declare any and all amounts payable now or in the future by Shipper to TransCanada for any and all service to be immediately due and payable as liquidated damages and not as a penalty.

In the event Shipper disputes any part of a bill, Shipper shall nevertheless pay to TransCanada the full amount of the bill when payment is due.

If Shipper fails to pay all of the amount of any bill as herein provided when such amount is due, interest on the unpaid portion of the bill accrues daily at a rate of interest equal to the prime rate of interest of the Royal Bank of Canada as it may vary from time to time, plus one percent (1%) and the principle and accrued interest to date shall be payable and due immediately upon demand.

3. **Adjustment of Underpayment, Overpayment or Error in Billing:** If it shall be found that at any time or times Shipper has been overcharged or undercharged in any form whatsoever under the provisions of the Contract and Shipper shall have actually paid the bills containing such overcharge or undercharge, then within thirty (30) days after the final determination thereof, TransCanada shall refund by cash or credit to an invoice the amount of any such overcharge, provided however the Abandonment Charge shall be refunded only by a credit on an invoice in any subsequent month that an Abandonment Charge would be payable. Any refund shall include interest which is equal to the prime rate of interest of the Royal Bank of Canada as it may vary from time to time from the time such overcharge was paid to the date of refund, plus one percent (1%) in addition thereto. If such refund is made by a credit on an invoice from TransCanada to Shipper, then the date of the refund shall be the date upon which the invoice reflecting such credit was rendered to Shipper by TransCanada. Shipper shall pay the amount of any such undercharge, but without interest. Adjustments to the amount billed in any statement rendered by TransCanada shall be made within the following time frames:

- (a) Measurement data corrections shall be processed within six (6) months of the production month with a three (3) month rebuttal period.
- (b) The time limitation for disputes of allocations shall be six (6) months from the date of the initial month-end allocation with a three (3) month rebuttal period.
- (c) Prior period adjustment time limits shall be six (6) months from the date of the initial transportation invoice with a three (3) month rebuttal period, excluding government-required rate changes.

These time limits shall not apply in the case of deliberate omission or misrepresentation or mutual mistake of fact. Parties' other statutory or contract rights shall not be otherwise diminished by these time limits.

4. **Time of Payment Extended if Bill Delayed:** If presentation of a bill to Shipper is delayed after the tenth (10th) or the fifteenth (15th) day of the month, as applicable for domestic or export service respectively, then the time of payment shall be extended accordingly unless Shipper is responsible for such delay.

## **XII DELIVERY PRESSURE**

Subject to the provisions set out in subsections a) and b) below, TransCanada shall deliver gas to Shipper at TransCanada's line pressure at the delivery point or points designated in the Contract, but the minimum pressure at each delivery point shall be not less than a gauge pressure of 4000 kilopascals or such lesser pressure that is agreed to by the parties; provided, however, that:

- (a) the parties shall not be required in any Contract into which these General Terms and Conditions are incorporated, to agree to delivery pressures less than the minimum contractual pressure theretofore applicable at existing delivery point; and
- (b) if the deliveries to Shipper at a delivery point or an agreed upon grouping of delivery points, exceeds the Shipper's Maximum Hourly Flow Rate without the prior consent of TransCanada, and the delivery pressure to Shipper falls below the delivery pressure agreed to in the Contract, despite reasonable preventative measures undertaken by TransCanada, then TransCanada shall, for the period of such excess deliveries, be relieved of its contractual obligation to such Shipper to deliver gas at such delivery point or area affected by the excess deliveries at the delivery pressure stipulated in the Contract.

If the receipt point or points under Shipper's Contract include that point on TransCanada's system which is immediately east of the Alberta/Saskatchewan border ("Empress"), then Shipper agrees to cause NOVA Gas Transmission Ltd. (hereinafter called "NGTL") to design and construct sufficient facilities to allow Shipper's Authorized Quantity to be delivered to TransCanada at Empress at a gauge pressure of 4137 kPa or any greater pressure which may from time to time be specified by TransCanada for all gas to

## GENERAL TERMS and CONDITIONS

be delivered into TransCanada's system at Empress and to cause NGTL to deliver Shipper's Authorized Quantity to TransCanada at NGTL's line pressure provided that said pressure shall not be less than a gauge pressure of 3792 kPa.

For any receipt point downstream of Empress, Shipper shall do or cause others to do all that is required to allow Shipper's Authorized Quantity to be delivered to TransCanada at a pressure no less than that prevailing in TransCanada's pipeline at such receipt point at the time of delivery and no greater than the maximum allowable operating pressure of TransCanada's pipeline at such point.

**XIII WARRANTY OF TITLE TO GAS**

Shipper warrants that it owns or controls, has the right to:

1. deliver or have delivered, the gas that is delivered to TransCanada under the Contract;
2. transfer the gas pursuant to Section XXIV of these General Terms and Conditions.

Shipper shall indemnify and hold harmless TransCanada against all claims, actions or damages arising from any adverse claims by third parties claiming an ownership or an interest in the gas delivered for transport to TransCanada under the Contract or transferred pursuant to Section XXIV of these General Terms and Conditions.

**XIV FORCE MAJEURE**

In the event of either Shipper or TransCanada being rendered unable, wholly or in part, by force majeure to perform or comply with any obligation or condition hereof or any obligation or condition in any Contract into which these General Terms and Conditions are incorporated, such party shall give notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible thereafter, and the obligations of the party giving such notice, other than obligations to make payments of money then due, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch. The term "force majeure" as used herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs to or alterations of machinery or lines of pipe, freezing of wells or lines of pipe, temporary failure of TransCanada's gas supply, inability to obtain



materials, supplies, permits or labour, any laws, orders, rules, regulations, acts or restraints of any governmental body or authority, civil or military, any act or omission (including failure to deliver gas) of a supplier of gas to, or a transporter of gas to or for, TransCanada which is excused by any event or occurrence of the character herein defined as constituting force majeure, any act or omission by parties not controlled by the party having the difficulty and any other similar causes not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

The settlement of strikes, lockouts or other labour disputes shall be entirely within the discretion of the party having the difficulty. Under no circumstances will lack of finances be construed to constitute force majeure.

In the event of an occurrence of a force majeure, TransCanada shall curtail delivery of gas to Shipper in accordance with Section XV hereof.

## **XV      IMPAIRED DELIVERIES**

On each day TransCanada shall determine in respect of all Contracts:

- (i) the total quantities which all Shippers have requested to be delivered on that day, and
- (ii) its available system capacity, including the maximum transportation on TransCanada's behalf under agreements that it has with Other Pipelines.

If due to any cause whatsoever TransCanada is unable on any day to deliver the quantities of gas Shippers would have received if such disability did not exist, then TransCanada shall order curtailment by all Shippers affected thereby in the following manner to the extent necessary to remove the effect of the disability.

If TransCanada estimates that, notwithstanding its then inability to deliver, it nevertheless will be able to meet its total minimum obligations to deliver under all Contracts TransCanada shall order daily curtailment in the following order of priority:

- (a) First under interruptible service provided pursuant to the IT Toll Schedule and under summer storage service provided pursuant to the SSS Toll Schedule.

The toll for STS Overrun is the Daily Demand Toll for STS service. STS Overrun will have a higher priority than i) IT when STS Overrun is tolled at an equal or higher price than IT; and ii) SSS when STS Overrun is tolled at an equal or higher price than SSS.

STS Overrun will have a lower priority than i) IT when the STS Overrun Toll is at a lower price than IT; and ii) SSS when the STS Overrun Toll is at a lower price than SSS.

(b) Second under any gas storage program of TransCanada.

(c) Third under:

Alternate Receipts made pursuant to FT, FT-SN, FT-NR, or MFP Contracts or Diversions made pursuant to FT, FT-SN, FT-NR, or MFP Contracts which:

- A. cause the actual flow of gas on a lateral or extension to exceed the capability of the lateral or extension, and/or
- B. cause the actual flow of gas through a metering facility to exceed the capability of the metering facility, and/or
- C. cause the actual flow of gas on any segment of TransCanada's integrated pipeline system (including those notional segments comprised of TransCanada's maximum transportation entitlements under transportation agreements that it has with Other Pipelines) to exceed the capability of the affected segment by an amount greater than that which would have occurred had the gas which is the subject of an Alternate Receipt and/or a Diversion, been received at the receipt point and delivered at the delivery point(s) or delivery area specified in the FT, FT-SN, FT-NR, or MFP Contract. Solely for the purpose of making the aforesaid determination, TransCanada may, for certain quantities, treat the point of interconnection between TransCanada's system and the system of Union Gas Limited at Parkway as a delivery point specified in those FT, FT-SN, FT-NR or MFP Contracts which have delivery points on the segment of TransCanada's integrated system from Kirkwall to Niagara Falls.

- (d) Fourth, quantities to be delivered on a best efforts basis under EMB Contracts during the period of April 1 of a year to October 31 of the same year and quantities to be delivered on a best efforts basis under STS and STS-L Contracts.
- (e) Fifth proportionately under:
  - (i) FT, FT-SN, FT-NR, STFT, ST-SN, SNB, STS, STS-L, MFP, Herbert LTFP, and EMB Contracts (other than, quantities to be delivered on a best efforts basis under EMB Contracts during the period of April 1 of a year to October 31 of the same year and quantities to be delivered on a best efforts basis under STS and STS-L Contracts) in amounts proportional to the Operating Demand Quantities minus the quantities to be delivered pursuant to an Alternate Receipt or a Diversion of such Contracts.
  - (ii) Alternate Receipts made pursuant to FT, FT-SN, FT-NR or MFP Contracts and/or Diversions made pursuant to FT, FT-SN, FT-NR, and MFP Contracts not already curtailed pursuant to subsection (c) above in amounts to be delivered pursuant to such Alternate Receipt and/or Diversion.

(For the purpose of this subsection, the Operating Demand Quantity shall be:

- (A) under FT Contracts, the Contract Demand;
- (B) under FT-SN Contracts, the Contract Demand;
- (C) under FT-NR Contracts, the Contract Demand;
- (D) under MFP Contracts, the Contract Demand;
- (E) under Herbert LTFP Contracts, the Contract Demand;
- (F) under EMB Contracts, the Contract Demand;
- (G) under STS Contracts, the Daily Injection Quantity or the Daily Withdrawal Quantity, as the case may be;
- (H) under STS-L Contracts, the Daily Contract Injection Quantity and the Daily Contract Withdrawal Quantity;

- (I) under STFT Contracts, the Maximum Daily Quantity;
- (J) under ST-SN Contracts, the Maximum Daily Quantity; and
- (K) under SNB Contracts, the Contract Quantity.

## **XVI DETERMINATION OF DAILY DELIVERIES**

1. A Shipper taking delivery of gas under contracts and/or toll schedules for more than one class of service in one delivery area or one Export Delivery Point shall be deemed on any day to have taken delivery of Shipper's Authorized Quantity under the applicable contract and/or toll schedule in accordance with such agreement as may exist between TransCanada and the downstream operator(s). Absent such agreement, shipper shall be deemed to have taken delivery of Shipper's Authorized Quantities sequentially as follows:

- (a) FT and MFP Contracts
- (b) FT-SN Contract
- (c) FT-NR Contract
- (d) Herbert LTFP Contract
- (e) STFT and ST-SN Contracts
- (f) EMB Contract
- (g) STS and STS-L Contracts
- (h) IT Contract, Delivery Quantity
- (i) SSS Contract, Delivery Quantity

## **XVII DEFAULT AND TERMINATION**

Subject to the provisions of Section XI, Section XIV, Section XV and Section XXIII of these General Terms and Conditions, if either TransCanada or Shipper shall fail to perform any of the covenants or obligations imposed upon it under any Contract into which these General Terms and Conditions are incorporated, then in such event the other party may, at its option, terminate such Contract by proceeding as follows: the party not in default shall cause a written notice to be served on the party in default stating

specifically the default under the Contract and declaring it to be the intention of the party giving the notice to terminate such Contract; thereupon the party in default shall have ten (10) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the default notice and if within the said ten (10) day period the party in default does so remove and remedy said cause or causes and fully indemnifies the party not in default for any and all consequences of such default, then such default notice shall be withdrawn and the Contract shall continue in full force and effect.

In the event that the party in default does not so remedy and remove the cause or causes or does not indemnify the party giving the default notice for any and all consequences of such default within the said period of ten (10) days, then, at the option of the party giving such default notice, the Contract shall terminate. Any termination of the Contract pursuant to the provisions of this Section shall be without prejudice to the right of TransCanada to collect any amounts then due to it for gas delivered or service provided prior to the date of termination, and shall be without prejudice to the right of Shipper to receive any gas which it has not received but the transportation of which has been paid prior to the date of termination, and without waiver of any other remedy to which the party not in default may be entitled for breaches of the Contract.

This Section shall not apply to any default and terminations pursuant to Section XI and Section XXIII.

#### **XVIII NON-WAIVER AND FUTURE DEFAULT**

No waiver by TransCanada or Shipper of any one or more defaults by the other in the performance of any provisions of the Contract shall operate or be construed as a waiver of any continuing or future default or defaults, whether of a like or different character.

#### **XIX DELIVERY AREAS**

Deliveries of gas within a delivery area shall be subject to sufficient capacity and facilities within such delivery area.

#### **XX DELIVERY AREA BOUNDARIES**

TransCanada's delivery areas for purposes of determining the Contract Demand applicable to the points of delivery of TransCanada's pipeline system are as follows:

**Saskatchewan Southern Delivery Area or SSDA**

extends from a point on TransCanada's main pipeline at the Alberta- Saskatchewan border near Empress, Alberta to a point on TransCanada's main pipeline at the Saskatchewan-Manitoba border.

**Manitoba Delivery Area or MDA**

extends from a point on TransCanada's main pipeline at the Saskatchewan-Manitoba border to a point on TransCanada's pipeline at the Manitoba-Ontario border to a point on TransCanada's pipeline at the International Border near Emerson, Manitoba.

**Western Delivery Area or WDA**

extends from a point on TransCanada's pipeline at the Manitoba- Ontario border to a point on TransCanada's pipeline 24.99 kilometres east of TransCanada's Station 80 near Geraldton, Ontario.

**Northern Delivery Area or NDA**

extends from a point on TransCanada's pipeline 24.99 kilometres east of TransCanada's Station 80 near Geraldton, Ontario to a point on TransCanada's pipeline 23.09 kilometres south and east respectively of TransCanada's Station 116 near North Bay, Ontario.

**Sault Ste. Marie Delivery Area or SSMDA**

any point on TransCanada's Sault Ste. Marie pipeline.

**North Central Delivery Area or NCDA**

extends from a point on TransCanada's pipeline 23.09 kilometres south of TransCanada's Station 116 near North Bay Ontario, to a point on TransCanada's pipeline 0.50 kilometres south of TransCanada's Station 127 near Barrie Ontario, provided that points of delivery to the Enbridge Gas Distribution Inc. Gas within this area are deemed for the purposes of this Tariff to be in the Central Delivery Area.

**Central Delivery Area or CDA**

extends from a point on TransCanada's pipeline 0.50 kilometres south of TransCanada's Station 127 near Barrie Ontario to a point on TransCanada's pipeline at the International Border near Niagara Falls, Ontario and to a point on TransCanada's pipeline 24.99 kilometres east of TransCanada's Station 134 near Bowmanville, Ontario.

Southwestern Delivery Area or SWDA

any point on TransCanada's St. Clair to Dawn pipeline.

Eastern Delivery Area or EDA

extends from a point on TransCanada's pipeline 24.99 kilometres east of TransCanada's Station 134 near Bowmanville, Ontario and from a point on TransCanada's North Bay Shortcut 23.09 kilometres east of TransCanada's Station 116 near North Bay, Ontario to a point on TransCanada's pipeline at the International Border near Philipsburg, Québec and to a point on the pipeline system of Trans Québec & Maritimes Pipeline Inc. near Québec City, Québec.

## **XXI INCORPORATION IN TOLL SCHEDULES AND CONTRACTS**

1. These General Terms and Conditions are incorporated in and are a part of all of TransCanada's Toll Schedules, Contracts and transportation service contracts.
2. These General Terms and Conditions are subject to the provisions of the National Energy Board Act or any other legislation passed in amendment thereto or substitution therefor.

## **XXII NOMINATIONS AND UNAUTHORIZED QUANTITIES**

### **1. Nominations**

For service required on any day under each of Shipper's transportation contracts (for the purposes of this Section XXII the "said Contract"), Shipper shall provide TransCanada with a nomination of the quantity of gas, expressed in GJ, it desires TransCanada to deliver at the delivery point ("Shipper's nomination") or Title Transfer pursuant to Section XXIV of these General Terms and Conditions. Unless otherwise provided under the applicable Toll Schedule or as outlined under this section in the Schedule of Nomination Times below, such nominations are to be provided in writing or EDI format, or by other electronic means, so as to be received by TransCanada's Gas Control Department in Calgary on or before 12:00 hours CCT on the day immediately preceding the day for which service is requested. Subject to the provisions of the applicable toll schedules and Sections XIV and XV of these General Terms and Conditions, TransCanada shall determine whether or not all or any portion of Shipper's nomination will be accepted.

In the event TransCanada determines that it will not accept such nomination, TransCanada shall advise Shipper, (on or before 14:00 hours CCT on the day immediately preceding the day for which service is requested), of the reduced quantity of gas, (if any) (the "quantity available") that TransCanada is prepared to deliver under the said Contract. Forthwith after receiving such advice from TransCanada but no later than 1 hour after receiving such notice on such day, Shipper shall provide a revised nomination to TransCanada which shall be no greater than the quantity available. If such revised nomination is not provided within the time allowed as required above or such revised nomination is greater than the quantity available, then the revised nomination shall be deemed to be the quantity available. If the revised nomination (delivered within the time allowed as required above) is less than the quantity available, then such lesser amount shall be the revised nomination. That portion of a Shipper's nomination or revised nomination, which TransCanada shall accept for delivery shall be known as "Shipper's Authorized Quantity" which authorized quantity shall be limited, for firm services, to Shipper's Contract Demand and, for other services, to such quantity permitted by the provisions of the Contract.

**Schedule of Nomination Times (CCT)**

<b>Gas Day Time</b>	<b>Class of Service *</b>	<b>Effective 0900 Hours Next Gas Day</b>
12:00	All Services	Faxed, website & EDI (website & EDI commencing on October 1, 1997)

\*\* Effective October 1, 1997 nominations for service must be received by TransCanada through its website or EDI at the time specified pursuant to Section XXII of the General Terms and Conditions. TransCanada shall not accept nominations by fax unless TransCanada's website and EDI systems are inoperative, except in the case of FT-SN and SNB Service. Nominations for FT-SN and SNB Service shall be submitted to TransCanada via fax or by other electronic means as determined from time to time by TransCanada.

**2. Definitions in Section XXII**

In this Section XXII, the following terms shall be construed to have the following meanings:

- (a) "Total Allocated Quantity":



- (i) for any receipt point, means the total quantity of gas which TransCanada determines has been received during any time period under all transportation service contracts with a Shipper; and
  - (ii) for any delivery point or delivery area, means the total quantity of gas which TransCanada determines has been delivered during any time period under all transportation service contracts with a Shipper.
- (b) "Total Authorized Quantity" or "TAQ" for any day:
  - (i) for any receipt point, means the sum of the Shipper's Authorized Quantities under all transportation service contracts at that receipt point.
  - (ii) for any delivery point or delivery area, means the sum of the Shipper's Authorized Quantities under all transportation service contracts at a delivery point or for that delivery area.
- (c) "Daily Variance" for a Shipper at any receipt or delivery point or delivery area means the absolute difference between the Total Authorized Quantity and the Total Allocated Quantity.
- (d) "FT Daily Demand Charge" or "FTD" means the Daily Demand Toll for FT service from Empress to KPUC EDA, as set out in the List of Tolls.
- (e) "Average Authorized Quantity" or "AAQ" for a Shipper at any receipt or delivery point or delivery area means the average Total Authorized Quantity during the preceding 30 days.
- (f) "Cumulative Variance" is the absolute value accumulation of the daily differences between the Total Authorized Quantity and the Total Allocated Quantity for a Shipper at any delivery point, delivery area or receipt point.

### 3. **Emergency Operating Conditions**

#### (a) EOC Definition

"Emergency Operating Conditions" ("EOC") means that TransCanada determines, in the exercise of its reasonable judgement, that its ability to fulfill its obligations under firm contracts is at risk due, in whole or in part, to Shipper variances during periods of extreme weather changes, and/or

supply, market, pipeline interruptions, and TransCanada issues an EOC notice pursuant to subsection 3(b).

(b) EOC Notices

If TransCanada determines an EOC exists, TransCanada shall issue notice to all Shippers via High Priority Bulletin on its website setting out the following information related to the EOC:

- i) EOC effective time, and
- ii) anticipated duration of the EOC, and
- iii) delivery points and delivery areas where EOC is in effect

In addition to such notice, TransCanada will use reasonable efforts to contact by phone those Shippers directly impacted by the EOC.

(c) EOC Effective Times

If TransCanada issues notice of EOC prior to 13:00 Central Clock Time (CCT), then the EOC takes effect on that day. If TransCanada issues notice of EOC after 13:00 CCT, then the EOC takes effect on the next day. The EOC will remain in effect until the operational condition has been remedied.

4. **Daily Balancing Fee**

On each day Shipper shall pay a "Daily Balancing Fee" equal to:

(Tier 1 Quantity times Tier 1 Fee); plus

(Tier 2 Quantity times Tier 2 Fee); plus

(Tier 3 Quantity times Tier 3 Fee); plus

(Tier 4 Quantity times Tier 4 Fee).

Where:

(a) Tier 1, 2, 3, 4 Fees and Quantities are set out in the following Table:

	<b>Tier 1</b>	<b>Tier 2</b>	<b>Tier 3</b>	<b>Tier 4</b>
Minimum Quantity	Greater of: 2% of TAQ, or 2% of AAQ or 75 GJ	Greater of: 4% if TAQ, or 4% of AAQ, or 150 GJ	Greater of: 8% of TAQ, or 8% of AAQ, or 302 GJ	Greater of: 10% of TAQ, or 10% of AAQ, or 377 GJ
Maximum Quantity	Greater of: 4% of TAQ, or 4% of AAQ, or 150 GJ	Greater of: 8% of TAQ, or 8% of AAQ, or 302 GJ	Greater of: 10% of TAQ, or 10% of AAQ, or 377 GJ	∞ (Infinity)
Standard Fee	0.2 times FTD	0.5 times FTD	0.75 times FTDC	1.0 times FTD
EOC Draft Fee	1.0 times Index	1.25 times Index	1.50 times Index	2.0 times Index
EOC Pack Fee	0	0	0	0

- (a) Quantity for each Tier equals that portion of the Daily Variance which is greater than the Minimum Quantity and less than the Maximum Quantity.
- (b) The applicable Fee for each Tier equals:
- (i) Standard Fee for days and locations where EOC are not in effect,
  - (ii) EOC Draft Fee for days and locations where EOC are in effect and where Shipper's Total Authorized Quantity is less than Shipper's Total Allocated Quantity, and
  - (iii) EOC Pack Fee for days and locations where EOC are in effect and where Shipper's Total Authorized Quantity is greater than Shipper's Total Allocated Quantity.
- (c) No Daily Balancing Fee is payable on the portion of a Daily Variance which is less than 75 GJ.
- (d) The Daily Balancing Fee is added to the bill for the month in which the day is included.

- (e) "Index" means the highest price of gas on the day among all receipt and delivery points on the TransCanada pipeline system as published by Platts Gas Daily or such other recognized industry publication.

**5. Cumulative Balancing Fee**

On each day Shipper shall pay a "Cumulative Balancing Fee" equal to:

(Tier 1 Quantity times Tier 1 Fee); plus

(Tier 2 Quantity times Tier 2 Fee).

Where:

- (a) Tier 1, 2 Fees and Quantities are set out in the following Table:

	<b>Tier 1</b>	<b>Tier 2</b>
Minimum Quantity	Greater of: 4% of TAQ, or 4% of AAG, or 150 GJ	Greater of: 6% of TAQ, or 6% of AAQ, or 225 GJ
Maximum Quantity	Greater of: 6% of TAQ, or 6% of AAQ, or 225 GJ	∞ (Infinity)
Standard Fee	0.15 times FTD	0.25 times FTD
EOC Draft Fee	0.15 times FTD	0.25 times FTD
EOC Pack Fee	0	0

- (b) Quantity for each Tier equals that portion of the Cumulative Variance which is greater than the Minimum Quantity and less than the Maximum Quantity.
- (c) The applicable Fee for each Tier equals:
- (i) Standard Fee for days and locations where EOC are not in effect,

- (ii) EOC Draft Fee for days and locations where EOC are in effect and where Shipper's accumulated Total Authorized Quantity is less than Shipper's accumulated Total Allocated Quantity, and
- (iii) EOC Pack Fee for days and locations where EOC are in effect and where Shipper's accumulated Total Authorized Quantity is greater than Shipper's accumulated Total Allocated Quantity.
- (d) No Cumulative Balancing Fee is payable on the portion of an Absolute Cumulative Variance which is less than 150 GJ.
- (e) The Cumulative Balancing Fee is added to the bill for the month in which the day is included.
- (f) A Cumulative Balancing Fee is in addition to Daily Balancing Fees payable under subsection 4 of Section XXII, and an additional Cumulative Balancing Fee is payable on each day where there is an Absolute Cumulative Variance.

## 6. Payback Provisions

- (a) Shippers may reduce Cumulative Variances through nomination of "Payback Quantities" which shall be nominated and authorized in accordance with these General Terms and Conditions.

TransCanada is not obligated to provide additional transportation capacity to deliver Payback Quantities.

- (b) If, on any day, a Shipper nominates a Payback Quantity under subsection (d), and TransCanada is unable to deliver or receive a quantity ("Minimum Payback Quantity") equal to the lesser of:
  - (i) Shipper's nominated Payback Quantities, or
  - (ii) the greater of:
    - (a) two percent of the Total Authorized Quantity,
    - (b) two percent of the Average Authorized Quantity, and
    - (c) 75 GJ

then Shipper is relieved from the Cumulative Balancing Fee by a quantity ("Payback Relief Quantity") equal to the difference between:

- (iii) the Minimum Payback Quantity, and
- (iv) The level of Payback Quantities which TransCanada was able to deliver or receive.

The relief from Cumulative Balancing Fees shall apply for each day until TransCanada delivers or receives the Payback Relief Quantity. No Payback Relief will be granted as a result of TransCanada not authorizing a transportation service.

- (c) If TransCanada determines, in its sole discretion, that its ability to meet firm obligations is at risk due to Shipper variances, and after curtailment of all discretionary transportation services that are hindering TransCanada's ability to meet its firm obligations, TransCanada may, without further notice, adjust Shipper's nominations for any day in order to reduce Shipper's Cumulative Variance to zero.

#### **7. Obligation to Balance Accounts**

Payments of balancing fees under this Section XXII do not give Shipper the right to receive or deliver unauthorized quantities, or incur Cumulative or Daily Variances, nor shall payment of the balancing fees be a substitute for other remedies available to TransCanada.

#### **8. Energy Imbalance Recovery**

- (a) Cumulative energy imbalances that result from energy in transit, accumulated fuel imbalances and imbalances held under other applicable accounts, shall be recovered in the following manner:
  - (i) on the 20th Day of each month, TransCanada shall advise Shipper in writing of all cumulative energy imbalances attributed to Shipper arising up to the end of the 19<sup>th</sup> Day of such month and carried forward or arising from previous months, provided however that such cumulative energy imbalances for export delivery points referred to in subsection 8(b) shall be the amount by which the cumulative energy imbalance at such points exceed 50 GJ;

- (ii) the cumulative energy imbalance reported to Shipper shall be aggregated at each applicable location from all of Shipper's Contracts, nomination groups and other applicable accounts;
- (iii) on or before the 3<sup>rd</sup> last Day of each month, Shipper may reduce the cumulative energy imbalances reported by TransCanada.
- (iv) The cumulative energy imbalance after giving effect to applicable offsetting transactions (the "Net Imbalance"), shall be determined on:
  - (A) the end of the 3<sup>rd</sup> last Day of such month if the cumulative energy imbalance is less than the cumulative energy imbalance on the 19<sup>th</sup> Day of such month; or
  - (B) the 19<sup>th</sup> Day of such month if the cumulative energy imbalance on the 3<sup>rd</sup> last Day of such month is greater than the energy balance on the 19<sup>th</sup> Day of such month.

The Net Imbalance shall be scheduled and recovered in equal amounts on each Day over the first 15 Days, or a lesser number of Days as mutually agreed to by Shipper and TransCanada, of next month (the "Recovery Period"). The amount of the Net Imbalance to be recovered each Day of the Recovery Period (the "Daily Imbalance Recovery") will be determined by TransCanada and verbally communicated to Shipper on the 2<sup>nd</sup> last Day of each month. Shipper shall nominate the Daily Imbalance Recovery on each Day of the Recovery Period as an "Imbalance Payback" under the Shipper account (nomination group) with the largest energy imbalance as determined by TransCanada based on the most recent monthly statements available.

- (vi) in nominating the Daily Imbalance Recovery, Shipper will ensure that all nominations remain in balance. Any nomination received from Shipper which does not include the required Daily Imbalance Recovery will, at TransCanada's sole discretion, be either rejected or forced to balance by TransCanada. TransCanada is authorized to curtail Shipper's gas supply and market, as necessary, to balance the nomination after accounting for the Daily Imbalance Recovery;
- (vii) where applicable, deliveries of the Daily Imbalance Recovery shall be the first deliveries made under the nomination on each Day of the Recovery Period; and

- (viii) any imbalance shall be deemed to have occurred and shall be held at the primary receipt point specified in the transportation service agreement.
- (b) Cumulative energy imbalances at export delivery points that result from rounding when converting between energy units used for daily scheduling purposes shall be subject to the following:
  - (i) Each Day Shipper shall be entitled to an energy imbalance of up to 5 GJ provided however, Shipper's cumulative energy imbalance at any time shall not exceed 50 GJ;
  - (ii) Shipper may reduce its cumulative energy imbalance on any Day by up to 10 GJ provided however, such reduction shall not result in the cumulative energy imbalance moving from a positive imbalance to a negative imbalance, or from a negative imbalance to a positive imbalance.

### **XXIII FINANCIAL ASSURANCES**

1. **Financial Assurance for Performance of Obligations:** TransCanada may request that Shipper (or any assignee) at any time from time to time prior to and during service, provide TransCanada with an irrevocable letter of credit or other assurance acceptable to TransCanada, in form and substance satisfactory to TransCanada and in an amount determined in accordance with subsection XXIII(3) hereof (the "Financial Assurance").
2. **Failure to Provide Financial Assurance:** TransCanada may withhold the provision of new service until TransCanada has received a requested Financial Assurance.

**Notwithstanding Section XVII**, if Shipper fails to provide a requested Financial Assurance to TransCanada within four (4) Banking Days of TransCanada's request, TransCanada may upon four (4) Banking Days written notice immediately suspend any or all service being or to be provided to Shipper provided however that any such suspension shall not relieve Shipper from any obligation to pay any rate, toll, charge or other amount payable to TransCanada. If at any time during such suspension Shipper provides such Financial Assurance to TransCanada, TransCanada shall within two (2) Banking Days recommence such suspended service.



**Notwithstanding Section XVII**, if Shipper fails to provide such Financial Assurance during such suspension, TransCanada may, in addition to any other remedy that may be available to it, upon four (4) Banking Days written notice to shipper immediately:

- a) Terminate any or all service being or to be provided to Shipper; and
- b) Declare any and all amounts payable now or in the future by Shipper to TransCanada for any and all service to be immediately due and payable as liquidated damages and not as a penalty.

Any notice provided by TransCanada to Shipper to withhold, suspend or terminate service pursuant to **sub-Section XXIII(2) hereof** shall be filed concurrently with the NEB.

3. **Amount of Financial Assurance:** The maximum amount of Financial Assurance TransCanada may request from a Shipper (or assignee) shall be as determined by TransCanada an amount equal to:

- a) for the provision of all gas transportation and related services, other than such services referred to in **sub-Section XXIII(3)(b)**, the aggregate of all rates, tolls, charges or other amounts payable to TransCanada for a period of seventy (70) days. Provided however, the amount of the Financial Assurance for all rates, tolls and charges other than demand charges shall be based on the daily average of the actual charges billed for service for the preceding twelve (12) month period with the initial forecast to be provided by Shipper; and
- b) for the provision of any gas transportation and related services where TransCanada determines it must construct facilities and Shipper has executed the Financial Assurances Agreement defined in Section 5.4(c)(ii) of the Transportation Access Procedure, the aggregate of all rates, tolls, charges or other amounts payable to TransCanada for a period of seventy (70) days plus one (1) month for each remaining year of the term of such service, up to a maximum of twelve (12) months total.

Nothing in this Section XXIII shall limit Shipper's right to request the NEB to issue an order, under sub-section 71(2) of the National Energy Board Act, requiring TransCanada to receive, transport

and deliver gas offered by Shipper for transmission, or to grant such other relief as Shipper may request under the circumstances, notwithstanding Shipper's default under this Section XXIII.

**XXIV TITLE TRANSFERS**

Shippers may request and TransCanada shall authorize Title Transfers subject to the following:

- a. TransCanada receives a nomination satisfactory to TransCanada from each Shipper that is a party to a Title Transfer;
- b. If TransCanada determines at any time that any title transfer account of a Shipper is out of balance, TransCanada may, without notice to the title transfer account holder, curtail transfers up to such amounts as TransCanada deems necessary to bring all affected title transfer accounts into balance. In so doing, TransCanada shall have no liability whatsoever to Shipper or any third party claiming through Shipper for any claims, actions or damages of any nature arising out of or in any way related to such curtailment

**XXV LIABILITY AND LIMITATION OF LIABILITY**

TransCanada's and Shipper's liability to each other is limited to direct damages only. In no event, other than in the case of gross negligence or wilful default, shall either TransCanada or Shipper be liable for loss of profits, consequential, incidental, punitive, or indirect damages, in tort, contract or otherwise.

**HV-97 SCHEDULE**

GENERAL TERMS and CONDITIONS

<b>Area</b>	<b>Heating Value</b>
	MJ/m3
CHIPPAWA	37.77
CORNWALL	37.69
EMERSON 1	37.68
EMERSON 2	37.68
EMPRESS	37.73
IROQUOIS-EXP.	37.68
NAPIERVILLE	37.68
NIAGARA FALLS	37.75
PARKWAY ENBRIDGE	37.69
PARKWAY UNION	37.68
PHILIPSBURG	37.68
ST-LAZARE	37.69
SABREVOIS	37.69
SPRUCE	37.68
ST. CLAIR	37.72
NCCA, UNION GAS LIMITED	37.69
CDA, ENBRIDGE GAS DISTRIBUTION INC.	37.69
CDA, UNION GAS LIMITED	37.68
EDA, UNION GAS LIMITED	37.68
EDA, GAZ METROPOLITAIN & CO. L.P.	37.69
EDA, KINGSTON PUBLIC UTILITIES COMM	37.68
EDA, ENBRIDGE GAS DISTRIBUTION INC.	37.69
MDA, CENTRA GAS MANITOBA INC	37.68
MDA, CENTRA TRANSMISSION HOLDINGS	37.68
MDA, GLADSTONE AUSTIN	37.68
NDA, UNION GAS LIMITED	37.68
NDA, GAZ METROPOLITAIN & CO. L.P.	37.68
NDA, TRANSCANADA POWER, L.P.	37.68
SSDA, CENTRA GAS MANITOBA INC	37.67
SSDA, TRANSGAS LTD.	37.66
SSMDA UNION GAS LIMITED.	37.71
SWDA, ENBRIDGE GAS DISTRIBUTION INC	37.68
SWDA, UNION GAS LIMITED	37.71
WDA, UNION GAS LIMITED	37.68
WDA, TRANSCANADA POWER, L.P.	37.67

## **Appendix C**

### **Tab 3**

Herbert LTFP Contract

**HERBERT LONG TERM FIXED PRICE SERVICE CONTRACT**

THIS HERBERT LONG TERM FIXED PRICE SERVICE CONTRACT, made as of the \_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

BETWEEN:

TRANSCANADA PIPELINES LIMITED  
a Canadian corporation  
("TransCanada")

OF THE FIRST PART

and

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
("Shipper")

OF THE SECOND PART

WITNESSES THAT:

WHEREAS TransCanada owns and operates a natural gas pipeline system extending from a point near the Alberta/Saskatchewan border where TransCanada's facilities interconnect with the facilities of NOVA Gas Transmission Ltd. easterly to the Province of Quebec with branch lines extending to various points on the Canada/United States of America International Border; and

WHEREAS Shipper has satisfied in full, or TransCanada has waived, each of the conditions precedent set out in Sections 2.2 (b) and (c) of TransCanada's Herbert Long Term Fixed Price Service Toll Schedule hereof (the "Herbert LTFP Toll Schedule"); and

WHEREAS Shipper has requested and TransCanada has agreed to transport quantities of gas, that are delivered by Shipper or Shipper's agent to TransCanada at the Receipt Point referred to in Section 3.1 hereof (the "Receipt Point"), to the Delivery Point referred to in Section 3.2 hereof (the "Delivery Point") pursuant to the terms and conditions of this Herbert LTFP Contract; and

WHEREAS the quantities of gas delivered hereunder by Shipper or Shipper's agent to TransCanada are to be removed from the province of production of such gas by Shipper and/or Shipper's suppliers and/or its (their) designated agent(s) pursuant to valid and subsisting permits and/or such other authorizations in respect thereof.

NOW THEREFORE THIS HERBERT LTFP CONTRACT WITNESSES THAT, in consideration of the covenants and agreement herein contained, the parties hereto covenant and agree as follows:

#### **ARTICLE I - COMMENCEMENT OF SERVICE**

1.1 The date of commencement of service hereunder (the "Date of Commencement") shall be the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

#### **ARTICLE II - GAS TO BE TRANSPORTED**

2.1 Subject to the provisions of this Herbert LTFP Contract, the Herbert LTFP Toll Schedule, the List of Tolls, and the General Terms and Conditions referred to in Section 7.1 hereof, TransCanada shall provide transportation service hereunder for Shipper in respect of a quantity of gas which, in any one day from the Date of Commencement until the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ ("the Herbert LTFP End Date"), and shall not exceed 58,000 GJ (the "Contract Demand").

#### **ARTICLE III - DELIVERY POINT(S) AND RECEIPT POINT(S)**

3.1 The Receipt Point hereunder is the point of interconnection between the pipeline facilities of TransCanada and NOVA Gas Transmission Ltd. which is located at Empress.

3.2 The Delivery Point hereunder is the point of interconnection between the pipeline facilities of TransCanada and Many Islands Pipelines (Canada) Limited which is located at Herbert.

#### **ARTICLE IV - TOLLS**

4.1 Shipper shall pay for all transportation service hereunder from the Date of Commencement in accordance with TransCanada's Herbert LTFP Toll Schedule, List of Tolls, and General Terms and Conditions set out in TransCanada's Transportation Tariff as the same may be amended or approved from time to time by the National Energy Board (the "NEB").

4.2 Shipper shall pay the following "Monthly Demand Toll": \$3.65/GJ/month (CDN\$).

4.3 Subject to NEB approval, the Monthly Demand Toll may be increased to account for changes in laws, rules or regulations, including any future surcharges developed to recover additional costs, provided that such future surcharges (or similar comparable means to recover such costs) are not applied exclusively to Herbert LTFP Service.

#### **ARTICLE V - CONVERSION AND TERMINATION.**

5.1 This Herbert LTFP Contract may be terminated by TransCanada upon three (3) months' written notice to Shipper, if at any time before the Herbert LTFP End Date, either:

- (a) The gas-fired power generation facility located near Swift Current, Saskatchewan is no longer commissioning or fully operating and in-service; or
- (b) TransGas maintains a Contract Demand of less than 80 TJ/d of FT Service to the TransGas SSDA.

5.2 TransCanada, in its sole discretion, may convert this Herbert LTFP Contract to an FT Contract with a receipt point of Empress and a delivery area that includes Herbert upon two (2) months' notice to Shipper for the remaining term of the Herbert LTFP Contract if the gas-fired power generation facility located near Swift Current, Saskatchewan ceases operation for a period exceeding five (5) consecutive months after the Date of Commencement. If TransCanada elects to convert the Herbert LTFP Contract to an FT Contract, then Shipper shall execute the applicable FT Contract.



**ARTICLE VI - NOTICES**

6.1 Any notice, request, demand, statement or bill (for the purpose of this paragraph, collectively referred to as "Notice") to or upon the respective parties hereto shall be in writing and shall be directed as follows:

**IN THE CASE OF TRANSCANADA: TransCanada PipeLines Limited**

- |                        |   |
|------------------------|---|
| (i) mailing address:   | P.O. Box 1000<br>Station M<br>Calgary, Alberta<br>T2P 4K5                             |
| (ii) delivery address: | TransCanada Tower<br>450 – 1 <sup>st</sup> Street S.W.<br>Calgary, Alberta<br>T2P 5H1 |
|                        | Attention: Director, Commercial Services<br>Telecopy: _____                           |
| (iii) nominations:     | Attention: Manager, Nominations & Allocations<br>Telecopy: _____                      |
| (iv) bills:            | Attention: Manager, Contracts, Billing & Credit<br>Telecopy: _____                    |
| (v) other matters:     | Attention: Director, Commercial Services<br>Telecopy: _____                           |

**IN THE CASE OF SHIPPER:**

- |                        |  |
|------------------------|--|
| (i) mailing address:   | _____<br>_____<br>_____                                      |
| (ii) delivery address: | _____<br>_____   |
| (iii) nominations:     | Attention: _____<br>Telecopy: _____                          |
| (iv) bills:            | Attention: _____<br>Telecopy: _____<br>E-mail address: _____ |
| (v) other matters:     | Attention: _____<br>Telecopy: _____                          |

Notice may be given by telecopier or other telecommunication device and any such Notice shall be deemed to be given four (4) hours after transmission. Notice may also be given by personal delivery or by courier and any such Notice shall be deemed to be given at the time of delivery. Any Notice may also be given by prepaid mail and any such Notice shall be deemed to be given four (4) days after mailing, Saturdays, Sundays and statutory holidays excepted. In the event regular mail service, courier service, telecopier or other telecommunication service shall be interrupted by a cause beyond the control of the parties hereto, then the party sending the Notice shall utilize any service that has not been so interrupted to deliver such Notice. Each party shall provide Notice to the other of any change of address for the purposes hereof. Any Notice may also be given by telephone followed immediately by personal delivery, courier, prepaid mail, telecopier or other telecommunication, and any Notice so given shall be deemed to be given as of the date and time of the telephone notice.

## **ARTICLE VII - MISCELLANEOUS PROVISIONS**

7.1 The Herbert LTFP Toll Schedule, the List of Tolls, and the General Terms and Conditions set out in TransCanada's Transportation Tariff as amended or approved from time to time by the NEB are all by reference made a part of this Contract and operations hereunder shall, in addition to the terms and conditions of this Contract, be subject to the provisions thereof. TransCanada shall notify Shipper at any time that TransCanada files with the NEB revisions to the Herbert LTFP Toll Schedule, the List of Tolls, and/or the General Terms and Conditions (the "Revisions") and shall provide Shipper with a copy of the Revisions.

7.2 The headings used throughout this Herbert LTFP Contract, the Herbert LTFP Toll Schedule, the List of Tolls, and the General Terms and Conditions are inserted for convenience of reference only and are not to be considered or taken into account in construing the terms or provisions thereof nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.

7.3 This Herbert LTFP Contract shall be construed and applied, and be subject to the laws of the Province of Alberta, and, when applicable, the laws of Canada, and shall be subject to the rules, regulations and orders of any regulatory or legislative authority having jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Herbert LTFP Contract as of the date first above written.

TransGas Limited

TransCanada PipeLines Limited

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_