

## RETOURNER LES SOUMISSIONS À :

Office national de l'énergie  
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## DEMANDE DE PROPOSITION

### Commentaires

Document contient des exigences Relatives à la sécurité

### Proposition à : Office national de l'énergie

Nous offrons par la présente de vendre à Sa Majesté la Reine du chef du Canada, aux conditions énoncées ou incluses par référence dans la présente et aux annexes ci-jointes, les biens, services et construction énumérés ici sur toute feuille ci-annexées, au(x) prix indiqué(s).

En apposant ma signature ci-après, j'atteste, au nom du soumissionnaire, que j'ai lu la demande de propositions (DP) en entier, y compris les documents incorporés par renvoi dans la DP et que :

1. le soumissionnaire considère qu'il a les compétences et que ses produits sont en mesure de satisfaire les exigences obligatoires décrites dans la demande de soumissions;
2. cette soumission est valide pour la période exigée dans la demande de soumissions ;
3. tous les renseignements figurant dans la soumission sont complets, véridiques et exacts; et
4. si un contrat est attribué au soumissionnaire, ce dernier se conformera à toutes les modalités énoncées dans les clauses concernant le contrat subséquent et comprises dans la demande de soumissions.

<b>Sujet</b>	
Services de reportage en cour	
<b>N° de l'invitation</b>	<b>Date</b>
84084-16-0175	2017-01-04
<b>L'invitation prend fin</b>	<b>Fuseau horaire</b>
à <b>02:00 PM – 14h00</b>	Heure normale des Rocheuses (HNR)
le 2017-01-19	
<b>F.A.B.</b>	
Usine: <input type="checkbox"/>	Destination: <input checked="" type="checkbox"/> Autre: <input type="checkbox"/>
<b>Adresser toute demande de renseignements à :</b>	
Jenny Gong	
Code regional et N° de téléphone	N° de télécopieur / courriel
	<b>Jenny.gong@neb-one.gc.ca</b>
<b>Destination – des biens, services et construction</b>	
Voir aux présentes	

**Instructions :** Voir aux présentes

<b>Livraison exigée</b>	<b>Livraison proposée</b>
Voir aux présentes	
<b>Raison sociale et adresse du fournisseur/de l'entrepreneur</b>	
N° de téléphone	
courriel	
<b>Nom et titre de la personne autorisée à signer au nom du fournisseur/de l'entrepreneur</b> (taper ou écrire en caractères d'imprimerie)	
<b>Signature</b>	<b>Date</b>

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## **PARTIE 1 – RENSEIGNEMENTS GÉNÉRAUX**

### **1.1 Introduction**

La demande de soumissions contient sept parties, ainsi que des pièces jointes et des annexes, et elle est divisée comme suit:

- Partie 1 Renseignements généraux : renferme une description générale du besoin;
- Partie 2 Instructions à l'intention des soumissionnaires : renferme les instructions, clauses et conditions relatives à la demande de soumissions;
- Partie 3 Instructions pour la préparation des soumissions : donne aux soumissionnaires les instructions pour préparer leur soumission;
- Partie 4 Procédures d'évaluation et méthode de sélection : décrit la façon selon laquelle se déroulera l'évaluation et présente les critères d'évaluation auxquels on doit répondre dans la soumission, ainsi que la méthode de sélection;
- Partie 5 Attestations et renseignements supplémentaires: comprend les attestations et les renseignements supplémentaires à fournir;
- Partie 6 Exigences relatives à la sécurité, exigences financières et autres exigences : comprend des exigences particulières auxquelles les soumissionnaires doivent répondre; et
- Partie 7 Clauses du contrat subséquent: contient les clauses et les conditions qui s'appliqueront à tout contrat subséquent.

Les annexes comprennent l'Énoncé des travaux, la Liste de vérification des exigences relatives à la sécurité, les instruments de paiement électronique, le Programme de contrats fédéraux pour l'équité en matière d'emploi – Attestation, le formulaire TPSGC-PWGSC 572 Autorisation de tâches de tâches et toute autre annexe.

### **1.2 Sommaire**

L'Office souhaite se prévaloir de services de sténographie judiciaire à Calgary, en Alberta, de même qu'à d'autres endroits sur le territoire canadien, « sur demande et selon les besoins ». L'entrepreneur ou le fournisseur de services de sténographie judiciaire doit être qualifié pour assurer la transcription officielle in extenso à la fois complète et fidèle des délibérations de l'Office ou de conférences connexes dans une des langues officielles. L'entrepreneur sera aussi tenu de fournir une version électronique de ces transcriptions ainsi que de multiples exemplaires imprimés et reliés dans les délais prescrits par l'Office.

Le contrat sera en vigueur à compter de la date de l'attribution pour deux ans avec une option d'un an.

Ce besoin comporte des exigences relatives à la sécurité. Pour de plus amples renseignements, consulter la Partie 6, Exigences relatives à la sécurité, exigences financières et autres exigences, et la Partie 7, Clauses du contrat subséquent. Pour de plus amples renseignements sur les enquêtes de sécurité sur le personnel et les organismes, les soumissionnaires devraient consulter le site Web du [Programme de sécurité industrielle \(PSI\)](http://ssi-iss.tpsgc-pwgsc.gc.ca/index-fra.html) de Travaux publics et Services gouvernementaux Canada (<http://ssi-iss.tpsgc-pwgsc.gc.ca/index-fra.html>).

Ce besoin est assujéti aux dispositions de l'Accord sur les marchés publics de de l'Accord sur le commerce intérieur (ACI).

Pour ce besoin, une préférence est accordée aux produits et(ou) aux services canadiens.

### 1.3 Compte rendu

Les soumissionnaires peuvent demander un compte rendu des résultats du processus de demande de soumissions. Les soumissionnaires devraient en faire la demande à l'autorité contractante dans les 15 jours ouvrables suivant la réception des résultats du processus de demande de soumissions. Le compte rendu peut être fourni par écrit, par téléphone ou en personne.

## PARTIE 2 – INSTRUCTIONS À L'INTENTION DES SOUMISSIONNAIRES

### 2.1 Instructions, clauses et conditions uniformisées

Toutes les instructions, clauses et conditions identifiées dans la demande de soumissions par un numéro, une date et un titre sont reproduites dans le [Guide des clauses et conditions uniformisées d'achat](https://achatsetventes.gc.ca/politiques-et-lignes-directrices/guide-des-clauses-et-conditions-uniformisees-d-achat) (<https://achatsetventes.gc.ca/politiques-et-lignes-directrices/guide-des-clauses-et-conditions-uniformisees-d-achat>) publié par Travaux publics et Services gouvernementaux Canada.

Les soumissionnaires qui présentent une soumission s'engagent à respecter les instructions, les clauses et les conditions de la demande de soumissions, et acceptent les clauses et les conditions du contrat subséquent.

Le document [2003](#), (2016-04-04) Instructions uniformisées – biens ou services - besoins concurrentiels, est incorporé par renvoi dans la demande de soumissions et en fait partie intégrante.

Le paragraphe 5.4 du document [2003](#), Instructions uniformisées - biens ou services - besoins concurrentiels, est modifié comme suit :

Supprimer : 60 jours  
Insérer : 180 jours

### 2.2 Présentation des soumissions

Les soumissions doivent être présentées uniquement au Module de réception des soumissions de Travaux publics et Services gouvernementaux Canada (TPSGC) au plus tard à la date, à l'heure et à l'endroit indiqués à la page 1 de la demande de soumissions.

### 2.3 Ancien fonctionnaire

Les contrats attribués à des anciens fonctionnaires qui touchent une pension ou qui ont reçu un paiement forfaitaire doivent résister à l'examen scrupuleux du public et constituer une dépense équitable des fonds publics. Afin de respecter les politiques et les directives du Conseil du Trésor sur les contrats attribués à des anciens fonctionnaires, les soumissionnaires doivent fournir l'information exigée ci-dessous avant l'attribution du contrat. Si la réponse aux questions et, s'il y a lieu les renseignements requis, n'ont pas été fournis par le temps où l'évaluation des soumissions est complétée, le Canada informera le soumissionnaire du délai à l'intérieur duquel l'information doit être fournie. Le défaut de se conformer à la demande du Canada et satisfaire à l'exigence dans le délai prescrit rendra la soumission non recevable.

### Définition

Aux fins de cette clause,

« *ancien fonctionnaire* » signifie tout ancien employé d'un ministère au sens de la [Loi sur la gestion des finances publiques](#), L.R., 1985, ch. F-11, un ancien membre des Forces armées canadiennes ou de la Gendarmerie royale du Canada. Un ancien fonctionnaire peut être :

- a. un individu;
- b. un individu qui s'est incorporé;
- c. une société de personnes constituée d'anciens fonctionnaires; ou
- d. une entreprise à propriétaire unique ou une entité dans laquelle la personne visée détient un intérêt important ou majoritaire.

« *période du paiement forfaitaire* » signifie la période mesurée en semaines de salaire à l'égard de laquelle un paiement a été fait pour faciliter la transition vers la retraite ou vers un autre emploi par suite de la mise en place des divers programmes visant à réduire la taille de la fonction publique. La période du paiement forfaitaire ne comprend pas la période visée par l'allocation de fin de services, qui se mesure de façon similaire.

« *pension* » signifie une pension ou une allocation annuelle versée en vertu de la [Loi sur la pension de la fonction publique](#) (LPFP), L.R., 1985, ch. P-36, et toute augmentation versée en vertu de la [Loi sur les prestations de retraite supplémentaires](#), L.R., 1985, ch. S-24, dans la mesure où elle touche la LPFP. La pension ne comprend pas les pensions payables conformément à la [Loi sur la pension de retraite des Forces canadiennes](#), L.R., 1985, ch. C-17, à la [Loi sur la continuation de la pension des services de défense](#), 1970, ch. D-3, à la [Loi sur la continuation des pensions de la Gendarmerie royale du Canada](#), 1970, ch. R-10, et à la Loi sur la pension de retraite de la Gendarmerie royale du Canada, L.R., 1985, ch. R-11, à la [Loi sur les allocations de retraite des parlementaires](#), L.R., 1985, ch. M-5, et à la partie de la pension versée conformément à la [Loi sur le Régime de pensions du Canada](#), L.R., 1985, ch. C-8.

### Ancien fonctionnaire touchant une pension

Selon les définitions ci-dessus, est-ce que le soumissionnaire est un ancien fonctionnaire touchant une pension? **Oui** (      ) **Non** (      )

Si oui, le soumissionnaire doit fournir l'information suivante pour tous les anciens fonctionnaires touchant une pension, le cas échéant :

- a. le nom de l'ancien fonctionnaire;
- b. la date de cessation d'emploi dans la fonction publique ou de la retraite.

En fournissant cette information, les soumissionnaires acceptent que le statut du soumissionnaire retenu, en tant qu'ancien fonctionnaire touchant une pension en vertu de la LPFP, soit publié dans les rapports de divulgation proactive des marchés, sur les sites Web des ministères, et ce conformément à l'[Avis sur la Politique des marchés : 2012-2](#) et les [Lignes directrices sur la divulgation des marchés](#).

### Directive sur le réaménagement des effectifs

Est-ce que le soumissionnaire est un ancien fonctionnaire qui a reçu un paiement forfaitaire en vertu de la Directive sur le réaménagement des effectifs? **Oui** (      ) **Non** (      )

Si oui, le soumissionnaire doit fournir l'information suivante :

- a. le nom de l'ancien fonctionnaire;
- b. les conditions de l'incitatif versé sous forme de paiement forfaitaire;
- c. la date de la cessation d'emploi;
- d. le montant du paiement forfaitaire;

- e. le taux de rémunération qui a servi au calcul du paiement forfaitaire;
- f. la période correspondant au paiement forfaitaire, incluant la date du début, d'achèvement et le nombre de semaines;
- g. nombre et montant (honoraires professionnels) des autres contrats assujettis aux conditions d'un programme de réaménagement des effectifs.

Pour tous les contrats attribués pendant la période du paiement forfaitaire, le montant total des honoraires qui peut être payé à un ancien fonctionnaire qui a reçu un paiement forfaitaire est limité à 5 000 \$, incluant les taxes applicables.

## **2.4 Demandes de renseignements – en période de soumission**

Toutes les demandes de renseignements doivent être présentées par écrit à l'autorité contractante au moins 7 jours civils avant la date de clôture des soumissions. Pour ce qui est des demandes de renseignements reçues après ce délai, il est possible qu'on ne puisse pas y répondre.

Les soumissionnaires devraient citer le plus fidèlement possible le numéro de l'article de la demande de soumissions auquel se rapporte la question et prendre soin d'énoncer chaque question de manière suffisamment détaillée pour que le Canada puisse y répondre avec exactitude. Les demandes de renseignements techniques qui ont un caractère exclusif doivent porter clairement la mention « exclusif » vis-à-vis de chaque article pertinent. Les éléments portant la mention « exclusif » feront l'objet d'une discrétion absolue, sauf dans les cas où le Canada considère que la demande de renseignements n'a pas un caractère exclusif. Dans ce cas, le Canada peut réviser les questions ou peut demander au soumissionnaire de le faire, afin d'en éliminer le caractère exclusif, et permettre la transmission des réponses à tous les soumissionnaires. Le Canada peut ne pas répondre aux demandes de renseignements dont la formulation ne permet pas de les diffuser à tous les soumissionnaires.

## **2.5 Lois applicables**

Tout contrat subséquent sera interprété et régi selon les lois en vigueur en Alberta, et les relations entre les parties seront déterminées par ces lois.

À leur discrétion, les soumissionnaires peuvent indiquer les lois applicables d'une province ou d'un territoire canadien de leur choix, sans que la validité de leur soumission ne soit mise en question, en supprimant le nom de la province ou du territoire canadien précisé et en insérant le nom de la province ou du territoire canadien de leur choix. Si aucun changement n'est indiqué, cela signifie que les soumissionnaires acceptent les lois applicables indiquées.

## **PARTIE 3 – INSTRUCTIONS POUR LA PRÉPARATION DES SOUMISSIONS**

### **3.1 Instructions pour la préparation des soumissions**

Le Canada demande que les soumissionnaires fournissent leur soumission en sections distinctes, comme suit :

- Section I : Soumission technique (1 copy papier, ou 1 copies électroniques)
- Section II : Soumission financière (1 copy papier, ou 1 copies électroniques)
- Section III : Attestations (1 copy papier, ou 1 copies électroniques)

Les prix doivent figurer dans la soumission financière seulement. Aucun prix ne doit être indiqué dans une autre section de la soumission.

Le Canada demande que les soumissionnaires suivent les instructions de présentation décrites ci-après pour préparer leur soumission :

- a) utiliser du papier de 8,5 po x 11 po (216 mm x 279 mm);
- b) utiliser un système de numérotation correspondant à celui de la demande de soumissions:

En avril 2006, le Canada a approuvé une politique exigeant que les ministères et organismes fédéraux prennent les mesures nécessaires pour incorporer les facteurs environnementaux dans le processus d'approvisionnement Politique d'achats écologiques (<http://www.tpsgc-pwgsc.gc.ca/ecologisation-greening/achats-procurement/politique-policy-fra.html>).

Pour aider le Canada à atteindre ses objectifs, les soumissionnaires devraient :

- 1) utiliser du papier de 8,5 po x 11 po (216 mm x 279 mm) contenant des fibres certifiées provenant d'un aménagement forestier durable et contenant au moins 30 % de matières recyclées; et
- 2) utiliser un format qui respecte l'environnement: impression noir et blanc, recto-verso/à double face, broché ou agrafé, sans reliure Cerlox, reliure à attaches ni reliure à anneaux.

### **Section I : Soumission technique**

Dans leur soumission technique, les soumissionnaires devraient démontrer leur compréhension des exigences contenues dans la demande de soumissions et expliquer comment ils répondront à ces exigences. Les soumissionnaires devraient démontrer leur de façon complète, concise et claire pour effectuer les travaux.

La soumission technique devrait traiter clairement et de manière suffisamment approfondie des points faisant l'objet des critères d'évaluation en fonction desquels la soumission sera évaluée. Il ne suffit pas de reprendre simplement les énoncés contenus dans la demande de soumissions. Afin de faciliter l'évaluation de la soumission, le Canada demande que les soumissionnaires reprennent les sujets dans l'ordre des critères d'évaluation, sous les mêmes rubriques. Pour éviter les recoupements, les soumissionnaires peuvent faire référence à différentes sections de leur soumission en indiquant le numéro de l'alinéa et de la page où le sujet visé est déjà traité.

### **Section II : Soumission financière**

**3.1.1** Les soumissionnaires doivent présenter leur soumission financière en conformité avec la base de paiement reproduite à l'annexe « B ». Le montant total des taxes applicables doit être indiqué séparément.

#### **3.1.2 Paiement électronique de factures – soumission**

Si vous êtes disposés à accepter le paiement de factures au moyen d'instruments de paiement électronique, compléter l'annexe « F » Instruments de paiement électronique, afin d'identifier lesquels sont acceptés.

Si l'annexe « F » Instruments de paiement électronique n'a pas été complétée, il sera alors convenu que le paiement de factures au moyen d'instruments de paiement électronique ne sera pas accepté.

L'acceptation des instruments de paiement électronique ne sera pas considérée comme un critère d'évaluation.

#### **3.1.3 Fluctuation du taux de change**

C3011T (2013-11-06), Fluctuation du taux de change



### **Section III : Attestations**

Les soumissionnaires doivent présenter les attestations et les renseignements supplémentaires exigés à la Partie 5.

## **PARTIE 4 – PROCÉDURES D'ÉVALUATION ET MÉTHODE DE SÉLECTION**

### **4.1 Procédures d'évaluation**

- a) Les soumissions seront évaluées par rapport à l'ensemble des exigences de la demande de soumissions, incluant les critères d'évaluation techniques et financiers.
- b) Une équipe d'évaluation composée de représentants du Canada évaluera les soumissions.
- c) L'équipe d'évaluation devra d'abord déterminer si deux soumissions ou plus sont accompagnées d'une attestation valide de contenu canadien. Si c'est le cas, seulement les soumissions accompagnées d'une attestation valide seront évaluées selon le processus d'évaluation, sinon toutes les soumissions reçues seront évaluées. Si des soumissions accompagnées d'une attestation valide sont déclarées non recevables, ou sont retirées, et qu'il reste moins de deux soumissions recevables accompagnées d'une attestation valide, l'équipe poursuivra l'évaluation des soumissions accompagnées d'une attestation valide. Si toutes les soumissions accompagnées d'une attestation valide sont déclarées non recevables, ou sont retirées, alors toutes les autres soumissions reçues seront évaluées.

#### **4.1.1 Évaluation technique**

##### **4.1.1.1. Critères techniques obligatoires** (première étape)

Reportez-vous à l'annexe G, Exigences Relatives À l'évaluation Technique

##### **4.1.1.2. Critères techniques cotés** (deuxième étape)

Reportez-vous à l'annexe G, Exigences Relatives À l'évaluation Technique

#### **4.1.2 Évaluation financière** (troisième étape)

##### **4.1.2.1 Critères financière obligatoires**

On calculera le prix évalué total de la manière décrite ci-après. Les quantités mentionnées dans le scénario ne servent qu'à l'évaluation et ne feront pas partie de tout contrat subséquent.

L'évaluation des soumissions sera fondée sur le scénario qui suit et le prix proposé à l'annexe B – Base de paiement.

### **Scénario**

Le 31 mars 2016, l'Office national de l'énergie envoie à l'entrepreneur une autorisation de tâches portant sur des services de sténographie judiciaire.

L'audience doit avoir lieu du 3 au 7 octobre (5 jours ouvrables) à Edmonton, en Alberta. On estime à 40 000 le nombre de mots à transcrire quotidiennement pendant cette audience tenue en anglais.

Au cours de cette période, une partie demande à recevoir de l'Office un CD ROM pour chaque journée d'audience.

Le 5 octobre, l'entrepreneur est avisé par l'Office que l'audience se terminera le 6 octobre.

Pendant la période de délibérations, l'audience est suspendue à deux reprises et dans chacun de ces cas il y a eu moins de deux heures de travail.

### **Calculs**

- i. 40 000 mots x 5 jours ouvrables x prix proposé à l'alinéa 1 PLUS
- ii. 5 jours ouvrables x prix proposé à l'alinéa 2 pour les enregistrements sonores sur CD ROM PLUS
- iii. frais d'annulation, selon l'option choisie par le soumissionnaire à l'alinéa 6 PLUS
- iv. frais de suspension, selon l'option choisie par le soumissionnaire à l'alinéa 7

**Ce calcul donne le prix total évalué pour la période d'application du contrat = i + ii + iii + iv**

Ce calcul s'appliquera à chaque année pour laquelle un prix est établi et on fera le total de toutes les périodes afin de déterminer le prix cumulatif total évalué pour la proposition.

#### **4.1.2.1 Clause du Guide des CCUA**

[A0222T \(2014-06-26\)](#), Évaluation du prix - soumissionnaires établis au Canada et à l'étranger

### **4.2 Méthode de sélection**

**4.2.1** Pour être déclarée recevable, une soumission doit:

- a. respecter toutes les exigences de la demande de soumissions; et
  - b. satisfaire à tous les critères obligatoires; et
  - c. obtenir le nombre minimal de points requis pour l'évaluation technique pour le critère; et
  - d. obtenir le nombre minimal de 114 points exigés pour l'ensemble des critères d'évaluation techniques cotés.
- L'échelle de cotation compte 200 points.

**4.2.2** Les soumissions qui ne répondent pas aux exigences a) ou b) ou c) ou d) seront déclarées non recevables.

**4.2.3** La sélection sera faite en fonction du meilleur résultat global sur le plan du mérite technique et du prix. Une proportion de 60% mérite technique sera accordée au mérite technique et une proportion de 40% pour le prix sera accordée au prix.

**4.2.4** Afin de déterminer la note pour le mérite technique, la note technique globale de chaque soumission recevable sera calculée comme suit : le nombre total de points obtenus sera divisé par le nombre total de points pouvant être accordés, puis multiplié par 60%

**4.2.5** Afin de déterminer la note pour le prix, chaque soumission recevable sera évaluée proportionnellement au prix évalué le plus bas et selon le ratio de 40%.

**4.2.6** Pour chaque soumission recevable, la cotation du mérite technique et la cotation du prix seront ajoutées pour déterminer la note combinée.

**4.2.7** La soumission recevable ayant obtenu le plus de points ou celle ayant le prix évalué le plus bas ne sera pas nécessairement choisie. La soumission recevable qui obtiendra la note combinée la plus élevée pour le mérite technique et le prix sera recommandée pour l'attribution du contrat.

Le tableau ci-dessous présente un exemple où les trois soumissions sont recevables et où la sélection de l'entrepreneur se fait en fonction d'un ratio de 60/40 à l'égard du mérite technique et du

prix, respectivement.] Le nombre total de points pouvant être accordé est de 135, et le prix évalué le plus bas est de 45 000,00 \$ (45).

**Méthode de sélection - Note combinée la plus haute sur le plan du mérite technique (60%) et du prix (40%)**

		Soumissionnaire 1	Soumissionnaire 2	Soumissionnaire 3
<b>Note technique globale</b>		115/135	89/135	92/135
<b>Prix évalué de la soumission</b>		55 000,00 \$	50 000,00 \$	45 000,00 \$
<b>Calculs</b>	<b>Note pour le mérite technique</b>	$115/135 \times 60 = 51.11$	$89/135 \times 60 = 39.56$	$92/135 \times 60 = 40.89$
	<b>Note pour le prix</b>	$45/55 \times 40 = 32.73$	$45/50 \times 40 = 36.00$	$45/45 \times 40 = 40.00$
<b>Note combinée</b>		83,84	75,56	80,89
<b>Évaluation globale</b>		1 <sup>er</sup>	3 <sup>e</sup>	2 <sup>e</sup>

**PARTIE 5 – ATTESTATIONS ET RENSEIGNEMENTS SUPPLÉMENTAIRES**

Les soumissionnaires doivent fournir les attestations et les renseignements supplémentaires exigés pour qu'un contrat leur soit attribué.

Les attestations que les soumissionnaires remettent au Canada peuvent faire l'objet d'une vérification à tout moment par le Canada. À moins d'indication contraire, le Canada déclarera une soumission non recevable, ou à un manquement de la part de l'entrepreneur s'il est établi qu'une attestation du soumissionnaire est fautive, sciemment ou non, que ce soit pendant la période d'évaluation des soumissions, ou pendant la durée du contrat.

L'autorité contractante aura le droit de demander des renseignements supplémentaires pour vérifier les attestations du soumissionnaire. À défaut de répondre et de coopérer à toute demande ou exigence imposée par l'autorité contractante, la soumission sera déclarée non recevable, ou constituera un manquement aux termes du contrat.

**5.1 Attestations exigées avec la soumission**

Les soumissionnaires doivent fournir les attestations suivantes dûment remplies avec leur soumission.

**5.1.1 Dispositions relatives à l'intégrité - déclaration de condamnation à une infraction**

Conformément à la *Politique d'inadmissibilité et de suspension* (<http://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-fra.html>), le soumissionnaire doit présenter avec sa soumission la documentation exigée, s'il y a lieu, afin que sa soumission ne soit pas rejetée du processus d'approvisionnement.

**5.1.2 Attestations additionnelles requises avec la soumission**

**5.1.2.1 Attestation du contenu canadien**

**5.1.2.1.1** Clause du *Guide des CUA* [A3050T](#) (2014-11-27), Définition du contenu canadien.

### 5.1.2.1.2 Cet achat est conditionnellement limité aux services canadiens.

Sous réserve des procédures d'évaluation contenues dans la demande de soumissions, les soumissionnaires reconnaissent que seulement les soumissions accompagnées d'une attestation à l'effet que le service offert est un service canadien, tel qu'il est défini dans la clause A3050T, peuvent être considérées.

Le défaut de fournir cette attestation remplie avec la soumission aura pour conséquence que le service offert sera traité comme un service non-canadien.

Le soumissionnaire atteste que :

( ) le service offert est un service canadien tel qu'il est défini au paragraphe 2 de la clause A3050T.

## 5.2 Attestations préalables à l'attribution du contrat et renseignements supplémentaires

Les attestations et les renseignements supplémentaires énumérés ci-dessous devraient être remplis et fournis avec la soumission mais ils peuvent être fournis plus tard. Si l'une de ces attestations ou renseignements supplémentaires ne sont pas remplis et fournis tel que demandé, l'autorité contractante informera le soumissionnaire du délai à l'intérieur duquel les renseignements doivent être fournis. À défaut de fournir les attestations ou les renseignements supplémentaires énumérés ci-dessous dans le délai prévu, la soumission sera déclarée non recevable.

### 5.2.1 Dispositions relatives à l'intégrité – documentation exigée

Conformément à la [Politique d'inadmissibilité et de suspension](http://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-fra.html) (<http://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-fra.html>), le soumissionnaire doit présenter la documentation exigée, s'il y a lieu, afin que sa soumission ne soit pas rejetée du processus d'approvisionnement.

### 5.2.2 Programme de contrats fédéraux pour l'équité en matière d'emploi - Attestation de soumission

En présentant une soumission, le soumissionnaire atteste que le soumissionnaire, et tout membre de la coentreprise si le soumissionnaire est une coentreprise, n'est pas nommé dans la liste des « soumissionnaires à admissibilité limitée du PCF » du Programme de contrats fédéraux (PCF) pour l'équité en matière d'emploi disponible au bas de la page du site Web [d'Emploi et Développement social Canada \(EDSC\) – Travail](http://www.edsc.gc.ca/fr/emplois/milieu_travail/droits_personne/equite_emploi/programme_contrats_federaux.page?&_ga=1.152490553.1032032304.1454004848) ([http://www.edsc.gc.ca/fr/emplois/milieu\\_travail/droits\\_personne/equite\\_emploi/programme\\_contrats\\_federaux.page?&\\_ga=1.152490553.1032032304.1454004848](http://www.edsc.gc.ca/fr/emplois/milieu_travail/droits_personne/equite_emploi/programme_contrats_federaux.page?&_ga=1.152490553.1032032304.1454004848)).

Le Canada aura le droit de déclarer une soumission non recevable si le soumissionnaire, ou tout membre de la coentreprise si le soumissionnaire est une coentreprise, figure dans la liste des « soumissionnaires à admissibilité limitée du PCF » au moment de l'attribution du contrat.

### 5.2.3 Attestations additionnelles préalables à l'attribution du contrat

#### 5.2.3.2 Statut et disponibilité du personnel

L'offrant atteste que, s'il obtient une offre à commandes découlant de la demande d'offres à commandes, chaque individu proposé dans son offre sera disponible pour exécuter les travaux dans le cadre d'une commande subséquente à l'offre à commandes, tel qu'exigé par le représentant du Canada, au moment indiqué dans la commande ou convenue avec ce dernier. Si pour des raisons hors de son contrôle, l'offrant est incapable de fournir les services d'un individu identifié dans son offre, l'offrant peut proposer un remplaçant avec des qualités et une expérience similaire. L'offrant doit aviser le responsable de l'offre à commandes de la raison pour le remplacement et fournir le nom, les qualités et l'expérience du remplaçant proposé. Pour les fins de cette clause, seule les raisons suivantes seront considérées comme

étant hors du contrôle de l'offrant : la mort, la maladie, le congé de maternité et parental, la retraite, la démission, le congédiement justifié ou la résiliation par manquement d'une entente.

Si l'offrant a proposé un individu qui n'est pas un employé de l'offrant, l'offrant atteste qu'il a la permission de l'individu d'offrir ses services pour l'exécution des travaux et de soumettre son curriculum vitae au Canada. L'offrant doit, sur demande du responsable de l'offre à commandes, fournir une confirmation écrite, signée par l'individu, de la permission donnée à l'offrant ainsi que de sa disponibilité. Le défaut de répondre à la demande pourrait avoir pour conséquence que l'offre soit déclarée non recevable.

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

## **PARTIE 6 – EXIGENCES RELATIVES À LA SÉCURITÉ, EXIGENCES FINANCIÈRES ET AUTRES EXIGENCES**

### **6.1 Exigences relatives à la sécurité**

6.1.1. Avant l'attribution d'un contrat, les conditions suivantes doivent être respectées :

- a) le soumissionnaire doit détenir une attestation de sécurité d'organisme valable tel qu'indiqué à la Partie 7 – Clauses du contrat subséquent;
- b) les individus proposés par le soumissionnaire et qui doivent avoir accès à des renseignements ou à des biens de nature protégée ou classifiée ou à des établissements de travail dont l'accès est réglementé doivent posséder une attestation de sécurité tel qu'indiqué à la Partie 7 – Clauses du contrat subséquent;
- c) le soumissionnaire doit fournir le nom de tous les individus qui devront avoir accès à des renseignements ou à des biens de nature protégée ou classifiée ou à des établissements de travail dont l'accès est réglementé;

6.1.2. On rappelle aux soumissionnaires d'obtenir rapidement la cote de sécurité requise. La décision de retarder l'attribution du contrat, pour permettre au soumissionnaire retenu d'obtenir la cote de sécurité requise, demeure à l'entière discrétion de l'autorité contractante.

6.1.3. Pour de plus amples renseignements sur les exigences relatives à la sécurité, les soumissionnaires devraient consulter le site Web du [Programme de sécurité industrielle \(PSI\)](http://ssi-iss.tpsgc-pwgsc.gc.ca/index-fra.html) de Travaux publics et Services gouvernementaux Canada (<http://ssi-iss.tpsgc-pwgsc.gc.ca/index-fra.html>).

## **PARTIE 7 – CLAUSES DU CONTRAT SUBSÉQUENT**

Les clauses et conditions suivantes s'appliquent à tout contrat subséquent découlant de la demande de soumissions et en font partie intégrante.

### **7.1 Énoncé des travaux**

L'entrepreneur doit exécuter les travaux conformément à l'énoncé des travaux qui se trouve à l'annexe « A »

## 7.1.2 Autorisation de tâches

La totalité ou une partie des travaux du contrat seront réalisés sur demande, au moyen d'une autorisation de tâches. Les travaux décrits dans l'autorisation de tâches doivent être conformes à la portée du contrat.

### 7.1.2.1 Processus d'autorisation de tâches

#### Autorisation de tâches

La totalité ou une partie des travaux du contrat seront réalisés sur demande, au moyen d'une autorisation de tâches (AT). Les travaux décrits dans l'AT doivent être conformes à la portée du contrat.

#### Processus d'autorisation des tâches :

**7.1.2.1.1** Le chargé de projet fournira à l'entrepreneur une description des tâches au moyen du Formulaire d'autorisation des tâches pour les clients autres que le MDN, *ou encore* le formulaire « Autorisation de tâches » de l'annexe E.

**7.1.2.1.2** L'AT comprendra les détails des activités à exécuter, une description des produits à livrer et un calendrier indiquant les dates d'achèvement des activités principales ou les dates de livraison des produits livrables. L'AT comprendra également les bases et les méthodes de paiement applicables, comme le précise le contrat.

**7.1.2.1.3** Dans les 5 jours civils suivant la réception de l'AT, l'entrepreneur doit fournir au chargé de projet le coût total estimatif proposé pour l'exécution des tâches et une ventilation de ce coût, établie conformément à la Base de paiement du contrat.

**7.1.2.1.4** L'entrepreneur ne doit pas commencer les travaux avant la réception de l'AT autorisée par chargé de projet. L'entrepreneur reconnaît que avant la réception d'une AT le travail effectué sera à ses propres risques.

### 7.1.2.2 Rapports d'utilisation périodiques – contrats avec autorisations de tâches

L'entrepreneur doit compiler et tenir à jour des données sur les services fournis au gouvernement fédéral, conformément à l'autorisation de tâches approuvée émise dans le cadre du contrat.

L'entrepreneur doit fournir ces données conformément aux exigences d'établissement de rapports précisées ci-dessous ou dans l'annexe D. Si certaines données ne sont pas disponibles, la raison doit en être indiquée. Si aucun service n'a été fourni pendant une période donnée, l'entrepreneur doit soumettre un rapport portant la mention « néant ».

Les données doivent être présentées tous les trimestres à l'autorité contractante.

Voici la répartition des trimestres :

premier trimestre : du 1er avril au 30 juin;

deuxième trimestre : du 1er juillet au 30 septembre;

troisième trimestre : du 1er octobre au 31 décembre;

quatrième trimestre : du 1er janvier au 31 mars.

Les données doivent être présentées à l'autorité contractante dans les 15 jours civils suivant la fin de la période de référence.

## Exigence en matière de rapport - Explications

Il faut tenir à jour un dossier détaillé de toutes les tâches approuvées pour chaque contrat avec une autorisation de tâches (AT). Le dossier doit comprendre:

### Pour chaque AT autorisée:

- i. le numéro de la tâche autorisée ou le numéro de révision de la tâche;
- ii. le titre ou une courte description de chaque tâche autorisée;
- iii. le coût estimatif total précisé dans l'AT autorisée de chaque tâche, excluant les taxes applicables;
- iv. le montant total, excluant les taxes applicables, dépensé jusqu'à maintenant pour chaque AT autorisée;
- v. dates de début et de fin de chaque AT autorisée;
- vi. l'état actuel de chaque AT autorisée, (s'il y a lieu).

### Pour toutes les AT autorisées:

- i. Le montant (excluant les taxes applicables) précisé dans le contrat (selon la dernière modification, s'il y a lieu) de la responsabilité totale du Canada envers l'entrepreneur pour toutes les AT autorisées;
- ii. le montant total, excluant les taxes applicables, dépensé jusqu'à présent pour toutes les AT autorisées.

## 7.2 Clauses et conditions uniformisées

Toutes les clauses et conditions identifiées dans le contrat par un numéro, une date et un titre sont reproduites dans le [Guide des clauses et conditions uniformisées d'achat](https://achatsetventes.gc.ca/politiques-et-lignes-directrices/guide-des-clauses-et-conditions-uniformisees-d-achat) (<https://achatsetventes.gc.ca/politiques-et-lignes-directrices/guide-des-clauses-et-conditions-uniformisees-d-achat>) publié par Travaux publics et Services gouvernementaux Canada.

### 7.2.1 Conditions générales

[2035 \(2016-04-04\)](#), Conditions générales - besoins plus complexes de services, s'appliquent au contrat et en font partie intégrante.

## 7.3 Exigences relatives à la sécurité

**7.3.1** Les exigences relatives à la sécurité suivantes (LVERS et clauses connexes, tel que prévu par le PSI) s'appliquent et font partie intégrante du contrat.

**7.3.1.1.** L'entrepreneur ou l'offrant doit détenir en permanence, pendant l'exécution du contrat ou de l'offre à commandes ou de l'arrangement en matière d'approvisionnement, une attestation de vérification d'organisation désignée (VOD) en vigueur, délivrée par la Direction de la sécurité industrielle canadienne (DSIC) de Travaux publics et Services gouvernementaux Canada (TPSGC).

**7.3.1.2.** Les membres du personnel de l'entrepreneur ou de l'offrant devant avoir accès à des établissements de travail dont l'accès est réglementé doivent TOUS détenir une cote de **FIABILITÉ** en vigueur, délivrée ou approuvée par la DSIC de TPSGC, ou d'autres ministères du gouvernement canadien

**7.3.1.3.** L'entrepreneur NE DOIT PAS utiliser ses propres systèmes informatiques pour traiter, produire ou stocker électroniquement des renseignements ou des données et(ou) de production au niveau **PROTÉGÉ** tant que la DSIC, TPSGC, ou ONE ne lui en aura pas donné l'autorisation par écrit. Lorsque cette autorisation aura été délivrée, ces tâches pourront être exécutées jusqu'au niveau **PROTÉGÉ B**.

**7.3.1.4.** Les contrats de sous-traitance comportant des exigences relatives à la sécurité NE doivent PAS être attribués sans l'autorisation écrite préalable de la DSIC de TPSGC, or ONE.

**7.3.1.5.** L'entrepreneur ou l'offrant doit se conformer aux dispositions des documents suivants :

- a). de la Liste de vérification des exigences relatives à la sécurité et directive de sécurité (s'il y a lieu), reproduite ci-joint à l'Annexe C;
- b). le Manuel de la sécurité industrielle (dernière édition).

## **7.4 Durée du contrat**

### **7.4.1 Période du contrat**

La période du contrat sera de deux (2) an à partir de la date d'attribution du contrat.

### **7.4.2 Option de prolongation du contrat**

L'entrepreneur accorde au Canada l'option irrévocable de prolonger la durée du contrat pour au plus d'un (1) période supplémentaire, selon les mêmes conditions. L'entrepreneur accepte que pendant la période prolongée du contrat, il sera payé conformément aux dispositions applicables prévues à la Base de paiement.

Le Canada peut exercer cette option à n'importe quel moment, en envoyant un avis écrit à l'entrepreneur au moins 30 jours civils avant la date d'expiration du contrat. Cette option ne pourra être exercée que par l'autorité contractante et sera confirmée, pour des raisons administratives seulement, par une modification au contrat.

## **7.5 Responsables**

### **7.5.1 Autorité contractante**

L'autorité contractante pour le contrat est:

Jenny Gong  
Services de gestion  
Office national de l'énergie |  
517, Dixième Avenue S.-O., bureau 210  
Calgary, AB Canada T2R 0A8

Téléphone : 403-470-1748  
Télécopieur : 403-292-5503  
Courriel : [jenny.gong@neb-one.gc.ca](mailto:jenny.gong@neb-one.gc.ca)

L'autorité contractante est responsable de la gestion du contrat, et toute modification doit être autorisée par écrit par l'autorité contractante. L'entrepreneur ne doit pas effectuer de travaux dépassant la portée du contrat ou des travaux qui n'y sont pas prévus, suite à des demandes ou instructions verbales ou écrites de toute personne autre que l'autorité contractante.

### **7.5.2 Chargé de projet**

Le chargé de projet pour le contrat est : (TBD)

Le chargé de projet représente le ministère ou l'organisme pour lequel les travaux sont exécutés en vertu du contrat. Il est responsable de toutes les questions liées au contenu technique des travaux prévus dans le contrat. On peut discuter des questions techniques avec le chargé de projet; cependant, celui-ci ne peut pas autoriser les changements à apporter à l'énoncé des travaux. De tels changements peuvent être effectués uniquement au moyen d'une modification au contrat émise par l'autorité contractante.



### 7.5.3 Représentant de l'entrepreneur

Nom : \_\_\_\_\_

Titre : \_\_\_\_\_

Organisation : \_\_\_\_\_

Adresse : \_\_\_\_\_

Téléphone : \_\_\_\_-\_\_\_\_-\_\_\_\_\_

Télécopieur : \_\_\_\_-\_\_\_\_-\_\_\_\_\_

Courriel : \_\_\_\_\_

### 7.6 Divulgence proactive de marchés conclus avec d'anciens fonctionnaires

En fournissant de l'information sur son statut en tant qu'ancien fonctionnaire touchant une pension en vertu de la *Loi sur la pension de la fonction publique* (LPFP), l'entrepreneur a accepté que cette information soit publiée sur les sites Web des ministères, dans le cadre des rapports de divulgation proactive des marchés, et ce, conformément à l'Avis sur la Politique des marchés : 2012-2 du Secrétariat du Conseil du Trésor du Canada.

### 7.7 Paiement

#### 7.7.1 Base de paiement - Limitation des dépenses - Autorisations de tâches

L'entrepreneur sera remboursé pour les coûts qu'il a engagés raisonnablement et convenablement dans l'exécution des travaux décrits dans l'autorisation de tâches (AT) approuvée, comme ils ont été déterminés conformément à la base de paiement l'annexe B, jusqu'à la limite des dépenses indiquée dans l'AT approuvée.

La responsabilité du Canada envers l'entrepreneur en vertu de l'AT approuvée ne doit pas dépasser la limitation des dépenses indiquée dans l'AT approuvée. Les droits de douane sont inclus et les taxes applicables sont en sus.

Aucune augmentation de la responsabilité totale du Canada ou du prix des travaux précisés dans toute AT approuvée découlant de tout changement à la conception, ou de toute modification ou interprétation des travaux, ne sera autorisée ou payée à l'entrepreneur, à moins que ces changements à la conception, ces modifications ou ces interprétations n'aient été approuvés, par écrit, par l'autorité contractante avant d'être intégrés aux travaux.

#### 7.7.2 Limite des dépenses - Total cumulatif de toutes les autorisations de tâches

**7.7.2.1** La responsabilité totale du Canada envers l'entrepreneur dans le cadre du contrat pour toutes les autorisations de tâches autorisées, y compris toutes révisions, ne doit pas dépasser la somme de TBD \$. Les droits de douane sont inclus et les taxes applicables sont en sus.

**7.7.2.2** Aucune augmentation de la responsabilité totale du Canada ne sera autorisée ou payée à l'entrepreneur, à moins qu'une augmentation ait été approuvée, par écrit, par l'autorité contractante.

**7.7.2.3** L'entrepreneur doit informer, par écrit, l'autorité contractante concernant la suffisance de cette somme :

- a. lorsque 75 p. 100 de la somme est engagée, ou
- b. quatre (4) mois avant la date d'expiration du contrat, ou

- c. dès que l'entrepreneur juge que la somme est insuffisante pour l'achèvement des travaux requis dans le cadre des autorisations de tâches, y compris toutes révisions, selon la première de ces conditions à se présenter.

**7.7.2.4** Lorsqu'il informe l'autorité contractante que les fonds du contrat sont insuffisants, l'entrepreneur doit lui fournir par écrit une estimation des fonds additionnels requis. La présentation de cette information par l'entrepreneur n'augmente pas la

### **7.7.3 Paiement unique**

Le Canada paiera l'entrepreneur lorsque les travaux seront complétés et livrés conformément aux dispositions de paiement du contrat si :

- a. une facture exacte et complète ainsi que tout autre document exigé par le contrat ont été soumis conformément aux instructions de facturation prévues au contrat;
- b. tous ces documents ont été vérifiés par le Canada;
- c. les travaux livrés ont été acceptés par le Canada.

### **7.7.4 Clauses du Guide des CUA**

C0705C (2010-01-11), Vérification discrétionnaire des comptes  
C2000C (2007-11-30), Taxes - entrepreneur établi à l'étranger  
C2604C (2013-04-25), Droits de douane, taxes d'accise et taxes applicables - non résident

### **7.7.5 Paiement électronique de factures – contrat**

L'entrepreneur accepte d'être payé au moyen de l'un des instruments de paiement électronique suivants :

- a. Carte d'achat Visa ;
- b. Carte d'achat MasterCard ;
- c. Dépôt direct (national et international) ;
- d. Échange de données informatisées (EDI) ;
- e. Virement télégraphique (international seulement) ;
- f. Système de transfert de paiements de grande valeur (plus de 25 M\$)

## **7.8 Instructions relatives à la facturation**

**7.8.1** L'entrepreneur doit soumettre ses factures conformément à l'article intitulé « Présentation des factures » des conditions générales. Les factures ne doivent pas être soumises avant que tous les travaux identifiés sur la facture soient complétés.

Chaque facture doit être appuyée par:

- a. Numéro d'autorisation de tâche, emplacement, horaire d'audience
- b. Une copie des factures, des reçus de toutes les dépenses de voyage et de subsistance

**7.8.2** Les factures doivent être distribuées comme suit :

- a. L'original et un (1) exemplaire doivent être envoyés à l'adresse qui apparaît à la page 1 du contrat pour attestation et paiement.

## **7.9 Attestations et renseignements supplémentaires**

### **7.9.1 Conformité**

À moins d'indication contraire, le respect continu des attestations fournies par l'entrepreneur avec sa soumission ou préalablement à l'attribution du contrat, ainsi que la coopération constante quant aux renseignements supplémentaires, sont des conditions du contrat et leur non-respect constituera un

manquement de la part de l'entrepreneur. Les attestations pourront faire l'objet de vérifications par le Canada pendant toute la durée du contrat.

### 7.9.2 Programme de contrats fédéraux pour l'équité en matière d'emploi - Manquement de la part de l'entrepreneur

Lorsqu'un Accord pour la mise en oeuvre de l'équité en matière d'emploi a été conclu avec Emploi et Développement social Canada (EDSC) – Travail, l'entrepreneur reconnaît et s'engage, à ce que cet accord demeure valide pendant toute la durée du contrat. Si l'Accord pour la mise en oeuvre de l'équité en matière d'emploi devient invalide, le nom de l'entrepreneur sera ajouté à la liste des « [soumissionnaires à admissibilité limitée du PCF](#) ». L'imposition d'une telle sanction par EDSC fera en sorte que l'entrepreneur sera considéré non conforme aux modalités du contrat.

### 7.9.3 Clauses du Guide des CCUA

A3060C (2008-05-12) Attestation du contenu canadien

### 7.10 Lois applicables

Le contrat doit être interprété et régi selon les lois en vigueur en Alberta et les relations entre les parties seront déterminées par ces lois.

### 7.11 Ordre de priorité des documents

En cas d'incompatibilité entre le libellé des textes énumérés dans la liste, c'est le libellé du document qui apparaît en premier sur la liste qui l'emporte sur celui de tout autre document qui figure plus bas sur la liste.

- a) les articles de la convention;
- b) les conditions générales – 2035 (2016-04-04) Conditions générales - besoins plus complexes de services;
- c) l'Annexe « A », Énoncé des travaux;
- d) l'Annexe « B », Base de paiement;
- e) l'Annexe « C », Liste de vérification des exigences relatives à la sécurité;
- f) l'Annexe « D », rapport d'utilisation des autorisations de tâches;
- g) l'Annexe « E », formulaire tpsgc-pwgsc 572 autorisation de tâches
- h) la soumission de l'entrepreneur datée du \_\_\_\_\_, (*inscrire la date de la soumission*)

### 7.12 Clause du Guide des CCUA

A7017C (2008-05-12)	Remplacement d'individus spécifiques
A9039C (2008-05-12)	Récupération
A9068C (2010-01-11)	Règlements concernant les emplacements du gouvernement
G1005C (2016-01-28)	Assurance - aucune exigence particulière

## ANNEXE « A »

### ÉNONCÉ DES TRAVAUX

#### 1. MISE EN CONTEXTE

##### 1.1 Rôles et responsabilités

L'Office national de l'énergie a été créé en 1959 aux termes de la *Loi sur l'Office national de l'énergie* pour conseiller le gouvernement sur les grandes questions énergétiques et pour régler des aspects précis du pétrole, du gaz et de l'électricité dans l'intérêt public. L'Office rend compte au Parlement par l'entremise du ministre des Ressources naturelles. À titre de tribunal quasi judiciaire, il est habilité à faire enquête sur tout aspect des questions énergétiques qui relève de sa compétence et à produire des rapports, à l'usage et pour l'information du gouvernement, du Parlement et du grand public.

L'Office réglemente les droits et les tarifs des sociétés pipelinières de compétence fédérale. Il veille à ce que ceux-ci soient justes, raisonnables et exempts de toute distinction injuste. Pour ce faire, il doit tenir compte de la structure de capitalisation des sociétés, de leurs frais d'exploitation et d'entretien ainsi que de la nécessité d'assurer un rendement convenable de l'investissement.

L'Office délivre des certificats pour la construction et l'exploitation de pipelines interprovinciaux ou internationaux de transport de pétrole, de gaz ou de produits pétroliers et de lignes internationales de transport d'électricité. Avant de délivrer un certificat, il doit tenir une audience publique et déterminer si les installations proposées revêtent un caractère d'utilité publique tant pour le présent que pour le futur.

L'Office est aussi un tribunal d'archives. En d'autres termes, il fonctionne à peu près comme un tribunal civil avec notamment des pouvoirs d'assermentation de témoins, de citation à comparaître de témoins réfractaires et d'audition de la preuve en vue de rendre ses décisions. Il fonde généralement ses délibérations sur des documents mis à la disposition du public et accessibles. Pour les demandes ou les enquêtes importantes, il tient normalement des audiences publiques auxquelles les demandeurs et les autres personnes intéressées ont le droit de participer pleinement dans la langue officielle de leur choix. Lors d'une audience orale, il y a examen de la preuve (documents, rapports, tableaux, etc.) par contre-interrogatoire et présentation d'arguments. Ces activités sont consignées dans une transcription des délibérations. À l'issue d'une audience, l'Office rédige sa décision ou un rapport officiel.

Les témoignages oraux et écrits sont généralement rendus publics. Ils peuvent être consultés dans les bureaux et sur le site Web de l'Office. Ce site assure chaque jour un libre accès immédiat par Internet au personnel de l'Office, à toutes les parties et au grand public.

##### 1.2 Parties

###### Demandeurs

Parties qui préparent leur déposition ou leur argumentation à l'appui de leur demande en vue d'un examen critique à l'audience.

###### Intervenants

Particuliers ou organismes, autres que le demandeur, qui présentent une déposition ou une argumentation normalement liée à des domaines d'intérêt particuliers.

## Comité d'audience de l'Office

Comité d'un à cinq membres qui écoute les dépositions et rédige ensuite la décision ou un rapport officiel. La plupart du temps, c'est un comité de trois membres qui est appelé à rendre une décision sur une demande.

## Agent de réglementation de l'Office

Membre du personnel de l'Office chargé d'organiser la logistique des audiences et de superviser l'application de la procédure. C'est la personne-ressource habituelle à l'Office pour l'entrepreneur ou le fournisseur de services de sténographie judiciaire en ce qui concerne les transcriptions et les préparatifs quotidiens des audiences. Tous les agents en question font partie de l'équipe des services de réglementation du bureau de la secrétaire de l'Office.

## Responsable technique

Personne-ressource de l'Office pour le fournisseur de services de sténographie judiciaire en ce qui concerne les transcriptions et le fonctionnement quotidien des audiences. Ce responsable est la secrétaire de l'Office ou un membre délégué de l'équipe des services de réglementation, soit l'agent de réglementation responsable en temps normal.

## Public

À titre d'archives judiciaires, les dossiers des audiences sont mis à la disposition du public et celui-ci passe par la bibliothèque ou le site Web de l'Office ([www.neb-one.gc.ca](http://www.neb-one.gc.ca)) lorsqu'il veut avoir accès aux transcriptions.

## Personnel de l'Office

Personnel qui prête son soutien pendant le processus d'audience.

## 2. OBJECTIF

L'Office souhaite se prévaloir de services de sténographie judiciaire à Calgary, en Alberta, de même qu'à d'autres endroits sur le territoire canadien, « sur demande et selon les besoins ». L'entrepreneur ou le fournisseur de services de sténographie judiciaire doit être qualifié pour assurer la transcription officielle in extenso à la fois complète et fidèle des délibérations de l'Office ou de conférences connexes dans une des langues officielles. L'entrepreneur sera aussi tenu de fournir une version électronique de ces transcriptions ainsi que de multiples exemplaires imprimés et reliés dans les délais prescrits par l'Office.

## 3. ÉNONCÉ DES TRAVAUX

L'entrepreneur ou le fournisseur de services de sténographie judiciaire doit s'acquitter des tâches suivantes :

- a. transcrire fidèlement toutes les délibérations en respectant la disposition et le style prescrits par l'Office (voir l'alinéa 5.2 plus loin);
- b. présenter à l'Office une version fidèle en format PDF des transcriptions par dépôt électronique et en utilisant le formulaire en ligne (voir le site Web de l'Office à l'adresse [www.neb-one.gc.ca](http://www.neb-one.gc.ca) dans les cinq heures suivant la fin de chaque séance quotidienne;
- c. livrer à l'Office, avant 7 h du matin le jour suivant la séance quotidienne, au plus 15 exemplaires imprimés et reliés des transcriptions, en plus de fournir les versions électroniques en MSWord, en ASCII ou dans un autre format convenu avec l'agent de réglementation responsable sur place;

- d. pouvoir fournir une copie sur papier des transcriptions à chaque intervenant et au demandeur avant 7 h du matin le jour suivant la fin de chaque séance quotidienne;
- e. fournir à l'Office une copie signée du reçu de dépôt électronique et les versions sur papier des transcriptions dans les trois jours suivant la fin de chaque séance quotidienne;
- f. pouvoir fournir un exemplaire sur CD ROM (avec les versions en MSWord, ASCII et PDF) à toute partie qui en fait la demande dans les trois jours suivant la fin de chaque séance quotidienne;
- g. créer et conserver un enregistrement sonore sur CD ROM des délibérations pendant six mois après l'audience;
- h. fournir à l'Office sur demande et sans frais supplémentaires un enregistrement sonore des délibérations quotidiennes sur CD ROM;
- i. étiqueter les CD ROM de la même manière que les copies papier des transcriptions;
- j. donner accès à l'Office à toute base de données que peut constituer ou tenir l'entrepreneur pour le stockage des transcriptions;
- k. pouvoir fournir les mêmes services de sténographie judiciaire à divers endroits au Canada;
- l. être présent et prêt à entreprendre le travail sur place au moins 30 minutes avant le début de la séance;
- m. pouvoir fournir les services décrits ci-dessus quand plusieurs audiences de l'Office ont lieu en même temps;
- n. fournir au responsable technique une liste des noms des sténographes judiciaires;
- o. se vêtir sobrement et de manière à rehausser l'image professionnelle d'un tribunal quasi judiciaire;
- p. pouvoir fournir les services décrits ci-dessus aux audiences en anglais et au besoin en français lors d'audiences bilingues.

#### **4. AUDIENCES**

##### **4.1 Lieux**

Les audiences peuvent avoir lieu à la salle d'audience de l'Office au deuxième étage du 517, Dixième Avenue S.-O., à Calgary, en Alberta, mais elles pourraient aussi se tenir ailleurs à Calgary ou à divers autres endroits au Canada, y compris en région rurale. L'entrepreneur doit disposer des ressources voulues pour assurer les services nécessaires en cas d'audiences simultanées à différents endroits au pays. L'Office peut aussi demander à l'entrepreneur de transcrire les délibérations à un certain nombre de conférences ou lors d'autres instances qui, toutes, portent ici la désignation générale d'audiences aux fins de la présente demande de propositions. On trouvera à l'alinéa 4.3 une liste des lieux d'audience possibles.

##### **4.2 Personnel**

L'Office s'attend que le personnel de l'entrepreneur se trouve sur place à chaque audience.

### **4.3 Déplacements**

**4.3.1** L'Office ne versera pas de frais de déplacement si une audience doit se tenir dans les endroits suivants :

Halifax, Saint John, Fredericton, St. John's, Charlottetown, Montréal, Québec, région de la capitale nationale (Ottawa, Gatineau), région du Grand Toronto\*, Winnipeg, Regina, Calgary, Edmonton, Vancouver et Victoria.

*\*Aux fins de ce contrat, on entend par région du Grand Toronto la ville même de Toronto et les municipalités régionales de York, Halton, Peel et Durham.*

**4.3.2** Si l'entrepreneur est en mesure de ne facturer aucuns frais de déplacement à l'Office pour tout autre endroit au Canada, veuillez le préciser à l'annexe B – Base de paiement.

**4.3.3** Pour tout autre endroit non précisé en 4.3.1 et 4.3.2, l'Office remboursera les frais réels de déplacement (y compris les billets d'avion) et de subsistance engagés sur présentation des reçus. Les frais de repas, les frais accessoires et les frais de kilométrage découlant de l'utilisation d'un véhicule privé ne doivent pas excéder les tarifs prévus dans la Directive du Conseil du Trésor sur les voyages, qui s'appliquent au moment du déplacement et qu'on peut trouver à l'adresse suivante :

[http://www.tbs-sct.gc.ca/pubs\\_pol/hrpubs/tbm\\_113/menu-travel-voyage-fra.asp](http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tbm_113/menu-travel-voyage-fra.asp).

Toutes les dispositions de voyage doivent être conformes aux dispositions de cette directive.

### **4.4 Durée**

Les séances quotidiennes ont normalement lieu du lundi au vendredi et durent de 8 h 30 à 16 h, mais la durée peut varier d'une à dix heures et empiéter sur la soirée ou le week-end. L'Office peut siéger plus longtemps que prévu à tout moment et à la suite d'un court préavis. La durée des délibérations entières peut varier considérablement. On trouvera à l'annexe 2 des données historiques sur la fréquence, le lieu et la durée des audiences.

### **4.5 Contenu**

La teneur des délibérations est souvent des plus complexes à cause de la terminologie financière, juridique et technique employée (habituellement dans les domaines de l'énergie, de l'économie, de la sécurité et de l'environnement).

### **4.6 Langue**

L'Office est tenu d'entendre les parties ou les témoins dans la langue officielle de leur choix, français ou anglais. Il avisera l'entrepreneur des exigences sur le plan linguistique. Les transcriptions doivent toujours être dans la langue officielle de la présentation de la preuve. Si les dépositions ont lieu dans une langue autre qu'une langue officielle, la transcription doit se faire uniquement dans la langue officielle de la traduction qu'en fait l'interprète désigné ou reconnu par l'Office.

### **4.7 Exigences en matière de sécurité concernant les documents confidentiels (huis clos)**

L'entrepreneur doit s'en tenir rigoureusement aux instructions de protection des documents présentés et produits. Il fournira à l'agent de réglementation responsable, en tenant compte de ses conseils en la matière, une liste complète et fidèle des extraits classifiés ou protégés des transcriptions. Il mettra cette

liste à jour à l'intention de l'agent de réglementation en cas d'ajout ou d'annulation après la première journée d'audience.

L'entrepreneur doit préparer des extraits classifiés ou protégés des délibérations et des transcriptions uniquement pour le responsable technique ainsi que pour les avocats inscrits au dossier qui ont comparu à une audience à huis clos (demandeur et intervenant dans certains cas). Tous les exemplaires de l'Office doivent être livrés en main propre par l'entrepreneur à l'agent de réglementation responsable avant la reprise de l'audience le jour suivant l'audience à huis clos ou à tout autre moment précisé. Tous les exemplaires des avocats doivent être remis en main propre ou par un autre mode sécurisé de livraison à l'endroit et au moment convenus, avec notification à l'agent de réglementation responsable, le tout aux frais de l'entrepreneur.

Sauf pour ce que prévoient les alinéas qui précèdent, des extraits classifiés ou protégés des délibérations et des transcriptions ne doivent pas être fournis ni remis à quiconque sans l'autorisation écrite préalable du responsable technique.

## **5. SERVICES ET PRODUITS DE TRANSCRIPTION**

Il est de première importance que les versions papier et électroniques, en format PDF, des transcriptions officielles soient fidèles et identiques pour faciliter les recherches quotidiennes ou historiques.

### **5.1 Données électroniques**

L'entrepreneur est tenu de présenter à l'Office une version électronique fidèle des transcriptions en format PDF par dépôt électronique et en utilisant le formulaire en ligne dans les cinq heures suivant la fin de chaque séance quotidienne de la manière prescrite par le Guide du dépôt électronique à l'intention des déposants. On trouvera plus de renseignements à ce sujet dans le guide en question sur le site Web de l'Office à l'adresse suivante :

[http://www.neb-one.gc.ca/efile/guide\\_f.pdf](http://www.neb-one.gc.ca/efile/guide_f.pdf) (version française) ou  
[http://www.neb-one.gc.ca/efile/guide\\_e.pdf](http://www.neb-one.gc.ca/efile/guide_e.pdf) (version anglaise).

En outre, les versions électroniques en MSWord et ASCII doivent parvenir par courrier électronique au personnel désigné dans les cinq heures suivant la fin de la séance quotidienne. Remarque : La copie papier de la transcription doit correspondre fidèlement à la copie électronique en format PDF.

Un reçu électronique de dépôt sera envoyé par courriel à l'entrepreneur comme preuve de transmission. Ce reçu doit être imprimé, signé et renvoyé à l'Office dans les trois jours suivant chaque séance quotidienne ou selon les exigences précisées.

Pour transmettre les fichiers de transcription à l'Office, l'entrepreneur sera tenu d'avoir une connexion Internet ainsi qu'un navigateur Internet qui accepte les fichiers témoins et le langage Java en plus d'avoir un système de cryptage à 128 bits selon le protocole SSL (Secure Socket Layer). On trouvera des indications de configuration dans le Guide du dépôt électronique sur le site Web de l'Office à l'adresse suivante : [http://www.neb-one.gc.ca/efile/guide\\_f.pdf](http://www.neb-one.gc.ca/efile/guide_f.pdf) (version française) ou [http://www.neb-one.gc.ca/efile/guide\\_e.pdf](http://www.neb-one.gc.ca/efile/guide_e.pdf) (version anglaise).

L'entrepreneur est responsable de la réussite du dépôt des documents conformément au Guide du dépôt électronique.



## **5.2 Disposition et style**

L'Office se réserve le droit, en consultation avec l'entrepreneur, de modifier de temps à autre le format et la présentation des transcriptions sur papier. Aux fins de la présente demande de propositions, chaque page de transcription imprimée doit être sur du papier bond blanc 20 lb de 85 cm sur 60 cm (8 ½ po sur 11 po) et doit compter au moins 30 lignes d'écriture (sans les notes d'angle extérieur en haut de la page) représentant environ 300 mots ou plus. Les transcriptions doivent être recto verso pour chaque page. L'Office se réserve le droit d'établir le motif et la couleur de la couverture. On trouvera ci-joint un exemple de copie papier.

On doit numéroter les paragraphes dans la copie papier et dans la copie électronique de façon qu'il existe une correspondance parfaite entre les deux versions. Voir l'exemple fourni à l'annexe 1 – Ordonnance d'audience RH-2-2004.

## **5.3 Nombre essentiel de copies papier pour l'Office**

L'Office a besoin d'un exemplaire officiel imprimé et de 14 exemplaires supplémentaires pour un total de 15, le tout devant être imprimé, relié et livré au plus tard à 7 h du matin le jour suivant la fin de chaque séance quotidienne.

Les parties devront acquitter les frais pour les copies qu'elles demandent, dont ceux de messagerie.

## **5.4 Enregistrements sonores**

L'entrepreneur sera tenu de créer sur support électronique (CD, DVD, clé USB ou autre support externe) un enregistrement sonore des délibérations, lequel devra être d'une qualité suffisante pour que la transcription puisse être recréée en entier au besoin. Il doit conserver cet enregistrement sonore pendant au moins six mois après l'audience.

## **5.5 Qualité**

L'Office juge qu'il est extrêmement important que les produits de transcription soient fidèles et clairs. C'est toujours lui qui tranche les questions de qualité de la transcription. Toute incapacité à fournir des services ou des transcriptions de qualité satisfaisante pourrait entraîner la résiliation du contrat.

## **6. DROITS D'AUTEUR ET DE REPRODUCTION**

Le droit d'auteur doit appartenir au Canada et demeurer sa propriété alors que tous les exemplaires doivent porter l'avis suivant :

© Sa Majesté la Reine du chef du Canada représentée par l'Office national de l'énergie

## **7. RESPONSABILITÉS DE L'OFFICE**

### **7.1 Personne-ressource à l'Office**

Le responsable technique ou son délégué donnera toutes les instructions relatives aux services fournis au nom de l'Office.

En cours d'audience, d'autres instructions relatives aux services peuvent être communiquées par l'agent de réglementation responsable sur place.

## 7.2 Installations

Pendant l'audience, l'Office fournira sans frais à l'entrepreneur des locaux, des meubles et d'autres aménagements appropriés dans ses propres bureaux. Il fera tout effort raisonnable pour agir ainsi partout ailleurs au Canada où il tient une audience. Il est également chargé de fournir un système de réception du son avec un canal mis à la disposition de l'entrepreneur pour toutes les audiences.

## 7.3 Avis opérationnel

Bien qu'il soit généralement capable de donner un préavis raisonnable des audiences à venir, l'Office sait par expérience que le calendrier de celles prévues peut changer assez rapidement. Il enverra un avis par courriel ou télécopieur et l'entrepreneur devra promptement confirmer sa réponse à toutes les demandes de services de sténographie judiciaire au responsable technique. L'entrepreneur peut exiger des frais d'annulation, prévus à l'annexe B – Base de paiement, lorsque l'Office lui envoie un avis d'annulation.

## 8. LIVRABLES

### 8.1 Facturation

L'entrepreneur doit fournir au responsable technique une facture précisant l'information suivante :

- i. numéro d'ordonnance d'audience et numéro d'autorisation de tâche;
- ii. dates et lieux des séances de l'audience;
- iii. nombre de journées d'audience et durée en heures/jours;
- iv. nombre de « mots » effectivement produits et demandés (voir la définition de « mot » à l'alinéa 1.0 de l'annexe B – Base de paiement);
- v. nombre de pages vendues, le cas échéant, c'est-à-dire plus précisément le nombre de pages de transcription de chaque séance quotidienne, multiplié par le nombre de transcriptions vendues chaque jour et le nombre d'exemplaires remis sans frais au demandeur, aux intervenants et à l'Office;
- vi. nombre d'enregistrements sonores vendus.

## 9. CRITÈRES D'ACCEPTATION

Les services feront l'objet d'une surveillance régulière pour juger de leur conformité avec l'énoncé des travaux. Il y aura acceptation lorsque le responsable technique aura contrôlé l'exécution des services et les aura jugés satisfaisants.

## 10. L'ANNEXE

- à l'annexe 1 – Ordonnance d'audience RH-2-2004(118 pages).
- à l'annexe 2 - des données historiques sur la fréquence, le lieu et la durée des audiences (1 page).

## ANNEXE « B »

### BASE DE PAIEMENT

\* Les taxes exigibles ne doivent pas être incluses dans les prix indiqués aux présentes. \*

\* Les taxes exigibles, le cas échéant, seront notées distinctement sur la facture. \*

Les soumissionnaires doivent proposer des prix de la manière indiquée ci-dessous.

#### A. DURÉE DU CONTRAT : PÉRIODE D'UN AN À PARTIR DE LA DATE D'ATTRIBUTION

##### 1. PRIX

Frais de « service de base » à facturer à l'Office national de l'énergie :

Tarif fixe et ferme de \_\_\_\_\_ \$ par « mot »

##### 1.1 Définition du terme « mot »

Aux fins de cette demande de propositions, un « mot » compte cinq caractères dans le fichier déposé de transcription électronique.

On calcule le nombre de « mots » en divisant par cinq le nombre total de caractères en MSWord.

##### 1.2 Copies destinées à l'Office et aux parties

Conformément à ce qui est indiqué à l'alinéa 5.3 de l'annexe A, l'entrepreneur fournit sans frais les copies voulues à l'Office.

Toutes les copies des transcriptions destinées aux demandeurs et aux intervenants sont facturées directement aux parties et non à l'Office. L'Office ne demande aucune copie au nom des parties aux audiences et n'engagera pas de tels coûts.

##### 2. Enregistrements sur CD ROM destinés à l'Office et aux parties

Tarif fixe et ferme de \_\_\_\_\_ \$ par enregistrement sonore d'une journée d'audience sur CD ROM pour l'Office

Tous les enregistrements destinés aux demandeurs et aux intervenants sont facturés directement aux parties et non à l'Office. L'Office ne demande aucun enregistrement au nom des parties aux audiences et n'engagera pas de tels coûts.

##### 3. SERVICE DE BASE

L'Office appliquera le barème suivant de « paiement à l'acte » pour le service de base de sténographie judiciaire.

##### 3.1 Le « service de base » doit comprendre ce qui suit :

- a) transcription in extenso des délibérations;
- b) correction et contrôle de la qualité;
- c) recours aux installations requises pour la transcription in extenso des délibérations, la production de copies supplémentaires et les enregistrements sonores;
- d) conservation des enregistrements sonores exigés;

- e) transmission directe d'une version fidèle en format PDF des transcriptions à l'Office à l'aide du formulaire en ligne;
- f) transmission directe d'une copie signée du reçu de dépôt électronique et des versions électroniques des transcriptions en MSWord, ainsi qu'en format PDF et ASCII;
- g) facteurs appliqués par le soumissionnaire pour les frais généraux et la marge bénéficiaire à l'égard des services rendus à l'Office;
- h) production des 15 copies papier exigées par l'Office pour chaque audience, frais de livraison compris.

**4. FRAIS DE DÉPLACEMENT ET DE SUBSISTANCE**

Aux fins de la présente demande de propositions, l'Office ne versera pas de frais de déplacement si une audience doit se tenir dans les endroits suivants :

**Halifax, Saint John, Montréal, Québec, région de la capitale nationale (Ottawa, Gatineau), région du Grand Toronto\*, Winnipeg, Regina, Calgary, Edmonton, Vancouver et Victoria.**

\*Aux fins de la présente demande de propositions, on entend par région du Grand Toronto la ville même de Toronto et les municipalités régionales de York, Halton, Peel et Durham.

Si l'entrepreneur est en mesure, pour tout autre lieu au Canada, de ne pas facturer de frais de déplacement à l'Office, il doit le préciser ci-après :

(     ) aucuns frais de déplacement ne seront facturés à l'Office pour tout autre endroit au Canada OU

(     ) l'entrepreneur peut fournir des services aux endroits précisés ci-dessous sans engager de frais de déplacement. Pour tout autre lieu non mentionné plus haut ou sur la liste qui suit, des frais de déplacement s'appliqueront dans la mesure indiquée plus loin.

Ville

Pour tout autre endroit non précisé, l'Office remboursera les frais réels de déplacement (y compris les billets d'avion) et de subsistance engagés. Les frais de repas, les frais accessoires et les frais de kilométrage découlant de l'utilisation d'un véhicule privé ne doivent pas excéder les tarifs prévus dans la Directive du Conseil du Trésor sur les voyages, qui s'appliquent au moment du déplacement et qu'on peut trouver à l'adresse suivante : [http://www.tbs-sct.gc.ca/pubs\\_pol/hrpubs/tbm\\_113/menu-travel-voyage-fra.asp](http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tbm_113/menu-travel-voyage-fra.asp).

Toutes les dispositions de voyage doivent être conformes à ce que prescrit cette directive et les reçus doivent être présentés pour remboursement.

**5. FRAIS DE LIVRAISON**

Tous les frais de livraison engagés doivent être facturés au coût réel, non majoré, directement à la partie qui demande les documents.

**6. FRAIS D'ANNULATION**

**6.1** Les soumissionnaires doivent choisir une des options suivantes :

- a) Frais d'annulation de \_\_\_\_\_ par journée d'audience prévue sur préavis de cinq jours ouvrables (une semaine), jusqu'à concurrence de 8 000 \$ pour la totalité de l'audience
- b) Tarif fixe de \_\_\_\_\_ pour la totalité de l'audience, jusqu'à concurrence de 8 000 \$
- c) 1 000 \$ par journée d'audience prévue, jusqu'à concurrence de 8 000 \$ pour toute la totalité de l'audience si ce montant est moindre, sur préavis d'annulation de 48 heures
- d) Barème de frais d'annulation ci-dessous (paiement forfaitaire)

Nombre de semaines avant le début de l'audience	Audience de 4 semaines	Audience de 3 semaines	Audience de 2 semaines	Audience de 1 semaine
4	2 000 \$	Aucuns frais	Aucuns frais	Aucuns frais
3	4 000 \$	2 000 \$	Aucuns frais	Aucuns frais
2	6 000 \$	4 000 \$	2 000 \$	Aucuns frais
1	8 000 \$	6 000 \$	4 000 \$	2 000 \$
Semaine d'audience où celle-ci est annulée	Audience de 4 semaines	Audience de 3 semaines	Audience de 2 semaines	Audience de 1 semaine
1 <sup>re</sup>	6 000 \$	4 000 \$	2 000 \$	Aucuns frais
2 <sup>e</sup>	4 000 \$	2 000 \$	Aucuns frais	s.o.
3 <sup>e</sup>	2 000 \$	Aucuns frais	s.o.	s.o.
4 <sup>e</sup>	Aucuns frais	s.o.	s.o.	s.o.

EXEMPLE

Si une audience de quatre semaines est annulée deux semaines d'avance, l'entrepreneur recevrait un paiement forfaitaire de 6 000 \$ en frais d'annulation.

EXEMPLE

Si une audience de trois semaines a débuté et en est à sa première semaine alors que les deux dernières, elles, sont annulées, l'entrepreneur recevrait un paiement forfaitaire de 2 000 \$ en frais d'annulation.

**OPTION DE FRAIS D'ANNULATION :** \_\_\_\_\_ (choisir a, b, c ou d)

**7. FRAIS DE SUSPENSION (par journée d'audience)**

Si les délibérations se terminent moins de deux heures après le début de la journée, des frais de suspension peuvent être facturés selon l'option retenue.

Les soumissionnaires doivent choisir une des options suivantes :

- a) minimum de \_\_\_\_\_ mots à facturer à l'Office par journée d'audience;
- b) frais de dérangement de \_\_\_\_\_ par journée d'audience.

**ANNEXE « C »**

**LISTE DE VÉRIFICATION DES EXIGENCES RELATIVES À LA SÉCURITÉ**

(voir document ci-joint 3 pages)

**ANNEXE « D »  
RAPPORT D'UTILISATION DES AUTORISATIONS DE TÂCHES**

FAIRE PARVENIR AU:  
Office national de l'énergie  
Courriel: [jenny.gong@neb-one.gc.ca](mailto:jenny.gong@neb-one.gc.ca)

FOURNISSEUR: \_\_\_\_\_

No DU CONTRAT: **84084-16-0175**

MINISTÈRE OU ORGANISME: Office national de l'énergie

No d'article	Description de la tâche	Valeur de la tâche (TPS non inclus)
A) Valeur totale en dollars des tâches pour la période de référence:		
B) Tâches totales accumulées à ce jour:		
(A+B) Tâches totales accumulées:		

AUCUN RAPPORT: Nous n'avons pas conclu d'affaires avec le gouvernement du Canada pour cette période [        ]

PRÉSENTÉ PAR: \_\_\_\_\_

SIGNATURE : \_\_\_\_\_

DATE : \_\_\_\_\_



**ANNEXE « E »**

**FORMULAIRE TPSGC-PWGSC 572 AUTORISATION DE TÂCHES**

(voir document ci-joint 4 pages)

**ANNEXE « F »**  
**de la PARTIE 3 de la DEMANDE DE SOUMISSIONS**

**INSTRUMENTS DE PAIEMENT ÉLECTRONIQUE**

Le soumissionnaire accepte d'être payé au moyen de l'un des instruments de paiement électronique suivants :

- Carte d'achat VISA ;
- Carte d'achat MasterCard ;
- Dépôt direct (national et international) ;
- Échange de données informatisées (EDI) ;
- Virement télégraphique (international seulement) ;
- Système de transfert de paiements de grande valeur (plus de 25 M\$)

**ANNEXE « G »**

**EXIGENCES RELATIVES À L'ÉVALUATION TECHNIQUE**

**1. Critères techniques obligatoires (première étape)**

Les exigences obligatoires énumérées ci-dessous seront évaluées selon une méthode simple « Satisfaite ou non » (c.-à-d. selon que la proposition est conforme ou non aux exigences). Chaque exigence doit être traitée séparément. Le défaut de satisfaire aux exigences obligatoires rendra la proposition irrecevable et mettra fin à son évaluation.

Les propositions DOIVENT répondre à toutes les exigences obligatoires, et les documents à l'appui DOIVENT être fournis.

N°	Critère technique obligatoire (O)	Satisfait/non satisfait	Page correspondante (n°) dans la proposition
<b>O1</b>	Curriculum vitæ détaillé et à jour d'au moins cinq sténographes judiciaires de manière à établir que chaque personne proposée remplit les exigences suivantes :  a. <b>DOIT</b> avoir une expérience d'au moins 36 mois depuis le 1 <sup>er</sup> janvier 2013 dans la transcription de délibérations judiciaires à l'aide de techniques éprouvées de sténographie.		

**2. Critères techniques cotés (deuxième étape)**

Les soumissionnaires doivent obtenir une note minimale de passage de 60 % pour chacun des critères en question (sauf pour le critère 6) pour que leur proposition soit jugée recevable.

Les propositions doivent être concises et traiter des critères énumérés ci-après par rapport auxquels chaque proposition sera évaluée. Une cote zéro sera attribuée pour les critères omis.

N°	Critères techniques cotés (C)	Note maximale	Note obtenue
<b>C1</b>	Le soumissionnaire doit clairement démontrer que son « gestionnaire des opérations » a de l'expérience dans l'exécution de travaux semblables à ceux dont parle la demande de propositions. Il doit décrire au moins deux projets démontrant que les travaux en question sont d'une nature comparable  <u>C1.1 Le soumissionnaire doit clairement démontrer l'expérience suivante : 25 points</u>  <b>a)</b> durée de l'affectation; (3 points) <b>b)</b> complexité technique (nombre d'audiences simultanées, courts délais de production, transfert de documents électroniques); (10 points) <b>c)</b> coordination du personnel, de la production et de la livraison;	<b>50 points</b>  (minimum requis = 30 points)	

	<p>(6 points)  <b>d) contrôle de la qualité. (6 points) ET</b></p> <p><u>C1.2 Le soumissionnaire doit aussi clairement démontrer les facteurs d'accessibilité suivants : 25 points</u></p> <p><b>e) accessibilité en tout temps du gestionnaire des opérations; (3 points)</b>  <b>f) capacité de prendre des décisions au nom de la société et à quel niveau décisionnel; (9 points)</b>  <b>g) lieu où se trouve physiquement le gestionnaire des opérations; (3 points)</b>  <b>h) délai de réponse aux demandes du responsable technique, ce qui comprend la possibilité de travailler à distance du lieu de l'audience. (10 points)</b></p>		
<b>C2</b>	<p>Le soumissionnaire doit clairement démontrer que les sténographes satisfaisant aux exigences obligatoires ont l'expérience des travaux suivants :</p> <p><b>a) transcription de délibérations dans des domaines non liés à l'énergie, à l'économie, à la sécurité et à l'environnement (10 points);</b>  <b>b) transcription en français ou en anglais dans des domaines techniques liés à l'énergie, à l'économie, à la sécurité et à l'environnement (36 points);</b>  <b>c) transcription de délibérations bilingues (français et anglais) dans les domaines techniques décrits à l'alinéa b) (60 points).</b></p>	<p><b>60 points</b></p> <p>(minimum requis = 36 points)</p>	
<b>C3</b>	<p>En ce qui concerne la « capacité de l'organisme », le soumissionnaire doit faire ce qui suit :</p> <p><b>a) démontrer l'accès à des ressources de remplacement en cas de maladie, etc.; (8 points)</b>  <b>b) décrire les critères utilisés lors de la présélection des demandes d'emploi et la façon dont ils sont appliqués; (6 points)</b>  <b>c) décrire tout plan de sous-traitance, ce qui comprend l'accès à des sténographes capables de travailler en français; (6 points)</b>  <b>d) décrire sommairement les procédures de gestion du service proposées, ce qui comprend notamment les procédures de contrôle de la qualité, les formulaires pertinents et les listes de contrôle utilisés à l'interne (le cas échéant). (10 points)</b></p>	<p><b>30 points</b></p> <p>(minimum requis = 18 points)</p>	
<b>C4</b>	<p>En ce qui concerne le matériel, le soumissionnaire doit indiquer dans sa proposition comment il fournira l'ensemble des pièces d'équipement, des aménagements et des opérateurs, y compris les installations d'impression et de reliure rapides, qui sont nécessaires en cas d'audiences simultanées (deux audiences, par exemple, l'une dans les bureaux de l'Office et l'autre dans une autre ville). Le plan devrait tenir compte des éléments suivants :</p> <p><b>a) exposer les difficultés possibles; (7 points)</b>  <b>b) discuter des solutions possibles avec le représentant de l'Office; (8 points)</b>  <b>c) donner des détails; (9 points)</b>  <b>d) faire preuve de logique. (6 points)</b></p>	<p><b>30 points</b></p> <p>(minimum requis = 18 points)</p>	

<b>C5</b>	<p>Le soumissionnaire doit donner deux références (nom et numéro de téléphone d'une personne-ressource) de sociétés auxquelles il a fourni des services semblables de sténographie judiciaire. Ces références devraient permettre de démontrer ce qui suit :</p> <p><b>a)</b> la qualité générale du service de transcription fourni; (12 points)  <b>b)</b> la qualité du service à la clientèle. (8 points)</p>	<b>20 points</b>	
		(minimum requis = 12 points)	
<b>C6</b>	<p>En ce qui concerne le lieu des audiences, le soumissionnaire doit indiquer dans quelles villes, autres que celles qui sont indiquées à l'alinéa 4.0 de l'annexe B – Base de paiement, il est en mesure de fournir ses services sans facturer de frais de déplacement à l'Office.</p> <p><b>a)</b> 1 endroit de plus (2 points)  <b>b)</b> 2 endroits de plus (4 points)  <b>c)</b> 3 endroits de plus (6 points)  <b>d)</b> partout ailleurs (10 points)</p>	<b>10 points</b>	
		(aucun minimum requis pour ce critère)	
<b>Total des points possibles = 200</b>			
<b>Minimum de points requis dans l'ensemble = 114</b>			

Contract Number / Numéro du contrat <b>16-0175</b>
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**SECURITY REQUIREMENTS CHECK LIST (SRCL)  
LISTE DE VÉRIFICATION DES EXIGENCES RELATIVES À LA SÉCURITÉ (LVERS)**

PART A - CONTRACT INFORMATION / PARTIE A - INFORMATION CONTRACTUELLE		
1. Originating Government Department or Organization Ministère ou organisme gouvernemental d'origine <b>National Energy Board</b>		2. Branch or Directorate / Direction générale ou Direction
3. a) Subcontract Number / Numéro du contrat de sous-traitance	3. b) Name and Address of Subcontractor / Nom et adresse du sous-traitant	
4. Brief Description of Work - Brève description du travail The NEB has identified a requirement for a dedicated court reporting service provider.		
5. a) Will the supplier require access to Controlled Goods? Le fournisseur aura-t-il accès à des marchandises contrôlées?		<input checked="" type="checkbox"/> No / Non <input type="checkbox"/> Yes / Oui
5. b) Will the supplier require access to unclassified military technical data subject to the provisions of the Technical Data Control Regulations? Le fournisseur aura-t-il accès à des données techniques militaires non classifiées qui sont assujetties aux dispositions du Règlement sur le contrôle des données techniques?		<input checked="" type="checkbox"/> No / Non <input type="checkbox"/> Yes / Oui
6. Indicate the type of access required - Indiquer le type d'accès requis		
6. a) Will the supplier and its employees require access to PROTECTED and/or CLASSIFIED information or assets? Le fournisseur ainsi que les employés auront-ils accès à des renseignements ou à des biens PROTÉGÉS et/ou CLASSIFIÉS? (Specify the level of access using the chart in Question 7. c) (Préciser le niveau d'accès en utilisant le tableau qui se trouve à la question 7. c)		<input checked="" type="checkbox"/> No / Non <input checked="" type="checkbox"/> Yes / Oui
6. b) Will the supplier and its employees (e.g. cleaners, maintenance personnel) require access to restricted access areas? No access to PROTECTED and/or CLASSIFIED information or assets is permitted. Le fournisseur et ses employés (p.ex. nettoyeurs, personnel d'entretien) auront-ils accès à des zones d'accès restreintes? L'accès à des renseignements ou à des biens PROTÉGÉS et/ou CLASSIFIÉS n'est pas autorisé.		<input checked="" type="checkbox"/> No / Non <input type="checkbox"/> Yes / Oui
6. c) Is this a commercial courier or delivery requirement with no overnight storage? S'agit-il d'un contrat de messagerie ou de livraison commerciales sans entreposage de nuit?		<input checked="" type="checkbox"/> No / Non <input type="checkbox"/> Yes / Oui
7. a) Indicate the type of information that the supplier will be required to access / Indiquer le type d'information auquel le fournisseur devra avoir accès		
Canada <input checked="" type="checkbox"/>	NATO / OTAN <input type="checkbox"/>	Foreign / Étranger <input type="checkbox"/>
7. b) Release restrictions / Restrictions relatives à la diffusion		
No release restrictions / Aucune restriction relative à la diffusion <input checked="" type="checkbox"/>	All NATO countries / Tous les pays de l'OTAN <input type="checkbox"/>	No release restrictions / Aucune restriction relative à la diffusion <input type="checkbox"/>
Not releasable / À ne pas diffuser <input type="checkbox"/>		
Restricted to: / Limité à: <input type="checkbox"/>	Restricted to: / Limité à: <input type="checkbox"/>	Restricted to: / Limité à: <input type="checkbox"/>
Specify country(ies): / Préciser le(s) pays:	Specify country(ies): / Préciser le(s) pays:	Specify country(ies): / Préciser le(s) pays:
7. c) Level of information / Niveau d'information		
PROTECTED A / PROTÉGÉ A <input type="checkbox"/>	NATO UNCLASSIFIED / NATO NON CLASSIFIÉ <input type="checkbox"/>	PROTECTED A / PROTÉGÉ A <input type="checkbox"/>
PROTECTED B / PROTÉGÉ B <input checked="" type="checkbox"/>	NATO RESTRICTED / NATO DIFFUSION RESTREINTE <input type="checkbox"/>	PROTECTED B / PROTÉGÉ B <input type="checkbox"/>
PROTECTED C / PROTÉGÉ C <input type="checkbox"/>	NATO CONFIDENTIAL / NATO CONFIDENTIEL <input type="checkbox"/>	PROTECTED C / PROTÉGÉ C <input type="checkbox"/>
CONFIDENTIAL / CONFIDENTIEL <input type="checkbox"/>	NATO SECRET / NATO SECRET <input type="checkbox"/>	CONFIDENTIAL / CONFIDENTIEL <input type="checkbox"/>
SECRET <input type="checkbox"/>	COSMIC TOP SECRET / COSMIC TRÈS SECRET <input type="checkbox"/>	SECRET / SECRET <input type="checkbox"/>
TOP SECRET / TRÈS SECRET <input type="checkbox"/>		TOP SECRET / TRÈS SECRET <input type="checkbox"/>
TOP SECRET (SIGINT) / TRÈS SECRET (SIGINT) <input type="checkbox"/>		TOP SECRET (SIGINT) / TRÈS SECRET (SIGINT) <input type="checkbox"/>

Security Classification / Classification de sécurité
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Security Classification / Classification de sécurité

DM

**PART A (continued) / PARTIE A (suite)**

8. Will the supplier require access to PROTECTED and/or CLASSIFIED COMSEC information or assets?  
Le fournisseur aura-t-il accès à des renseignements ou à des biens COMSEC désignés PROTÉGÉS et/ou CLASSIFIÉS?  
If Yes, indicate the level of sensitivity: Dans l'affirmative, indiquer le niveau de sensibilité: **Protected B**

No / Non  Yes / Oui

9. Will the supplier require access to extremely sensitive INFOSEC information or assets?  
Le fournisseur aura-t-il accès à des renseignements ou à des biens INFOSEC de nature extrêmement délicate?

No / Non  Yes / Oui

Short Title(s) of material / Titre(s) abrégé(s) du matériel :  
Document Number / Numéro du document :

**PART B - PERSONNEL (SUPPLIER) / PARTIE B - PERSONNEL (FOURNISSEUR)**

10. a) Personnel security screening level required / Niveau de contrôle de la sécurité du personnel requis

<input checked="" type="checkbox"/> RELIABILITY STATUS / COTE DE FIABILITÉ	<input type="checkbox"/> CONFIDENTIAL / CONFIDENTIEL	<input type="checkbox"/> SECRET / SECRET	<input type="checkbox"/> TOP SECRET / TRÈS SECRET
<input type="checkbox"/> TOP SECRET - SIGINT / TRÈS SECRET - SIGINT	<input type="checkbox"/> NATO CONFIDENTIAL / NATO CONFIDENTIEL	<input type="checkbox"/> NATO SECRET / NATO SECRET	<input type="checkbox"/> COSMIC TOP SECRET / COSMIC TRÈS SECRET
<input type="checkbox"/> SITE ACCESS / ACCÈS AUX EMPLACEMENTS			

Special comments: **Contractor is supervised at all times and only accesses public information and public zones.**  
Commentaires spéciaux :

NOTE: If multiple levels of screening are identified, a Security Classification Guide must be provided.  
REMARQUE: Si plusieurs niveaux de contrôle de sécurité sont requis, un guide de classification de la sécurité doit être fourni.

10. b) May unscreened personnel be used for portions of the work?  
Du personnel sans autorisation sécuritaire peut-il se voir confier des parties du travail?

No / Non  Yes / Oui

If Yes, will unscreened personnel be escorted?  
Dans l'affirmative, le personnel en question sera-t-il escorté?

No / Non  Yes / Oui

**PART C - SAFEGUARDS (SUPPLIER) / PARTIE C - MESURES DE PROTECTION (FOURNISSEUR)**

**INFORMATION / ASSETS / RENSEIGNEMENTS / BIENS**

11. a) Will the supplier be required to receive and store PROTECTED and/or CLASSIFIED information or assets on its site or premises?  
Le fournisseur sera-t-il tenu de recevoir et d'entreposer sur place des renseignements ou des biens PROTÉGÉS et/ou CLASSIFIÉS?

No / Non  Yes / Oui

11. b) Will the supplier be required to safeguard COMSEC information or assets?  
Le fournisseur sera-t-il tenu de protéger des renseignements ou des biens COMSEC?

No / Non  Yes / Oui

**PRODUCTION**

11. c) Will the production (manufacture, and/or repair and/or modification) of PROTECTED and/or CLASSIFIED material or equipment occur at the supplier's site or premises?  
Les installations du fournisseur serviront-elles à la production (fabrication et/ou réparation et/ou modification) de matériel PROTÉGÉ et/ou CLASSIFIÉ?

No / Non  Yes / Oui

**INFORMATION TECHNOLOGY (IT) MEDIA / SUPPORT RELATIF À LA TECHNOLOGIE DE L'INFORMATION (TI)**

11. d) Will the supplier be required to use its IT systems to electronically process, produce or store PROTECTED and/or CLASSIFIED information or data?  
Le fournisseur sera-t-il tenu d'utiliser ses propres systèmes informatiques pour traiter, produire ou stocker électroniquement des renseignements ou des données PROTÉGÉS et/ou CLASSIFIÉS?

No / Non  Yes / Oui

11. e) Will there be an electronic link between the supplier's IT systems and the government department or agency?  
Disposera-t-on d'un lien électronique entre le système informatique du fournisseur et celui du ministère ou de l'agence gouvernementale?

No / Non  Yes / Oui

Security Classification / Classification de sécurité
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**PART C (continued) / PARTIE C (suite)**

For users completing the form manually use the summary chart below to indicate the category(ies) and level(s) of safeguarding required at the supplier's site(s) or premises.

Les utilisateurs qui remplissent le formulaire manuellement doivent utiliser le tableau récapitulatif ci-dessous pour indiquer, pour chaque catégorie, les niveaux de sauvegarde requis aux installations du fournisseur.

For users completing the form online (via the Internet), the summary chart is automatically populated by your responses to previous questions.

Dans le cas des utilisateurs qui remplissent le formulaire en ligne (par Internet), les réponses aux questions précédentes sont automatiquement saisies dans le tableau récapitulatif.

**SUMMARY CHART / TABLEAU RÉCAPITULATIF**

Category / Catégorie	PROTECTED / PROTÉGÉ			CLASSIFIED / CLASSIFIÉ			NATO				COMSEC					
	A	B	C	Confidential / Confidentiel	Secret	Top Secret / Très Secret	NATO Restricted / NATO Diffusion Restreinte	NATO Confidential	NATO Secret	COSMIC Top Secret / COSMIC Très Secret	Protected / Protégé			Confidential / Confidentiel	Secret	Top Secret / Très Secret
											A	B	C			
Information / Assets / Renseignements / Biens	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Production	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
IT Media / Support TI	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
IT Link / Lien électronique	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12. a) Is the description of the work contained within this SRCL PROTECTED and/or CLASSIFIED? / La description du travail visé par la présente LVERS est-elle de nature PROTÉGÉ et/ou CLASSIFIÉE?  No / Non  Yes / Oui

If Yes, classify this form by annotating the top and bottom in the area entitled "Security Classification". / Dans l'affirmative, classifiez le présent formulaire en indiquant le niveau de sécurité dans la case intitulée.

12. b) Will the document attached to this SRCL be PROTECTED and/or CLASSIFIED? / La documentation associée à la présente LVERS sera-t-elle PROTÉGÉE et/ou CLASSIFIÉE?  No / Non  Yes / Oui

If Yes, classify this form by annotating the top and bottom in the area entitled "Security Classification" and indicate with attachments (e.g. SECRET with Attachments). / Dans l'affirmative, classifiez le présent formulaire en indiquant le niveau de sécurité dans la case intitulée « Classification de sécurité » au haut et au bas du formulaire et indiquer qu'il y a des pièces jointes (p. ex. SECRET avec des pièces jointes).

Security Classification / Classification de sécurité
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## Task Authorization Autorisation de tâche

**Instruction for completing the form PWGSC - TPSGC 572 - Task Authorization**  
*(Use form DND 626 for contracts for the Department of National Defence)*

**Instruction pour compléter le formulaire PWGSC - TPSGC 572 - Autorisation de tâche**  
*(Utiliser le formulaire DND 626 pour les contrats pour le ministère de la Défense)*

**Contract Number**

Enter the PWGSC contract number.

**Numéro du contrat**

Inscrire le numéro du contrat de TPSGC.

**Contractor's Name and Address**

Enter the applicable information

**Nom et adresse de l'entrepreneur**

Inscrire les informations pertinentes

**Security Requirements**

Enter the applicable requirements

**Exigences relatives à la sécurité**

Inscrire les exigences pertinentes

**Total estimated cost of Task (Applicable taxes extra)**

Enter the amount

**Coût total estimatif de la tâche (Taxes applicables en sus)**

Inscrire le montant

**For revision only**

**Aux fins de révision seulement**

**TA Revision Number**

Enter the revision number to the task, if applicable.

**Numéro de la révision de l'AT**

Inscrire le numéro de révision de la tâche, s'il y a lieu.

**Total Estimated Cost of Task (Applicable taxes extra) before the revision**

Enter the amount of the task indicated in the authorized TA or, if the task was previously revised, in the last TA revision.

**Coût total estimatif de la tâche (Taxes applicables en sus) avant la révision**

Inscrire le montant de la tâche indiquée dans l'AT autorisée ou, si la tâche a été révisée précédemment, dans la dernière révision de l'AT.

**Increase or Decrease (Applicable taxes extra), as applicable**

As applicable, enter the amount of the increase or decrease to the Total Estimated Cost of Task (Applicable taxes extra) before the revision.

**Augmentation ou réduction (Taxes applicables en sus), s'il y a lieu**

S'il y a lieu, inscrire le montant de l'augmentation ou de la réduction du Coût total estimatif de la tâche (Taxes applicables en sus) avant la révision.

**1. Required Work: Complete sections A, B, C, and D, as required.**

**1. Travaux requis : Remplir les sections A, B, C et D, au besoin.**

**A. Task Description of the Work required:**

**A. Description de tâche des travaux requis :**

Complete the following paragraphs, if applicable. Paragraph (a) applies only if there is a revision to an authorized task.

Remplir les alinéas suivants, s'il y a lieu : L'alinéa (a) s'applique seulement s'il y a révision à une tâche autorisée.

(a) Reason for revision of TA, if applicable: Include the reason for the revision; i.e. revised activities; delivery/completion dates; revised costs. Revisions to TAs must be in accordance with the conditions of the contract. See Supply Manual 3.35.1.50 or paragraph 6 of the Guide to Preparing and Administering Task Authorizations.

(a) Motif de la révision de l'AT, s'il y a lieu : Inclure le motif de la révision c.-à.-d., les activités révisées, les dates de livraison ou d'achèvement, les coûts révisés. Les révisions apportées aux AT doivent respecter les conditions du contrat. Voir l'article 3.35.1.50 du Guide des approvisionnements ou l'alinéa 6 du Guide sur la préparation et l'administration des autorisations de tâches.

(b) Details of the activities to be performed (include as an attachment, if applicable)

(b) Détails des activités à exécuter (joindre comme annexe, s'il y a lieu).

(c) Description of the deliverables to be submitted (include as an attachment, if applicable).

(c) Description des produits à livrer (joindre comme annexe, s'il y a lieu).

(d) Completion dates for the major activities and/or submission dates for the deliverables (include as an attachment, if applicable).

(d) Les dates d'achèvement des activités principales et (ou) les dates de livraison des produits (joindre comme annexe, s'il y a lieu).

---

**B. Basis of Payment:**

Insert the basis of payment or bases of payment that form part of the contract that are applicable to the task description of the work; e.g. firm lot price, limitation of expenditure, firm unit price

**C. Cost of Task:****Insert Option 1 or 2:****Option 1:**

Total estimated cost of Task (Applicable taxes extra): Insert the applicable cost elements for the task determined in accordance with the contract basis of payment; e.g. Labour categories and rates, level of effort, Travel and living expenses, and other direct costs.

**Option 2:**

Total cost of Task (Applicable taxes extra): Insert the firm unit price in accordance with the contract basis of payment and the total estimated cost of the task.

**D. Method of Payment**

Insert the method(s) of payment determined in accordance with the contract that are applicable to the task; i.e. single payment, multiple payments, progress payments or milestone payments. For milestone payments, include a schedule of milestones.

**B. Base de paiement :**

Insérer la base ou les bases de paiement qui font partie du contrat qui sont applicables à la description du travail à exécuter : p. ex., prix de lot ferme, limitation des dépenses et prix unitaire ferme.

**C. Coût de la tâche :****Insérer l'option 1 ou 2****Option 1 :**

Coût total estimatif de la tâche (Taxes applicables en sus) Insérer les éléments applicables du coût de la tâche établies conformément à la base de paiement du contrat. p. ex., les catégories de main d'œuvre, le niveau d'effort, les frais de déplacement et de séjour et autres coûts directs.

**Option 2 :**

Coût total de la tâche (Taxes applicables en sus) : Insérer le prix unitaire ferme conformément à la base de paiement du contrat et le coût estimatif de la tâche.

**D. Méthode de paiement**

Insérer la ou les méthode(s) de paiement établit conformément au contrat et qui sont applicable(s) à la tâche; c.-à.-d., paiement unique, paiements multiples, paiements progressifs ou paiements d'étape. Pour ces derniers, joindre un calendrier des étapes.

---

**2. Authorization(s):**

The client and/or PWGSC must authorize the task by signing the Task Authorization in accordance with the conditions of the contract. The applicable signatures and the date of the signatures is subject to the TA limits set in the contract. When the estimate of cost exceeds the client Task Authorization's limits, the task must be referred to PWGSC.

**3. Contractor's Signature**

The individual authorized to sign on behalf of the Contractor must sign and date the TA authorized by the client and/or PWGSC and provide the signed original and a copy as detailed in the contract.

**2. Autorisation(s) :**

Le client et (ou) TPSGC doivent autoriser la tâche en signant l'autorisation de tâche conformément aux conditions du contrat. Les signatures et la date des signatures appropriées sont assujetties aux limites d'autorisation de tâche établies dans le contrat . Lorsque l'estimation du coût dépasse les limites d'autorisation de tâches du client, la tâche doit être renvoyée à TPSGC.

**3. Signature de l'entrepreneur**

La personne autorisée à signer au nom de l'entrepreneur doit signer et dater l'AT, autorisée par le client et (ou) TPSGC et soumettre l'original signé de l'autorisation et une copie tel que décrit au contrat.



## Task Authorization Autorisation de tâche

Contract Number - Numéro du contrat

Contractor's Name and Address - Nom et l'adresse de l'entrepreneur	Task Authorization (TA) No. - N° de l'autorisation de tâche (AT)
	Title of the task, if applicable - Titre de la tâche, s'il y a lieu
	Total Estimated Cost of Task (Applicable taxes extra) Coût total estimatif de la tâche (Taxes applicables en sus) \$

Security Requirements: This task includes security requirements  
Exigences relatives à la sécurité : Cette tâche comprend des exigences relatives à la sécurité

No - Non       Yes - Oui      If YES, refer to the Security Requirements Checklist (SRCL) included in the Contract  
 Si OUI, voir la Liste de vérification des exigences relative à la sécurité (LVERS) dans le contrat

### For Revision only - Aux fins de révision seulement

TA Revision Number, if applicable Numéro de révision de l'AT, s'il y a lieu	Total Estimated Cost of Task (Applicable taxes extra) before the revision Coût total estimatif de la tâche (Taxes applicables en sus) avant la révision \$	Increase or Decrease (Applicable taxes extra), as applicable Augmentation ou réduction (Taxes applicables en sus), s'il y a lieu \$
--	--	---

**Start of the Work for a TA : Work cannot commence until a TA has been authorized in accordance with the conditions of the contract.**

**Début des travaux pour l'AT : Les travaux ne peuvent pas commencer avant que l'AT soit autorisée conformément au contrat.**

### 1. Required Work: - Travaux requis :

A. Task Description of the Work required - Description de tâche des travaux requis	See Attached - Ci-joint
B. Basis of Payment - Base de paiement	See Attached - Ci-joint
C. Cost of Task - Coût de la tâche	See Attached - Ci-joint
D. Method of Payment - Méthode de paiement	See Attached - Ci-joint

Contract Number - Numéro du contrat

## 2. Authorization(s) - Autorisation(s)

By signing this TA, the authorized client and (or) the PWGSC Contracting Authority certify(ies) that the content of this TA is in accordance with the conditions of the contract.

En apposant sa signature sur l'AT, le client autorisé et (ou) l'autorité contractante de TPSGC atteste(nt) que le contenu de cette AT respecte les conditions du contrat.

The client's authorization limit is identified in the contract. When the value of a TA and its revisions is in excess of this limit, the TA must be forwarded to the PWGSC Contracting Authority for authorization.

La limite d'autorisation du client est précisée dans le contrat. Lorsque la valeur de l'AT et ses révisions dépasse cette limite, l'AT doit être transmise à l'autorité contractante de TPSGC pour autorisation.

\_\_\_\_\_  
Name and title of authorized client - Nom et titre du client autorisé à signer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
PWGSC Contracting Authority - Autorité contractante de TPSGC

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## 3. Contractor's Signature - Signature de l'entrepreneur

\_\_\_\_\_  
Name and title of individual authorized - to sign for the Contractor  
Nom et titre de la personne autorisée à signer au nom de l'entrepreneur

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NATIONAL ENERGY BOARD  
OFFICE NATIONAL DE L'ÉNERGIE



**Appendix 1 - l'annexe 1 -  
Hearing Order RH-2-2004  
Ordonnance d'audience RH-2-2004**

**TransCanada PipeLines Limited (TransCanada)**

**2004 Mainline Tolls and Tariff Application (2004 Tolls Application)**

**PHASE II**

**Hearing held at  
L'audience tenue à**

**National Energy Board  
444 Seventh Avenue SW  
Calgary, Alberta**

**November 29 , 2004  
le 29 novembre 2004**

**International Reporting Inc.  
Ottawa, Ontario  
(613) 748-6043**

**Canada**

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as represented by the National Energy Board

This publication is the recorded verbatim transcript and, as such, is taped and transcribed in either of the official languages, depending on the languages spoken by the participant at the public hearing.

Printed in Canada

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Cette publication est un compte rendu textuel des délibérations et, en tant que tel, est enregistrée et transcrite dans l'une ou l'autre des deux langues officielles, compte tenu de la langue utilisée par le participant à l'audience publique.

Imprimé au Canada

HEARING ORDER/ORDONNANCE D'AUDIENCE  
RH-2-2004

IN THE MATTER OF TransCanada applied to the  
National Energy Board  
pursuant to Part IV of the *National Energy Board Act*  
for approval of tolls to be charged for service on the  
TransCanada Mainline  
between 1 January and 31 December 2004

**HEARING LOCATION/LIEU DE L'AUDIENCE**

Hearing held at Calgary (Alberta), Monday, November 29, 2004

Audience tenue à Calgary (Alberta) Lundi, le 29 novembre 2004

**BOARD PANEL/COMITÉ D'AUDIENCE DE L'OFFICE**

G. Caron	Chairman/Président
D. Emes	Member/Membre
J.S. Bulger	Member/Membre

## **APPEARANCES/COMPARUTIONS**

### **Applicant/Demandeur**

TransCanada PipeLines Limited

- Mr. C.K. Yates
- Ms. W.M. Moreland

### **Associations**

Canadian Association of Petroleum Producers

- Mr. N.J. Schultz

Industrial Gas Users Association

- Mr. P.L. Fournier

### **Companies/Compagnies**

BP Canada Energy Company

- Mr. B. Troicuk

Coral Energy Canada Inc.

- Mr. M.P. Stauff

Nexen Marketing

- Ms. S. Young

### **Governments/Gouvernements**

Minister of Energy for Ontario

- Mr. J.C. Turchin

Procureur general du Québec

- M. R. Richard

### **National Energy Board/Office national de l'énergie**

- Ms. M. Fowke
- Ms. R. Zanin



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**(Prefiled/Déposées à l'avance)**

<b>No.</b>	<b>Description</b>
<b>A</b>	<b>National Energy Board</b>
A-1	National Energy Board (the Board) letter dated 12 February 2004 to TransCanada PipeLines Limited (TransCanada) acknowledging receipt of TransCanada's Application regarding the tolls to be charged for services on TransCanada's Mainline between 1 January 2004 and 31 December 2004 / Lettre de l'Office national de l'énergie (l'Office) adressée à TransCanada en date du 12 février 2004 pour accuser réception de la demande de TransCanada concernant les droits que celle-ci pourra exiger pour les services de transport offerts sur son réseau principal au cours de la période allant du 1er janvier 2004 au 31 décembre 2004
A-2	Board letter and Hearing Order RH-2-2004 dated 23 March 2004 to TransCanada setting out the procedures governing the proceeding / Lettre de l'Office et ordonnance d'audience RH-2-2004 adressées à TransCanada en date du 23 mars 2004 pour énoncer les instructions qui régiront le déroulement de cette instance
A-4	Board letter dated 8 April 2004 to Parties to the RH-2-2004 proceeding with the List of Parties and Amendments to the List of Issues / Lettre de l'Office adressée à TransCanada et aux parties à l'instance RH-2-2004 en date du 8 avril 2004 incluant la liste des parties et des modifications à la liste des questions
A-5	Board letter dated 20 April 2004 to All Parties to Hearing Order RH-2-2004 requesting comments on Phase II (Cost of Capital) / Lettre de l'Office adressée à TransCanada et aux parties à l'instance RH-2-2004 en date du 20 avril 2004 demandant de commentaires sur la phase II (coût du capital)
A-7	Board letter dated 6 May 2004 to Parties to the RH-2-2004 Proceeding revising the List of Parties / Lettre de l'Office adressée aux parties à l'instance RH-2-2004 en date du 6 mai 2004 avec modifications à la liste des parties
A-9	Board letter dated 19 May 2004 to Parties to the RH-2-2004 Proceeding with follow-up to comments on Phase II / Lettre de l'Office adressée aux parties à l'instance RH-2-2004 en date du 19 mai 2004 avec suivi des commentaires sur la phase II (coût du capital)
A-13	Board letter dated 25 May 2004 to Parties to the RH-2-2004 Proceeding revising the List of Parties / Lettre de l'Office adressée aux parties à l'instance RH-2-2004 en date du 25 mai 2004 avec modifications à la liste des parties

**LIST OF EXHIBITS/LISTE DE PIÈCES**  
**(Prefiled/Déposées à l'avance)**

<b>No.</b>	<b>Description</b>
<b>A</b>	<b>National Energy Board (Continued)</b>
A-17	Board letter to TransCanada dated 7 June 2004 ruling on CAPP's Notice of Motion concerning Phase II (Cost of Capital) dated 4 June 2004 / Lettre de l'Office adressée à TransCanada en date du 7 juin 2004 pour annoncer la décision relative à l'avis de requête de l'ACPP concernant la phase II (coût du capital) daté du 4 juin 2004
A-18	Board letter to Parties to Hearing Order RH-2-2004 dated 7 June 2004 and Order AO-1-RH-2-2004 setting out the procedures for Phase II (Cost of Capital) / Lettre de l'Office adressée aux parties à l'instance RH-2-2004 en date du 7 juin 2004 et ordonnance AO-1-RH-2-2004 pour énoncer les instructions qui régiront le déroulement de la phase II (coût du capital)
A-19	Board letter to Parties to Hearing Order RH-2-2004 dated 30 June 2004 ruling on CAPP's Motion dated 4 June 2004 and Order AO-2-RH-2-2004 / Lettre de l'Office adressée aux parties à l'instance RH-2-2004 en date du 30 juin 2004 avec la décision concernant la requête de l'ACPP en date du 4 juin 2004 et ordonnance AO-2-RH-2-2004
A-20	Board letter to Parties to Hearing Order RH-2-2004 dated 14 July 2004, Request for Amendments to the Timetable of Events / Lettre de l'Office aux parties à l'instance RH-2-2004 en date du 14 juillet 2004, demande de modifications au calendrier des événements
A-21	Board letter to Parties to Hearing Order RH-2-2004 dated 23 July 2004 and Order AO-3-RH-2-2004, Amendments to the Timetable of Events / Lettre de l'Office aux parties à l'instance RH-2-2004 en date du 23 juillet 2004 et Ordonnance AO-3-RH-2-2004, modifications au calendrier des événements
A-22	Board letter to CAPP dated 12 August 2004 reiterating its 30 June 2004 ruling in regards to TransCanada's presentation of its evidence
A-23	Board Information Request No. 1 to TransCanada dated 30 August 2004
A-24	Board letter to all Parties to Hearing Order RH-2-2004 dated 14 September 2004 approving TransCanada's request for an extension to its deadline for the filing of responses to information requests / Lettre de l'Office à toutes les parties intéressées par l'ordonnance d'audience RH-2-2004 en date du 14 septembre 2004 autorisant TransCanada à reporter le délai qu'elle demande pour le dépôt de ses réponses aux demandes de renseignements

**LIST OF EXHIBITS/LISTE DE PIÈCES**  
**(Prefiled/Déposées à l'avance)**

<b>No.</b>	<b>Description</b>
<b>A National Energy Board (Continued)</b>	
A-25	Board letter to all Parties to Hearing Order RH-2-2004 dated 23 September 2004 with amendment to Timetable of Events (Order AO-4-RH-2-2004) / Lettre de l'Office à toutes les parties intéressées par l'ordonnance d'audience RH-2-2004 en date du 23 septembre avec modification du calendrier des événements
A-26	Board letter to all Parties to Hearing Order RH-2-2004 dated 28 September with changes to the List of Parties / Lettre de l'Office à toutes les parties intéressées par l'ordonnance d'audience RH-2-2004 en date du 28 septembre modifiant la liste des parties
A-27	Board Information Request No. 2 to TransCanada dated 15 October 2004
A-28	Board Information Request No. 1 to CAPP dated 2 November 2004
A-29	Board Information Request No. 3 to TransCanada dated 9 November 2004
A-30	Board letter dated 15 November 2004 to all Parties to Hearing Order RH-2-2004 - Notice of Motion of TransCanada / Lettre de l'Office du 15 novembre 2004 à toutes les parties de l'Ordonnance d'audience RH-2-2004 - Avis de requête de TransCanada
<b>B TransCanada PipeLines Limited</b>	
B-1-A	TransCanada PipeLines Limited (TransCanada) application dated 26 January 2004 regarding the tolls to be charged for services on TransCanada's Mainline between 1 January 2004 and 31 December 2004 - Volume 1 of 2 -Direct Evidence
B-1-B	TransCanada application dated 26 January 2004 regarding the tolls to be charged for services on TransCanada's Mainline between 1 January 2004 and 31 December 2004 - Volume 2 of 2 - Supporting Materials
B-1-C	TransCanada application dated 26 January 2004 regarding the tolls to be charged for services on TransCanada's Mainline between 1 January 2004 and 31 December 2004 - Omitted pages from Volume 2, Revenue Requirement, Tab 5, Schedule 5.3.1 to Schedule 5.3.8
B-1-D	TransCanada update to application (February Update) regarding the tolls to be charged for services on TransCanada's Mainline between 1 January 2004 and 31 December 2004 - February 2004 Update, dated 18 February 2004

**LIST OF EXHIBITS/LISTE DE PIÈCES**  
**(Prefiled/Déposées à l'avance)**

<b>No.</b>	<b>Description</b>
<b>B</b>	<b>TransCanada PipeLines Limited (Continued)</b>
B-2	TransCanada letter to the Board dated 27 February 2004 in response to the Board's letter of 12 February 2004 seeking comments on procedural and timing concerns in respect of TransCanada's 2004 Tolls and Tariff Application
B-7	TransCanada letter to the Board dated 14 April 2004 regarding CAPP letter to the Board dated 13 April 2004 providing its views on the Federal Court of Appeal decision in respect of TransCanada's appeal of the RH-R-1-2002 decision
B-8	TransCanada letter to the Board dated 28 April 2004 responding to Board letter dated 20 April 2004 seeking comments on Phase II
B-12	TransCanada letter to the Board dated 12 May 2004 with reply comments on Phase II
B-13	TransCanada letter to the Board dated 17 May 2004 with reply comments to CAPP's letter of 13 May 2004 on Phase II
B-18	TransCanada's amendments to Tolls Application for Phase II (May Revision), dated 28 May 2004
B-26	TransCanada Affidavit of Publication and Service of Notice of Public Hearing, dated 14 June 2004
B-36	TransCanada letter to the Board dated 16 June 2004 - Answer to the CAPP Motion
B-37	TransCanada letter to the Board dated 13 July 2004 requesting an amendment to the Timetable of Events for Phase II of the proceeding
B-38	TransCanada letter to the Board dated 22 July 2004 stating it has no reply comments regarding the amendments to the Timetable of Events
B-39	TransCanada's 27 July 2004 update to the TransCanada to Canadian Mainline Throughput Study and Supply Risk

**LIST OF EXHIBITS/LISTE DE PIÈCES**  
**(Prefiled/Déposées à l'avance)**

<b>No.</b>	<b>Description</b>
<b>B TransCanada PipeLines Limited (Continued)</b>	
B-40	TransCanada's 29 July 2004 Revisions to written evidence: Fair Return Overview; Fair Return Standard; Business Risk; evidence of Paul Carpenter; evidence of Mr. Lackenbauer and Mr. Engen; evidence of Paul Murphy; and evidence of Michael Vilbert
B-41	TransCanada's responses to CAPP Information Requests 1 and 2, dated 13 September 2004
B-42	TransCanada letter to the Board and CAPP dated 14 September 2004 enclosing a compact disk of responses to CAPP Information Requests 1 and 2 in electronic format
B-43	TransCanada's responses to Board IR# 1.1(a) to 1.49(g), CAPP IR# 3(a) to 134(d), Coral IR#1.1 to 22(c) and Quebec IR# 1.1 to 2.2 dated 20 September 2004
B-44	TransCanada's revised responses to CAPP Information Requests 1(a),1 (c), 1(d), 1(e), 1(f), 2(a), 2(o) and 2(r), dated 23 September 2004
B-45	TransCanada letter to the Board dated 23 September 2004 enclosing a compact disk with revision of responses to Board, CAPP and Coral Information Requests in electronic format
B-46	TransCanada's revised responses to CAPP Information Requests 3(b), 35(a), 131(a) and 108(a) dated 8 October 2004
B-47	TransCanada's letter to the Board and CAPP dated 8 October 2004 enclosing a compact disk with an electronic version of the attachment to response to CAPP Information Request 108(a)
B-48	TransCanada's response to the Board Information Request No. 2, dated 26 October 2004
B-49	TransCanada's Information Request No. 1 to CAPP dated 2 November 2004

**LIST OF EXHIBITS/LISTE DE PIÈCES**  
**(Prefiled/Déposées à l'avance)**

<b>No.</b>	<b>Description</b>
<b>B</b>	<b>TransCanada PipeLines Limited (Continued)</b>
B-50	TransCanada's letter to the Board dated 12 November 2004 - Notice of Motion seeking direction of the Board to clarify issues that remain to be considered in Phase II of the RH-2-2004
B-51	TransCanada letter to the Board dated 18 November 2004 - Response to NEB No. 3
B-52	TransCanada letter to the Board dated 18 November 2004 - Written Evidence of Witnesses and Witness Panels and Responsibilities
B-53	TransCanada letter to the Board dated 18 November 2004 - Replacement response to Board Information Request No. 3.
B-54	TransCanada letter to the Board dated 25 November 2004 - Reply Evidence
B-55	TransCanada letter to the Board dated 26 November 2004 - Revision and Updates to TransCanada's Evidence and Responses to Information Requests. Associations
<b>C</b>	<b>ASSOCIATIONS</b>
<b>C-1</b>	<b>CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS (CAPP)</b>
C-1-1	CAPP letter to the Board dated 24 February 2004 providing comments in response to Board letter of 12 February 2004
C-1-2	Intervention of CAPP dated 7 April 2004
C-1-4	CAPP Letter to the Board dated 13 April 2004 with comments on the RH-2-2004 Phase I and II proceedings
C-1-7	CAPP letter to the Board dated 4 May 2004 providing comments in response to TransCanada letter dated 28 April 2004

**LIST OF EXHIBITS/LISTE DE PIÈCES**  
**(Prefiled/Déposées à l'avance)**

<b>No.</b>	<b>Description</b>
<b>C-1</b>	<b>CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS (CAPP) (Continued)</b>
C-1-9	CAPP letter to the Board dated 13 May 2004 making corrections to TransCanada letter to the Board dated 12 May 2004
C-1-14	CAPP's Notice of Motion dated 4 June 2004
C-1-16	CAPP reply comments dated 21 June 2004 in respect of CAPP's Notice of Motion dated 4 June 2004
C-1-17	CAPP comments dated 20 July 2004 - TransCanada's proposed amendments to the Timetable of Events
C-1-18	CAPP's Information Requests, items 1 and 2, to TransCanada, dated 3 August 2004
C-1-19	CAPP letter to the Board dated 4 August 2004 regarding TransCanada's July revised application
C-1-20	CAPP letter to TransCanada dated 23 August 2004 - Follow-up questions to Information Request No. 2 to TransCanada
C-1-21	CAPP's Information Requests Nos. 3 to 134 to TransCanada dated 27 August 2004
C-1-22	CAPP letter to the Board dated 14 September 2004 - Comments on the timing of TransCanada's filing of responses to Information Requests
C-1-23	CAPP letter to TransCanada dated 14 September 2004 requesting additional information to responses to Information Requests 1 and 2, items 1(a)(i); 1(a)(iii); 1(c)(ii),(iii); 1(d)(v); 1(e)(iv),(v); 1(e)(i),(ii),(iii); 2(a)(xiii); 2(i)(iii),(iv),(v); 2(r)(i); 1(a)(iii) attachment; and 1(a)(iv) attachment
C-1-24	CAPP letter to TransCanada dated 15 September 2004 requesting additional information to responses to Information Requests 1 and 2, items 1(d)(ii); 1(e)(iv),(v); 2(a)(xiv); 2(o)(ii)



**LIST OF EXHIBITS/LISTE DE PIÈCES**  
**(Prefiled/Déposées à l'avance)**

<b>No.</b>	<b>Description</b>
<b>C-1</b>	<b>CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS (CAPP) (Continued)</b>
C-1-25	CAPP letter to the Board dated 21 September 2004 proposing adjustments to the Timetable of Events
C-1-26	CAPP letter to TransCanada dated 23 September 2004 requesting additional information to responses to Information Requests 3(b), (c); 35(a), and 131(a)
C-1-27	CAPP letter to TransCanada dated 27 September 2004 requesting additional information to responses to Information Request 108(a)
C-1-28	CAPP's written evidence dated 19 October 2004 - Also written evidence of Dr.Laurence Booth, Gilbert Laustsen Jung Associates Ltd., Mr. Hugh W. Johnson, Mr. Perter M. Nettleton, Dr. Andy Safir
C-1-29	CAPP letter dated 25 October 2004 - Revision to page 12 of Written Evidence of Mr. Peter M. Nettleton
C-1-30	CAPP's responses to Information Requests of the NEB and TransCanada dated 16 November 2004
C-1-31	CAPP letter to TransCanada dated 22 November 2004 - Request for a copy of the financial analyst's reports or comments (CAPP Information Request No. 26)
<b>C-2</b>	<b>INDUSTRIAL GAS USERS ASSOCIATIONS (IGUA)</b>
C-2-1	Intervention of IGUA dated 1 April 2004
C-2-3	Letter to the Board from Borden Ladner Gervais, counsel to IGUA, dated 15 April 2004 - Comments regarding letter from CAPP dated 13 April 2004
C-2-5	IGUA letter to the Board dated 5 May 2004 responding to Board letter dated 20 April 2004 seeking views on the process to be followed for Phase II of the proceeding
C-2-6	IGUA letter to the Board dated 11 June 2004 in support of CAPP motion of 4 June 2004

**LIST OF EXHIBITS/LISTE DE PIÈCES**  
**(Prefiled/Déposées à l'avance)**

<b>No.</b>	<b>Description</b>
<b>C-2</b>	<b>INDUSTRIAL GAS USERS ASSOCIATIONS (IGUA)</b> <b>(Continued)</b>
C-2-8	IGUA Letter to the Board dated 19 July 2004 supporting the amendments to the Timetable of Events proposed by TransCanada
C-2-9	IGUA letter to the Board dated 6 August 2004 in support of the submissions of CAPP in CAPP's letter to the Board dated 4 August 2004
C-2-10	IGUA letter to the Board dated 17 November 2004 - Written submissions pertaining to TransCanada's Motion dated 12 November 2004
<b>C</b>	<b>Companies/Compagnies</b>
<b>C-3</b>	<b>ALBERTA NORTHEAST GAS, LIMITED</b>
C-3-1	Intervention of Alberta Northeast Gas, Limited dated 6 April 2004
<b>C-4</b>	<b>ALLIANCE PIPELINE LTD.</b>
C-4-1	Intervention of Alliance Pipeline Ltd. dated 30 March 2004
<b>C-5</b>	<b>ANDROSCOGGIN ENERGY, L.L.C. and RUMFORD POWER ASSOCIATES, L.P.</b>
C-5-1	Intervention of Androscoggin Energy, L.L.C. (Androscoggin) and Rumford Power Associates, L.P. (Rumford) dated 6 April 2004
<b>C-6</b>	<b>BP CANADA ENERGY COMPANY</b>
C-6-1	Intervention of BP Canada Energy Company dated 7 April 2004

**LIST OF EXHIBITS/LISTE DE PIÈCES**  
**(Prefiled/Déposées à l'avance)**

<b>No.</b>	<b>Description</b>
<b>C</b>	<b>Companies/Compagnies (Continued)</b>
<b>C-7</b>	<b>BURLINGTON RESOURCES CANADA LTD.</b>
C-7-1	Intervention of Burlington Resources Canada Ltd. dated 26 March 2004
<b>C-8</b>	<b>CARGILL POWER &amp; GAS MARKETS</b>
C-8-1	Intervention of Cargill Power & Gas Markets dated 6 April 2004
C-8-2	"Information Request No. 1 from Cargill Power & Gas Markets to TransCanada dated 22 April 2004"
<b>C-9</b>	<b>CENTRA GAS MANITOBA INC. (CENTRA)</b>
C-9-1	Intervention of Centra dated 6 April 2004
<b>C-10</b>	<b>CINERGY CANADA, INC.</b>
C-10-1	Intervention of Cinergy Canada, Inc. dated 5 April 2004
<b>C-11</b>	<b>COENERGY TRADING COMPANY (COENERGY)</b>
C-11-1	Intervention of CoEnergy dated 7 April 2004
<b>C-12</b>	<b>COGENERATORS ALLIANCE (CA)</b>
C-12-1	Intervention of CA dated 7 April 2004
C-12-4	Letter from Ogilvy Renault, counsel for CA, dated 5 May 2004 with comments on how to proceed with Phase II of the RH-2-2004 proceeding (same as C-13-4)
C-12-9	Letter from Ogilvy Renault, counsel for CA, dated 11 June 2004, in support of CAPP motion of 4 June 2004 (same as C-13-9)
<b>C-13</b>	<b>CORAL ENERGY CANADA INC. (CORAL)</b>
C-13-1	Intervention of Coral dated 7 April 2004

**LIST OF EXHIBITS/LISTE DE PIÈCES**  
**(Prefiled/Déposées à l'avance)**

<b>No.</b>	<b>Description</b>
<b>C</b>	<b>Companies/Compagnies (Continued)</b>
<b>C-13</b>	<b>CORAL ENERGY CANADA INC. (CORAL) (Continued)</b>
C-13-4	Letter from Ogilvy Renault, counsel for Coral, dated 5 May 2004 with comments on how to proceed with Phase II of the RH-2-2004 proceeding (same as C-12-4)
C-13-9	Letter from Ogilvy Renault, counsel for Coral, dated 11 June 2004, in support of CAPP motion of 4 June 2004 (same as C-12-9)
C-13-14	Information Request No. 1 from Coral to TransCanada, dated 30 August 2004
C-13-15	Letter from Coral to the Board dated 18 November 2004 - Changes to Coral's contact persons
<b>C-14</b>	<b>ENBRIDGE GAS DISTRIBUTION INC.</b>
C-14-1	Enbridge Gas Distribution letter to the Board dated 24 February 2004 filing comments in response to Board letter of 12 February 2004
C-14-2	Intervention of Enbridge Gas Distribution Inc. dated 7 April 2004
<b>C-15</b>	<b>ENCANA CORPORATION</b>
C-15-1	Intervention of EnCana Corporation dated 1 April 2004
<b>C-16</b>	<b>HUSKY ENERGY MARKETING INC.</b>
C-16-1	Intervention of Husky Energy Marketing Inc. dated 6 April 2004
<b>C-17</b>	<b>IMPERIAL OIL RESOURCES</b>
C-17-1	Intervention of Imperial Oil Resources dated 5 April 2004

**LIST OF EXHIBITS/LISTE DE PIÈCES**  
**(Prefiled/Déposées à l'avance)**

<b>No.</b>	<b>Description</b>
<b>C</b>	<b>Companies/Compagnies (Continued)</b>
<b>C-18</b>	<b>NEW YORK STATE ELECTRIC &amp; GAS CORPORATION and ROCHESTER GAS AND ELECTRIC CORPORATION</b>
C-18-1	Intervention of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation dated 5 April 2004
<b>C-19</b>	<b>NEXEN MARKETING</b>
C-19-1	Intervention of Nexen Marketing dated 1 April 2004
<b>C-20</b>	<b>NORTHERN BORDER PIPELINE COMPANY</b>
C-20-1	Intervention of Northern Border Pipeline Company dated 30 April 2004
<b>C-21</b>	<b>SEMPRA ENERGY TRADING CORP.</b>
C-21-1	Intervention of Sempra Energy Trading Corp. dated 7 April 2004
<b>C-22</b>	<b>SITHE CANADA LTD. And SITHE SOUTHDOWN, LTD. (SITHE)</b>
C-22-1	Intervention of Sithe dated 7 April 2004
<b>C-23</b>	<b>SOCIÉTÉ EN COMMANDITE GAZ MÉTROPOLITAIN (GAZ MÉTROPOLITAIN)</b>
C-23-1	Intervention de Gaz Métro en date du 7 avril 2004
<b>C-24</b>	<b>TALISMAN ENERGY INC.</b>
C-24-1	Intervention of Talisman Energy Inc. dated 7 April 2004
<b>C-25</b>	<b>TRANSGAS LIMITED</b>
C-25-1	Intervention of TransGas Limited dated 31 March 2004

**LIST OF EXHIBITS/LISTE DE PIÈCES**  
**(Prefiled/Déposées à l'avance)**

<b>No.</b>	<b>Description</b>
<b>C</b>	<b>Companies/Compagnies (Continued)</b>
<b>C-26</b>	<b>UNION GAS LIMITED (UNION)</b>
C-26-1	Intervention of Union dated 7 April 2004
<b>C-27</b>	<b>VECTOR PIPELINE L.P. and VECTOR PIPELINE LIMITED PARTNERSHIP</b>
C-27-1	"Intervention of Vector Pipeline L.P. and Vector Pipeline Limited Partnership dated 7 April 2004"
<b>C-28</b>	<b>WESTCOAST ENERGY INC. (WESTCOAST)</b>
C-28-1	Intervention of Westcoast dated 2 April 2004
<b>C</b>	<b>Governments/Les Gouvernements</b>
<b>C-29</b>	<b>ALBERTA DEPARTMENT OF ENERGY</b>
C-29-1	Intervention of Alberta Department of Energy dated 6 April 2004
<b>C-30</b>	<b>MINISTER OF ENERGY FOR THE PROVINCE OF ONTARIO</b>
C-30-1	"Intervention of the Department of the Minister of Energy for the Province of Ontario dated 6 April 2004"
<b>C-31</b>	<b>PROCUREUR GÉNÉRAL DU QUÉBEC</b>
C-31-1	Intervention du Procureur général du Québec en date du 6 avril 2004
C-31-4	Demandes de renseignements du Procureur général du Québec à TransCanada, questions 1 et 2, en date du 28 juillet 2004
C-31-5	Lettre du Procureur Général du Québec à l'Office en date du 18 novembre 2004 - Observations concernant la requête de TransCanada du 12 novembre 2004

## LIST OF EXHIBITS/LISTE DE PIÈCES

<b>No.</b>	<b>Description</b>	<b>Paragraph No./No. de paragraphe</b>
C-1-32	CAPP's letter to TransCanada dated 26 November, IR 135	34
B-56	Written Evidence of Paul J. Murphy for TransCanada PipeLines, revised November 29th, 2004	57
C-1-33	Page 2513, lines 22-25, and page 2514, lines 1-9, of an extract from Transcript Volume 18 from the EUB generic hearing December 5th, 2003	832
C-1-34	RBC Dominion Securities February 10, 2000 Morning Comment	1002
C-1-35	Document from Nesbitt Burns dated February 9, 2000	1127
C-1-36	Extracts of the slides presentation entitled "February, 2000 Road Show"	1250

--- Upon commencing at 9:01 a.m./L'audience débute B 09h01.

1. **THE CHAIRMAN:** Bonjour, mesdames and messieurs. Good morning, ladies and gentlemen.
2. The National Energy Board, pursuant to Hearing Order RH-2-2004, as amended on the 23rd of September, has set down for hearing commencing today an application by TransCanada PipeLines Limited, pursuant to Part IV of the *National Energy Board Act* for orders fixing and approving tolls that TransCanada shall charge for transportation services on its Mainline for the period of January 1st to December 31st, 2004. The details of TransCanada's request are set out in its application.
3. Je m'appelle Gaétan Caron et je vais présider la présente audience. Mes collègues sont Madame Deborah Emes et le Dr. John Bulger. Comme d'habitude, l'interprétation simultanée sera disponible durant l'audience et les parties qui désirent s'en prévaloir n'ont qu'à obtenir les appareils au fond de la salle. De plus, sachez que l'audience est retransmise en direct sur le réseau Internet de l'Office.
4. Bien que l'audience qui commence aujourd'hui se déroulera principalement en anglais, les parties sont libres de s'exprimer dans la langue de leur choix.
5. The Board decided to hear this application in two phases. Phase I took place in June in Ottawa, Ontario. That phase dealt with the evidence of TransCanada and intervenors on all issues except for the issue of TransCanada's cost of capital.
6. Following TransCanada's decision not to seek review of the RH-2-94 return on equity formula for 2004, the Board removed: "... the appropriate rate of return on common equity for the Mainline from the list of issues to be addressed in Phase II."
7. The issues to be addressed in Phase II are thus: the appropriate capital structure for the Mainline; the appropriate cost of debt for the Mainline, including any financial impact resulting from debt redemption; and the appropriate effective date for any change to the Mainline's cost of capital.
8. Prior to the commencement of this hearing, a motion filed by TransCanada was filed with the Board. The motion was heard orally on November 19th, and the ruling was rendered that same date.
9. The Board has concerns with the volume of material filed in the last two business days before the hearing; in particular, the filing on Friday afternoon of 468 pages of evidence to reflect corrections affecting approximately 70 pages of that same evidence.
10. The Board has made the changes to the evidence as indicated in the filing by TransCanada of November 26th. However, in this hearing, we will be referring to the



July 29th version of the application, which is predominantly Exhibit B-40, which we have used all along to prepare for the hearing and which corresponds with the cross-references by other pieces of evidence and the information requests.

11. Therefore, all references to the text in this hearing should be to the July 29th filing as amended.
12. In this proceeding, the Board will follow its customary practice in respect of the presentation of evidence and argument by the applicant and interested parties.
13. If any party is uncertain about the hearing process or requires information concerning the entering of -- concerning entering the exhibits or other hearing-related matters, we would ask that you speak to Board counsel, Miss Margery Fowke or Miss Rose Marie Zanin, seated to your right.
14. Si des parties sont incertaines quant à la procédure à suivre ou ont besoin d'information sur des sujets reliés à cette audience, nous vous demandons de parler avec nos avocates, Me Margery Fowke ou Me Rose Marie Zanin, qui sont assises à votre droite.
15. Today, the Board will sit until 1:30 p.m., with two breaks, the first being a 20-minute break at approximately 10:30 a.m., and the second being a 10-minute break commencing at noon.
16. We will reconvene tomorrow morning at 8:30 a.m. and sit daily to 1:30 p.m. For the duration of the hearing, the Board intends to take two breaks during the course of the day; the first being a 20-minute break at approximately 10:15 a.m., and the second being a 10-minute break at approximately 12:00 o'clock noon.
17. The Board is prepared to be flexible on its hours of sitting, but would not make any decision to alter hearing hours without adequate consultation with counsel and notice to all parties.
18. It has come to the Board's attention that one of the witnesses for TransCanada will be unavailable on Thursday and Friday of this week. Should cross-examination of Panel 1 be concluded by Wednesday afternoon, cross-examination of Panel 2 will commence on Thursday morning. If, however, examination of Panel 1 is not complete by Wednesday afternoon, then the Board will adjourn the hearing on Wednesday afternoon and reconvene on Monday, December 6th at 8:30 a.m.
19. The Board intends to sit until December 17th, if necessary. If the hearing is not completed by that time, we will reconvene in the new year on a date to be determined.

20. Given that this is the first day of the hearing, we request that all counsel or parties' representatives meet with our counsel this morning during the break to discuss a proposed timetable and to identify any special concerns.
21. We will begin this morning with the registration of appearances. Parties will be called in the order in which they appear on the Order of Appearances, a copy of which is available at the back of the hearing room. The order of presentation of evidence and cross-examination will also follow the Order of Appearances.
22. When registering your appearance, please inform the Board whether you wish to be called for the purpose of cross-examination and argument. As well, please indicate whether you have any preliminary matters that you wish to raise before we proceed with the evidentiary portion of the hearing. Any preliminary matters will be dealt with following the registration of appearances.
23. A list of pre-filed exhibits is available on the exhibit table at the back of the hearing room. We would ask that you check the list before you register your appearance. And if you intend to file a document which does not appear on the list, you may do so when you come forward to enter your appearance. Parties need not tender for filing copies of exhibits which are already included in the Exhibit List.
24. When filing an exhibit at this time and during the proceeding, please provide five copies to the Hearing Officer, five copies to Board Counsel, and leave sufficient copies in the hearing room for all interested parties.
25. At this time I will ask the court reporter to note the exhibits which have been filed and which appear on the Exhibit List.
- (Refer to List of Exhibits/Se référer à la Liste de Pièces)
26. After the registration of appearances, the Panel will deal with any preliminary matters raised in relation to the hearing.
27. I will now ask Board counsel to assist in the registration of appearances and the filing of exhibits. When your name is called, please come forward to register the appearance.
28. Miss Fowke, please.
29. **MISS FOWKE:** Thank you, Mr. Chairman.
30. For the record, my name is Margery Fowke, and with me today is Rose Marie Zanin.

31. Mr. Chairman, before we proceed with the Order of Appearances, I just noted a couple -- or one was pointed out and one I noted changes -- errors -- an omission and an error on the Exhibit List.
32. The first is Exhibit B-40, which is TransCanada's revision that was filed in July, and Mr. Kolbe's evidence isn't listed as being amended and, of course, it should have been because it was one of the documents that was filed in that. So if people could just take note of that on B-40.
33. And the other is an addition that was filed on Friday. And that's CAPP's letter to TransCanada dated 26 November, IR 135. If that could be given an exhibit number, please.
34. **THE CLERK:** Exhibit No. C-1-32, Pièce numéro C-1-32.

--- EXHIBIT NO./ N<sup>o</sup>: DE LA PIECE C-1-32:

*CAPP's letter to TransCanada dated 26 November, IR 135*

35. **MS. FOWKE:** Thank you, Mr. Chairman.
36. I will now proceed with the order of appearances.
37. TransCanada PipeLines Limited...?
38. **MR. YATES:** Good morning, Mr. Chairman, Panel Members.  
C. Kemm Yates for TransCanada PipeLines.
39. With me will be Ms. Wendy M. Moreland, M-0-R-E-L-A-N-D.
40. TransCanada would, of course, want to be called for cross-examination of the CAPP witness panels when we get there. I will just confirm that for the record.
41. I don't have any preliminary matters to speak to other than one exhibit, which I am a little concerned about filing at the moment, given your admonition in your Opening Statement, Mr. Caron.
42. But, as I understand the Opening Statement, you do want to have any exhibits filed now?
43. **THE CHAIRMAN:** I mentioned this was the intention, Mr. Yates.
44. Could you perhaps explain what you intended and perhaps still intend to proceed with?

45. **MR. YATES:** Well, let me first say, Mr. Chairman, that I take responsibility for the filing of the 400 odd pages on Friday, and that was done that way for two reasons.
46. One was that the last time that I suggested filing just replacement pages for these minor corrections, that the response was that parties -- and I believe the Board in that case as well -- would have said that they preferred the re-filing of the document. So having been admonished for that once, I have apparently erred on the other side this time.
47. Secondly, because of the increased utilization of computers, there are going to be some of the TransCanada witnesses who will be dealing with this -- with the documents electronically, and that was why I thought it best to have the documents -- the complete document filed electronically.
48. So I understand your concern, Mr. Chairman. Certainly we -- when I say "we", I mean counsel as well as the witnesses for TransCanada, will work with Exhibit B-40 and seek to accommodate everybody in that regard.
49. Now, having said that, one of the documents that was filed on Friday did not pick up all of the changes in the sense of indicating them by the marginal sidebars that are required by the Board's rules. And that was brought to my attention graciously by Ms. Fowke, and what I have for filing today is that document, which is the updated evidence of
50. Mr. Murphy with what I sincerely hope are all of the sidebars -- all of the changes indicated by sidebars in the margin. I am told that this is a -- this was a software issue. So I would propose to file that now as the next exhibit.
51. I have also been informed that there may be a similar issue with the schedules in the evidence of Mr. Lackenbauer and Mr. Engen and I will undertake to deal with that as soon as the witnesses are done today and see if we can get the document filed, as it should have been filed, later today. And if not, I'll bring the copies tomorrow.
52. **THE CHAIRMAN:** Mr. Yates, please proceed with your filings as you originally intended.
53. And just to clarify, the reference in the Opening Statement, it is practical advice to all parties because we have been taking notes ourselves from the paper copy that was filed electronically for several months and it is for us a question of practical consequence that we prefer not to have to transcribe by hand the number of changes -- or comments we may have made over the several weeks preceding the hearing.
54. So that was the main purpose of the reference in the Opening Statement, Mr. Yates, but please proceed with the filings as you had anticipated before hearing the Opening Statement.

55. **MR. YATES:** Thank you, Mr. Chairman. And I'll try to get it right next time.

56. What I have for filing is the Written Evidence of Paul J. Murphy for TransCanada PipeLines. The cover page indicates that it is revised November 29th, 2004. And as I indicated a few moments ago, what this is intended to do is correctly represent all changes -- or indicate all changes by marginal sidebars.

57. **THE CLERK:** This will be Exhibit B-56. Pièce numéro B-56.

**--- EXHIBIT NO./N<sup>o</sup> DE LA PIECE B-56:**

*Written Evidence of Paul J. Murphy for TransCanada PipeLines, revised November 29th, 2004*

58. **MR. YATES:** And I should say, Mr. Chairman, that there are copies of this document being placed at the back of the room.

59. And I should also note for the record, Mr. Chairman, that in accordance with the terms of the Hearing Order, there are also copies at the back of the room of the documents that TransCanada filed within five days of the start of the hearing. Thank you.

60. **THE CHAIRMAN:** Thank you, Mr. Yates.

61. **MS. FOWKE:** Thank you, Mr. Chairman.

62. Canadian Association of Petroleum Producers.

63. **MR. SCHULTZ:** Good morning, Mr. Chairman, Members of the Board. N.J. Schultz appearing for the Canadian Association of Petroleum Producers.

64. **THE CHAIRMAN:** Your mike.

65. **MR. SCHULTZ:** I thought it was on. Pardon me.

66. Good morning, Mr. Chairman, Members of the Board. N.J. Schultz appearing for the Canadian Association of Petroleum Producers.

67. I did have two brief preliminary matters, but one has been taken care of kindly with the introduction -- or the giving of an exhibit number to the letter and Information Request to be sent on Friday. And I have put copies at the back for folks who have been travelling and haven't seen that.

68. And the only other brief preliminary matter I had related to the fact that we haven't completely digested all of the material we got last week. And I don't believe

there should be anything arising from that that will cause concern, but should we determine there is something, then I will speak to Mr. Yates, of course, and, if necessary, speak to you.

69. We do wish to be called for cross-examination and argument. And other than that, I have no further matters. Thank you, sir.

70. **THE CHAIRMAN:** Thank you, Mr. Schultz.

71. **MS. FOWKE:** Cogenerators Alliance...?

--- (No Response/Pas de réponse)

72. **MS. FOWKE:** Industrial Gas Users Association...?

73. **MR. FOURNIER:** Good morning, Mr. Chairman, Panel Members. Peter L. Fournier for Industrial Gas Users Association.

74. We will not be active in cross-examination, not for want of interest but for want of funds, in the absence of intervenor funding. We will, however, submit argument. Whether we do that in writing or orally, it will be through counsel. And counsel for IGUA is as listed in the List of Appearances, Peter Thompson.

75. **THE CHAIRMAN:** Thank you, Mr. Fournier.

76. **MS. FOWKE:** Alberta Northeast Gas Limited...?

--- (No Response/Pas de réponse)

77. **MS. FOWKE:** Alliance Pipeline Limited.,,?

--- (No Response/Pas de réponse)

78. **MS. FOWKE:** Androscoggin Energy, L.L.C. and Rumford Power Associates, L.P.?

--- (No Response/Pas de réponse)

79. **MS. FOWKE:** BP Canada Energy Company...?

80. **MR. TROICUK:** Good morning, Mr. Chairman, Panel Members. My name is Brian Troicuk.

81. I would like to register an appearance for BP Canada Energy Company. BP will be participating through the Canadian Association of Petroleum Producers and need not be called upon for cross-examination or for final argument. Thank you.

82. **THE CHAIRMAN:** Thank you, Mr. Troicuk.
83. **MS. FOWKE:** Burlington Resources Canada Ltd.?  
--- (No Response/Pas de réponse)
84. **MS. FOWKE:** Cargill Power & Gas Markets...?  
--- (No Response/Pas de réponse)
85. **MS. FOWKE:** Centra Gas Manitoba Inc.?  
--- (No Response/Pas de réponse)
86. **MS. FOWKE:** Cinergy Canada, Inc.?  
--- (No Response/Pas de réponse)
87. **MS. FOWKE:** CoEnergy Trading Company...?  
--- (No Response/Pas de réponse)
88. **MS. FOWKE:** Coral Energy Canada Inc.?
89. **MR. STAUFF:** Good morning, Mr. Chairman, Members of the Board.  
Mark P. Stauff, S-T-A-U-F-T, on behalf of Coral Energy Canada.
90. I would like to be called for cross-examination of the TransCanada panels  
and for final argument, and I have no preliminary matters.
91. **THE CHAIRMAN:** Thank you, Mr. Stauff.
92. **MS. FOWKE:** Enbridge Gas Distribution Inc.?  
--- (No Response/Pas de réponse)
93. **MS. FOWKE:** EnCana Corporation...?  
--- (No Response/Pas de réponse)
94. **MS. FOWKE:** Husky Energy Marketing Inc.?  
--- (No Response/Pas de réponse)
95. **MS. FOWKE:** Imperial Oil Resources...?

--- (No Response/Pas de réponse)

96. **MS. FOWKE:** New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation...?

--- (No Response/Pas de réponse)

97. **MS. FOWKE:** Nexen Marketing...?

98. **MS. YOUNG:** Good morning, Mr. Chairman, Board Members. Shannon Young for Nexen Marketing.

99. We will be participating in this proceeding through CAPP and do not need to be called upon for cross-examination or final argument. Thank you.

100. **THE CHAIRMAN:** Thank you. Ms. Young.

101. **MS. FOWKE:** Northern Border Pipeline Company...?

--- (No Response/Pas de réponse)

102. **MS. FOWKE:** Sempra Energy Trading Corp.?

--- (No Response/Pas de réponse)

103. **MS. FOWKE:** Sithe Canada Ltd. and Sithe Southdown Ltd.?

--- (No Response/Pas de réponse)

104. **MS. FOWKE:** Société en commandite Gaz Métro

--- (No Response/Pas de réponse)

105. **MS. FOWKE:** Talisman Energy Inc.?

--- (No Response/Pas de réponse)

106. **MS. FOWKE:** Transgas Limited...?

--- (No Response/Pas de réponse)

107. **MS. FOWKE:** Union Gas Limited...?

--- (No Response/Pas de réponse)



108. **MS. FOWKE:** Vector Pipeline L.P. and Vector Pipeline Limited Partnership...?  
--- (No Response/Pas de réponse)
109. **MS. FOWKE:** Westcoast Energy Inc.?  
--- (No Response/Pas de réponse)
110. **MS. FOWKE:** Alberta Department of Energy...?  
--- (No Response/Pas de réponse)
111. **MS. FOWKE:** Minister of Energy for Ontario...?
112. **MR. TURCHIN:** Good morning, Mr. Chairman, Members of the Hearing Panel. John Turchin here for the Minister of Energy for the Province of Ontario.
113. We would ask to be called for cross-examination of TransCanada witness panels. We would ask to be called for final argument.
114. We have no preliminary matters other than to express our appreciation, Mr. Chairman, for dealing, as you did, with the mass of material that came late on Friday and the way that we will work our way through that during the course of the hearing. That will assist us as well as assisting the Board. Thank you, sir.
115. **THE CHAIRMAN:** Thank you, Mr. Turchin.
116. **MS. FOWKE:** Procureur général du Québec...?
117. **M. RICHARD:** Bonjour, Membres du Panel. Ronald Richard, Ministère des ressources naturelles du Québec.
118. Nous n'allons pas contre-interroger les Panels de témoins. Nous allons cependant déposer une plaidoirie finale. Merci.
119. **LE PRÉSIDENT:** Merci, Monsieur Richard.
120. **MS. FOWKE:** Thank you, Mr. Chairman, that completes the Order of Appearances.
121. **THE CHAIRMAN:** Thank you, Ms. Fowke.
122. Mr. Yates, it would appear we are -- if you are ready, to proceed with Panel 1. I think we are ready.

123. **MR. YATES:** Thank you, Mr. Chairman.
124. I would ask the representatives on Panel 1 to take their seats then now, please.
125. What I propose to do, Mr. Chairman, is first introduce the panel to the Board and parties here, then have them sworn and then go through the process of getting their evidence accepted and adopted for the record.
126. So I will start with Mr. Girling, who is second from farthest from the Board. Mr. Girling is the Executive Vice President, Corporate Development and Chief Financial Officer for TransCanada Pipelines. He is also here as the primary policy witness for the company.
127. To his immediate right, farthest from the Board, is Mr. Sean Brett who is, Director of Corporate Finance for TransCanada PipeLines.
128. To Mr. Girling's immediate left, closer to the Board, is Mr. Gordon Lackenbauer, who is Deputy Chairman of BMO Nesbitt Burns and who the Board is very familiar with as a witness in respect of capital markets.
129. I should say, Mr. Chairman, that in the pleasantries that were going on before the hearing started today, Mr. Schultz said to Mr. Lackenbauer that he was pleased to see the "retiring but not shy" Mr. Lackenbauer. So it is Mr. Lackenbauer who is -- well, I guess this is his real swan song as a witness before the Board, and it is for that reason that TransCanada also has Mr. Aaron Engen on this witness panel.
130. Mr. Engen is seated to Mr. Lackenbauer's immediate left, and Mr. Engen is a managing director of BMO Nesbitt Burns, and I will be asking him to tell you something about his qualifications in a few moments.
131. Now, next to Mr. Engen, closer to the Board, is Mr. Paul J. Murphy, who is Managing Director and co-head of SG Barr Devlin in New York. It is also his first appearance before this Board, although he has given expert testimony before the Alberta Energy & Utilities Board, also in that case for a TransCanada affiliate, being Nova Gas Transmission. But I will ask him to tell you something about his qualifications in a few moments as well.
132. And closest to the Board is Dr. Paul R. Carpenter, who is a principal of the Brattle Group and who I believe is well known to the Board, having appeared before you many times.
133. So with that introduction, perhaps we could have the witnesses sworn.

**P.R. CARPENTER: Sworn**

**P.J. MURPHY: Sworn**

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**A.M. ENGEN: Sworn**  
**G.S. LACKENBAUER: Sworn**  
**R.K. GIRLING: Sworn**  
**S.M. BRETT: Sworn**

134.           **MR. YATES:** Thank you.

135.           I should also say, Mr. Chairman and Members, that you will notice there are two people sitting in the row behind the witnesses. They are Mr. Zimmerman and Ms. Klewchuk. They are there not as witnesses but as people to help deal with the massive paper that we are already hearing so much about.

**--- EXAMINATION BY/INTERROGATOIRE PAR MR. YATES:**

136.           **MR. YATES:** So I will start with you, Mr. Girling.

137.           Do you have before you a copy of the B, as in Bob, section of the National Energy Board's exhibits list that was issued last Friday?

138.           **MR. GIRLING:** Yes.

139.           **MR. YATES:** And can you confirm that the B exhibits, other than the testimony of experts and the information request responses in respect of that expert testimony, and including any updates and corrections, were prepared under your ultimate direction and control?

140.           **MR. GIRLING:** Yes.

141.           **MR. YATES:** Do you have any corrections or additions to make to that document?

142.           **MR. GIRLING:** No, I don't.

143.           **MR. YATES:** To those documents, I'm sorry. And are they, therefore, accurate, to the best of your knowledge and belief?

144.           **MR. GIRLING:** Yes.

145.           **MR. YATES:** And do you accept and adopt all of the exhibits listed in the B section of the exhibits list and Exhibit B-56, which was filed this morning, as the evidence of TransCanada in this case?

146.           **MR. GIRLING:** Yes.

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147.           **MR. YATES:** And can you confirm for us that this panel, Policy & Fair Return Standard, is here to speak to the matters assigned to it on pages 1 and 2 of 5 of the Witness Panels and Responsibilities document which is contained in Exhibit B-52?
148.           **MR. GIRLING:** Yes.
149.           **MR. YATES:** Do you have a copy of your personal direct evidence, the direct evidence of Russell K. Girling, which was also filed as part of Exhibit B-52 in the document entitled "Written Direct Evidence of Witnesses for TransCanada PipeLines Limited"?
150.           **MR. GIRLING:** Yes, I do.
151.           **MR. YATES:** And was that document prepared under your specific direction and control?
152.           **MR. GIRLING:** Yes.
153.           **MR. YATES:** And is it accurate to the best your information and belief?
154.           **MR. GIRLING:** Yes, it is.
155.           **MR. YATES:** And do you accept and adopt it as part of your evidence in this proceeding?
156.           **MR. GIRLING:** Yes, I do.
157.           **MR. YATES:** Thank you.
158.           Mr. Brett, can you confirm for us that you were involved in the preparation of various aspects of the evidence of TransCanada that is being spoken to by this panel of witnesses?
159.           **MR. BRETT:** Yes.
160.           **MR. YATES:** And is that evidence accurate to the best of your knowledge and belief?
161.           **MR. BRETT:** Yes.
162.           **MR. YATES:** Do you have a copy of the document entitled: "Written direct evidence of Sean Brett," which is included in Exhibit B-52?
163.           **MR. BRETT:** Yes.

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164.           **MR. YATES:** Was that document prepared under your specific direction and control?
165.           **MR. BRETT:** Yes.
166.           **MR. YATES:** Is it accurate to the best of your knowledge and belief?
167.           **MR. BRETT:** Yes.
168.           **MR. YATES:** And do you accept and adopt it as part of your testimony in these proceeding?
169.           **MR. BRETT:** Yes.
170.           **MR. YATES:** Thank you.
171.           Mr. Lackenbauer, the written evidence of Gordon S. Lackenbauer and Aaron M. Engen as revised July 29th, 2004, is included in the TransCanada application as -- and it was Appendix B-5 in the application. The revision is Exhibit B-40.
172.           The November 2004 updated version of that document appears in Exhibit B-55, and your reply evidence, the reply evidence of you and Mr. Engen, appears in Exhibit B-54. Were all of those documents prepared under the joint direction and control of you and Mr. Engen?
173.           **MR. LACKENBAUER:** Yes, they were.
174.           **MR. YATES:** Are they accurate, to the best of your knowledge and belief?
175.           **MR. LACKENBAUER:** Yes.
176.           **MR. YATES:** And can you confirm that the responses to information requests directed to you and Mr. Engen in respect of your evidence are included in the responses listed in the witness panel responsibilities document and were prepared by you or under the joint direction and control of you and Mr. Engen?
177.           **MR. LACKENBAUER:** Correct.
178.           **MR. YATES:** And are those responses accurate, to the best of your knowledge?
179.           **MR. LACKENBAUER:** Yes.

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180. **MR. YATES:** Do you accept and adopt your Written Evidence, Reply Evidence and responses to information requests as part of your testimony in this proceeding?
181. **MR. LACKENBAUER:** Yes.
182. **MR. YATES:** Mr. Chairman, the qualifications of Mr. Lackenbauer appear as an appendix to the evidence, but he has appeared many times before this Board, and I wouldn't proceed to have him go through any of that and would ask that be accepted as an expert by the Board.
183. **THE CHAIRMAN:** Yes, we do accept him as an expert.
184. **MR. YATES:** Thank you.
185. Turning to you, Mr. Engen, can you confirm that the Written Evidence of yourself and Mr. Lackenbauer, the Reply Evidence and the responses to information requests were prepared under the joint direction and control of you and Mr. Lackenbauer?
186. **MR. ENGEN:** Yes.
187. **MR. YATES:** And are all of those documents accurate, to the best of your knowledge and belief?
188. **MR. ENGEN:** They are.
189. **MR. YATES:** And do you accept them as part of your testimony in this proceeding?
190. **MR. ENGEN:** I do.
191. **MR. YATES:** Mr. Engen is presented by TransCanada, Mr. Chairman, as an expert in capital markets and economic and financial environment, so I'm going to ask him a few questions about this background.
192. Some of your qualifications appear in Appendix 1 to the evidence of yourself and Mr. Lackenbauer, Mr. Engen, but could you please tell us what your post-secondary education was?
193. **MR. ENGEN:** I have a Bachelors of Arts and Science from the University of Lethbridge which I completed in 1986. Subsequent to that, I did a joint MBA/LLB program, University of Alberta. I received my MBA, the focus in corporate finance, in 1990 and received my LLB in 1991.
194. **MR. YATES:** And after receiving your LLB, I understand from Appendix 1 that you spent some time practicing with the law firm of McCarthy Tétrault

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and ultimately as a partner there. Could you please describe the nature of your work as a lawyer, particularly as it relates to the matters which you are here to discuss in this proceeding.

195.               **MR. ENGEN:** My area of practice when I was at McCarthy Tétrault was in corporate finance, securities law. So I worked extensively with clients, with particular emphasis on utilities, and advised clients on structuring and executing capital markets transactions, public offerings, private placements of both debt and equity.
196.               We also worked on advising clients on mergers and acquisitions transactions. While I was there, I also spent a fair bit of time structuring income funds and limited partnerships. In particular, a couple of transactions I worked on included the TransCanada Power LP and the TransCanada Gas Processing LP.
197.               As well, I was involved with structuring Westshore Income Fund and several other funds.
198.               **MR. YATES:** And you moved to BMO Nesbitt Burns in 1999.
199.               Can you please briefly tell us about the nature of your work at BMO Nesbitt Burns particularly as it relates to the matters dealt with in your evidence in this proceeding?
200.               **MR. ENGEN:** Sure.
201.               For the most part, I continue to focus now on power and utility sector in Canada, advising clients on capital markets transactions. Rather than focusing on the structuring and the legal aspects though, we focus more on market reaction and executing the transactions, acting as underwriters for clients who are doing, again, both principally public offerings of debt and equity securities.
202.               I have also worked with a number of clients on advising them on mergers and acquisitions, timing for offerings and the like.
203.               **MR. YATES:** And the various transactions that are listed in your qualifications in Appendix 1, are they representative of the transactions in which you have been involved?
204.               **MR. ENGEN:** They are.
205.               **MR. YATES:** Thank you, Mr. Engen.
206.               With that, Mr. Chairman, I would ask that the Board accept Mr. Engen's qualifications and accept him as an expert in this proceeding.

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207.           **THE CHAIRMAN:** Yes, Mr. Yates, we accept Mr. Engen as an expert witness.
208.           **MR. YATES:** Thank you.
209.           Mr. Murphy, your Written Evidence as revised appears as part of Exhibit B-40. The November update to that evidence was included in Exhibit B-55, but the version with the correct sidebars has been marked this morning as Exhibit B-56. Can you confirm that those documents were prepared under your direction and control?
210.           **MR. MURPHY:** Yes, they were.
211.           **MR. YATES:** And are those documents accurate, to the best of your information and belief?
212.           **MR. MURPHY:** Yes, they are.
213.           **MR. YATES:** And did you also prepare -- or let me phrase it this way: Were the responses to information requests relating to your evidence prepared under your direction and control as well?
214.           **MR. MURPHY:** Yes, they were.
215.           **MR. YATES:** And are they accurate, to the best of your knowledge and belief?
216.           **MR. MURPHY:** Yes, they are.
217.           **MR. YATES:** Do you accept and adopt your evidence and the responses to information requests as part of your testimony in this proceeding?
218.           **MR. MURPHY:** I do.
219.           **MR. YATES:** Mr. Chairman, Mr. Murphy is being presented by TransCanada as an expert in the United States capital markets and the economic and financial environment in which North American gas pipelines operate to compete for capital, and in that light, I'm going to ask him the next few questions about his background.
220.           Firstly, Mr. Murphy, can you confirm that you were accepted as an expert in the United States capital markets by the Alberta Energy and Utilities Board in the generic cost of capital proceeding?
221.           **MR. MURPHY:** Yes, I was.
222.           **MR. YATES:** Could you tell us briefly about SG Barr Devlin?



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223. **MR. MURPHY:** Yes, I can.
224. Good morning, Mr. Chairman, Board Members. SG Barr Devlin is part of the Global Investment Banking Division of Société Générale, which is one of the world's largest financial institutions with assets in excess of \$780 billion U.S.
225. The Barr Devlin division of Société Générale is a specialized utility advisory service. We operate from New York, and we advise electric gas utilities, water utilities, gas pipelines, primarily in North America Europe -- North America including both Canada and the United States.
226. The firm was founded in 1990. It's the spin-off of a major bulge bracket utility practice, and we have continued to have been active in the sector since then, and we have been fortunate to advise on a number of the very large significant utility transactions that have occurred in the United States and in Canada over the last 13, 14 years.
227. Our services generally involve advising corporations, and that is utilities now, on capital structure, profiles in capital structure, changes in earnings, changes in rating agency actions and the feasibility and structure of corporate financings.
228. We specialize in valuing utilities and advising utilities in merger and acquisition transactions. Those include asset divestitures, asset acquisitions and corporate mergers. And we do that both in Canada and the United States and in Europe.
229. **MR. YATES:** Thank you, Mr. Murphy.
230. As for yourself, your appendix does indicate that you're Canadian by birth and education, but have been working in the Investment Banking industry in the United States for, I believe, 17 years.
231. And the appendix also includes descriptions of some of the transactions in respect of which you provided advice. What I would like you to do briefly here for the Board and for parties is summarize your background and experience that is specifically relevant to the testimony that you have provided in this proceeding.
232. **MR. MURPHY:** Thank you.
233. I am a Canadian citizen. I was raised in Canada, educated in Canada, also educated in New York at Columbia Law School. I have lived in New York since 1983 where I began life as a lawyer as well for two or three years. But in 1987, I joined the Investment Banking industry, and since that time I have been involved primarily in advising utilities, and in particular, initially I began my career at Salomon Brothers, where I ran the natural gas utility practice for Salomon Brothers for a number of years, and then I joined SG Barr Devlin in the year 2000 doing the same work.

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234. My business practice for my investment banking career over the numbers of years that Mr. Yates just mentioned really involves five things. One is raising capital for utilities. I have been involved in the raising of billions of dollars of capital for utilities in North America. And that is public financings, private financings and project financings.
235. I have also advised a number of utilities on mergers and acquisitions in both Canada and The United States as well as strategic advisory services in both Europe and Latin America and Asia as well. I have advised utilities on a number of restructurings, including strength of cost recovery for electric utilities and recapitalizations.
236. I have also advised a number of utilities on the reaction to various corporate transactions perceived by the rating agencies and advised utilities before rating agencies in their presentations and negotiating with the rating agencies in the outcomes of their deliberations.
237. And, finally, I have advised utilities in the United States on Chapter 11 proceedings. In fact, the two largest Chapter 11 proceedings in the United States being Columbia Gas. I advised Columbia Gas in their four-and-a-half-year Chapter 11 proceeding and Pacific Gas and Electric in their two-and-a-half-year Chapter 11 proceeding.
238. **MR. YATES:** And you have also appeared as an expert -- or you have provided expert testimony in proceedings relating to PG&E and in other jurisdictions in the United States?
239. **MR. MURPHY:** That's correct.
240. **MR. YATES:** With that, Mr. Chairman, I would ask that Mr. Murphy be accepted by the Board as an expert.
241. **THE CHAIRMAN:** Yes, Mr. Yates, Mr. Murphy is accepted as an expert witness.
242. **MR. YATES:** Thank you, Mr. Chairman.
243. Dr. Carpenter, your written evidence as revised July 29th has been marked as part of Exhibit B-40. Your Reply Evidence is included in Exhibit B-54. Were those documents prepared by you or under your direction and control?
244. **DR. CARPENTER:** Yes, they were.
245. **MR. YATES:** And are they accurate, to the best of your knowledge and belief?

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246. **DR. CARPENTER:** Yes.
247. **MR. YATES:** And did you also prepare responses to information requests that were directed to you in respect of your evidence?
248. **DR. CARPENTER:** Yes, I did.
249. **MR. YATES:** And can you confirm that those responses are accurate, to the best of your knowledge and belief?
250. **DR. CARPENTER:** Yes, I can.
251. **MR. YATES:** And do you accept and adopt your Written Evidence, Reply Evidence, and responses to information requests as your testimony in this proceeding?
252. **DR. CARPENTER:** Yes, I do.
253. **MR. YATES:** Your qualifications appear in your evidence?
254. **DR. CARPENTER:** Yes.
255. **MR. YATES:** And, Mr. Chairman, Dr. Carpenter has provided expert testimony previously before the Board, so I will not take that one any further.
256. There is no opening statement, and this witness panel is now available for cross-examination.
257. **THE CHAIRMAN:** Thank you, Mr. Yates.
258. Mr. Schultz...?
259. **MR. SCHULTZ:** Thank you, Mr. Chairman, and good morning, gentlemen. My name is Nick Schultz. I have a few questions for you -- actually, quite a few questions for you, on behalf of the Canadian Association of Petroleum Producers.
260. And I might say, Mr. Chairman, that within the pleasantries that we engage in, I am trying to be a pleasant person. I did refrain from any comment or any word play on the brilliance of Mr. Lackenbauer's tie.

--- (Laughter/Rires)

--- **EXAMINATION BY/INTERROGATOIRE PAR MR. SCHULTZ:**

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261.           **MR. SCHULTZ:** Just a brief introduction about roles, gentlemen, if we might. Mr. Girling, you're an executive vice-president of TransCanada Corporation; is that right?
262.           **MR. GIRLING:** That's correct.
263.           **MR. SCHULTZ:** And hence an officer of that corporation?
264.           **MR. GIRLING:** That's correct.
265.           **MR. SCHULTZ:** And you're also an officer of TCPL, which is the owner of the Mainline; is that right?
266.           **MR. GIRLING:** That's correct.
267.           **MR. SCHULTZ:** You, then, are the senior member of the TransCanada team in this hearing?
268.           **MR. GIRLING:** That's correct.
269.           **MR. SCHULTZ:** And I take it you are the last word on policy questions, then?
270.           **MR. GIRLING:** That's correct.
271.           **MR. SCHULTZ:** At least in this hearing.
272.           Now, Mr. Frew is testifying as part of Panel 2, and I understand he is a vice-president of TCPL. Is he also an officer of TransCanada Corporation?
273.           **MR. GIRLING:** I don't -- I don't know the answer to that question.
274.           **MR. SCHULTZ:** All right, thank you. But for this purpose, we can treat you as -- as an officer of both the corporation and TCPL?
275.           **MR. GIRLING:** That's correct.
276.           **MR. SCHULTZ:** Okay.
277.           Now, Dr. Carpenter, you are appearing on Panel 2 as well, and the bulk of your evidence, your Written Evidence, would appear to touch on Panel 2 matters. I'm wondering if you can help us by indicating what it is about your evidence that touches on Panel 1.
278.           **DR. CARPENTER:** I think the overlap, Mr. Schultz, has to do with comparisons of returns and earnings and performance with U.S. pipelines.

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279.           **MR. SCHULTZ:** And the overlap is not only between Panel 1 and Panel 2 in a sense that there may not be a bright line there, but also between your support on that view for Mr. Murphy's evidence? Would that be right?
280.           **DR. CARPENTER:** I think that's fair.
281.           **MR. SCHULTZ:** And so if I was to characterize the overlap, it would be in relation to risk return comparisons between the Mainline and other North American pipelines. Would that be right?
282.           **DR. CARPENTER:** That's correct.
283.           Of course, I come at it from an economist point of view as distinct from an investment banking point of view.
284.           **MR. SCHULTZ:** Okay, thank you.
285.           I have one very small matter before we move into the more substantive issues.
286.           So Mr. Girling, this would -- this, I guess, would be for you, and if you don't have the answer to this now, I am happy to take it when you do have it.
287.           You may or may not be aware that we had some discussion of regulatory costs in Phase I of this 2004 Application in a hearing in Ottawa, and I talked there about the regulatory costs related to the cost of capital part of the 2004 Application. Your counsel indicated that that was a matter to be addressed at another time.
288.           So with respect to the issue of regulatory costs for this Phase II proceeding and the related material that TransCanada has prepared, its costs of experts and counsel and so on, do you see that as something that we need to address now in this Phase II hearing, or is it something that would be addressed in 2005 when the deferral account for regulatory costs is being brought forward to be addressed?
289.           **MR. BRETT:** It would not be addressed at this hearing.
290.           **MR. SCHULTZ:** So you're content, then, if we say whatever it is we are going to say, pleasant or otherwise, about regulatory costs then when the deferral account comes forward, so that the whole issue of prudence and who should pay what is left, then, until the deferral account is addressed in 2005; would that be right?
- 290.1.       **MR. BRETT:** It is certainly subject to check.
291.           **MR. SCHULTZ:** Okay.

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292. If there is any change in that view, then you'll let us know? Otherwise, I'll proceed on the basis that whatever I have to say about the costs of this proceeding I'll save until 2005. Thank you.

293. **MR. BRETT:** Certainly.

294. **MR. SCHULTZ:** Now, Mr. Girling, I have a question about timing. One of the issues in the hearing is -- relates to what -- the timing of any change the Board may make with respect to cost of capital. And I take it you would be aware from the RH-4-2001 decision. And the reference that I'm going to just briefly read from is short. It is page 62, where the Board said this.

295. And if you need to find the -- I was assuming, Mr. Chairman, that some of these decisions people would probably have fairly handy, but it is one sentence that I'm going to read. It's not too long.

296. So page 62 of RH-4-2001 says the following:

*"The Board would normally expect an applicant to file a cost of capital application early enough to allow it to review the application and issue a decision prior to the commencement of, or early into, the applicable test year."*

297. So my question is: What would you want the Board to do if it came to the conclusion, and again I'll say if it comes to the conclusion, that it is not prepared to change the 2004 capital structure because it is now too late in the 2004 test year?

298. **MR. BRETT:** I'm not sure I understand your question, Mr. Schultz.

299. Are you asking what we would do after the Board had rendered its decision, or are you asking what would we suggest the Board do in advance of rendering its decision?

300. **MR. SCHULTZ:** Yes. I'm asking you the latter: What do you want the Board to do in this case if it were to come to the conclusion that it would not be prepared to change the 2004 capital structure because it's now too late in the 2004 test year?

301. **MR. BRETT:** Well, firstly, I would question the assumption.

302. We've asked for, with respect to changes of capital structure, an effective date of the 30th of June of this year. And from our perspective we see no reason why that can't be done on a -- I think the term is retrospective basis.

303. So, firstly, I don't see why it could not be done in that manner, as I understand these sorts of changes have been done in the past. You know, in having said

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that, we would await the Board's decision. The premise of your question, I just don't -- I guess we don't agree with.

304.                   **MR. SCHULTZ:** Well, let me try again, because I think it is an important question. Let me modify this with another assumption.
305.                   Suppose the Board -- and again this is purely a hypothetical for the purpose of seeing what kind of possibilities are there for a decision.
306.                   Suppose the Board were to think to itself, after listening to all the evidence, that perhaps some change in capital structure might be appropriate but because of timing wasn't prepared to change the 2004 capital structure. Should it then simply say to TransCanada sorry, it's too late and simply dispose of the application on that basis; or, would you want the Board to say something about what they might expect to see from you in a 2005 or subsequent period application? In other words, to share their thinking with you as opposed to simply telling you you're too late.
307.                   **MR. GIRLING:** I think the answer to your second question is easier.
308.                   It is we always seek to have more explanation and guidance from the Board with respect to their decisions and understanding them. But the scenario that you outlined it isn't one that we spent a lot of time contemplating, actually.
309.                   I don't think we spent any time contemplating a scenario under an application that we have made for 2004 to recover our costs for 2004, a decision outcome that would basically say that those costs are fair and they're pertinently occurred in the recoverable, but because it's too late you can't recover them. It's not a scenario that we spent any time contemplating because we don't think that it's a plausible scenario.
310.                   So I don't have an answer to your question, as to what the Board should do. I guess the Board will do what the Board sees fit and right to do at the end. But I don't have a suggestion for them how to handle that scenario.
311.                   **MR. BRETT:** Mr. Schultz, we wouldn't view this as being any different than RH-4-2001, where the Board ruled in 2002 with respect to a capital structure in 2001 and 2002. We wouldn't see this circumstance as being any different than that.
312.                   **MR. SCHULTZ:** Well, I don't -- I'm focusing now on process rather than substance for the moment, so I won't engage you on your substantive observation.
313.                   What I would like to do, though, Mr. Girling, is come back to your answer. You began your answer by saying you always welcome more guidance rather than less guidance, but then you ended on the note of you don't have an answer for me. And I thought the beginning of the question -- or the beginning of your answer was an answer, in the sense that you would prefer the Board share its thinking rather than just tell you you're out of time, but then you said you don't have an answer.

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314. So let me --
315. **MR. GIRLING:** I think, Mr. Schultz, you asked me two questions, if I remember correctly. You asked me what I thought the Board should do if they came to the conclusion that the capital structure that we put forward is correct and fair, but the time had run out; and a second question as to whether or not they should provide us with some explanation around their thinking.
316. I answered the second question with the answer that I think that the Board should, and we very much appreciate any guidance or explanation that they can give us. With respect to the first question on what the Board should do in that situation, my answer to that question was: I don't have an answer for what the Board should do with respect to the dilemma that they have in making their decision as to what to do.
317. **MR. SCHULTZ:** Thank you, and I appreciate that clarification, Mr. Girling. I understand now that I have an answer to my question.
318. And then just to be completely clear on the point, you would be of the view that a decision on capital structure here in this case could have effect into, say, 2005 or subsequent periods, even if, for some reason, the Board decided not to do so, not to make any change in 2004?
319. **MR. GIRLING:** I don't know how that can come about as what we have applied for is for an equity thickness for 2004. If the Board wants to give us some direction on 2005 and beyond, that would be up to them, but we haven't applied for anything in 2005 in this case.
320. **MR. SCHULTZ:** So the Board would give you guidance at its peril, then? Because you might --
321. **MR. GIRLING:** I didn't say that.
322. **MR. SCHULTZ:** I think we have probably gone around this enough.
323. Mr. Girling, is TransCanada saying that the NEB got it mostly wrong in its RH-4-2001 decision?
324. **MR. GIRLING:** No.
325. **MR. SCHULTZ:** The NEB, when it comes to capital structure, only went 30 percent of the way with you in RH-4-2001; is that right? It gave you a 300 basis point increase in equity thickness as opposed to the 1,000 basis points you were looking for?
326. **MR. GIRLING:** That's correct.



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327.           **MR. SCHULTZ:** And do I understand that a good part of your evidence in this case is designed to persuade the Board that TransCanada's view of its risks in RH-4-2001 was the correct view and that 40 percent should have been the outcome?

328.           **MR. BRETT:** No. We're talking about 2004, Mr. Schultz.

329.           **MR. SCHULTZ:** All right.

330.           Are you asking the Board to conclude from your evidence that it made a  
mistake in

331.           RH-4-2001, but it will be fixed now for 2004?

332.           **MR. GIRLING:** No.

333.           We've presented evidence with respect to our position in 2004. We're not suggesting anything about 2001, 2002.

334.           **MR. SCHULTZ:** Mr. Girling, does TransCanada agree that it is fair for cost-based tolls to include every penny of proper cost?

335.           **MR. GIRLING:** Yes.

336.           **MR. SCHULTZ:** And does TransCanada agree that it is fair for the customer to pay every penny of proper cost?

337.           **MR. GIRLING:** That's correct.

338.           **MR. SCHULTZ:** Does TransCanada believe it is fair for cost-based tolls to include a penny more than what is a proper cost?

339.           **MR. GIRLING:** No.

340.           **MR. SCHULTZ:** Thank you.

341.           At the broadest level, Mr. Girling, has anything changed since RH-4-2001 that you would see as positive in the sense of reducing risk or otherwise reducing the required return?

342.           **MR. GIRLING:** I can't think of anything, you know, in terms of change in circumstances that has lessened the risk for a pipeline system, but our experts on Panel 2 would probably be better able to discuss that.

343.           **MR. SCHULTZ:** All right.

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344. And when you answered that question, had you considered things that have occurred since RH-4-2001, such as the change in IT service pricing, creation of a southwestern zone, the increase in depreciation rates, or TransCanada's decision earlier this year not to continue its pursuit of comprehensive regulatory change?
345. **MR. GIRLING:** There is a lot in that question.
346. With respect to services, obviously we are trying to implement new services to meet what we believe are customer demands and ensure that our system remains competitive.
347. And again, with respect to the impact of those risks, Panel 2, and specifically Mr. Frew, can probably speak to those a lot better than I can.
348. You asked about depreciation in there, and I guess our view on depreciation -- we've seen a lot of testimony go back and forth -- is that a change in depreciation does not change the business risk of the company.
349. And there was a third at the end, but I don't recall exactly what the third piece was.
350. **MR. SCHULTZ:** I had asked you if you -- when you answered my question initially, you had had in your mind things that have occurred since RH-4-2001, and the four that I gave you were the Southwest Zone, the change in IT service pricing, the increase in depreciation rates and the decision by TransCanada that it will no longer pursue comprehensive regulatory change.
351. **MR. GIRLING:** The answer to the last question, again, is best in Panel 2 with respect to comprehensive regulatory change, but we continue to look for ways to make our system more competitive, ways to offer better services, and I would say that to the extent that there was a comprehensive model that could be worked out with our shippers, they can achieve those kinds of objectives, we would still pursue those, so...
352. And with respect to that latter question or the latter issue, I'm not sure that that's ever one that is dead for sure. It's something we continue to review on an ongoing basis as to whether there's a better way to approach this regulatory process, a better way to approach delivering services to our customers.
353. So that issue we haven't found an answer to yet, but it's not that we have stopped trying. And so, you know, because we haven't found an answer I don't think has any impact on risk.
354. **MR. SCHULTZ:** Thank you. I would like to refer you, Mr. Girling, to TransCanada's response to CAPP Information Request No. 6, which is part of Exhibit B-43, I believe. That's CAPP No. 6.

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--- (A short pause/Courte pause)

355. If you are with me there, Mr. Girling, this is a question that CAPP asked TransCanada with respect to what TransCanada would be saying in respect of capital structure, and specifically in relation to significant changes since RH-4-2001, if the starting point for analysis has been an RH-4-2001 decision in which the Board had agreed with TransCanada and its experts as to the fair level of return, which TransCanada at that point was asking for 12.5 percent ROE on 40 percent equity.

356. And the answer is:

*"Nothing. Had the Board agreed with TransCanada in RH-4-2001, then TransCanada would not have filed an application for a change in the rate of return on equity or the deemed capital structure for 2004."*

357. I will stop the quote there. There is one last sentence I won't read, but you can read it to yourself and come back to it if you feel necessary.

358. So can you confirm for me, then, that if the Board had agreed with you in RH-4-2001, we would not have a cost of capital application in this 2004 year?

359. **MR. BRETT:** You can't know that for certain, Mr. Schultz, because you'd have, as we've pointed out in the last sentence, TransCanada -- well, as you didn't point out in the last sentence, TransCanada would be dealing with materially different Reasons for Decision than those found in RH-4-2001.

360. In your hypothesis, we don't know what direction the Board would have had. We don't know whether the Board would have set out along the lines that it did in RH-2-94, that this decision is to survive for a number of years or whether the Board would have said that it's, as it did in this instance, effectively bifurcate that process. There are simply too many unknowables in the assumptions or in your -- the request for us to make a definitive statement one way or the other.

361. What we tried to get across, though, is the general principle that if the Board had agreed with us in RH-4, then there would not -- from our perspective, we wouldn't expect that there would be a need for us to bring forward a fulsome application with respect to cost of capital.

362. **MR. SCHULTZ:** Thank you for that, Mr. Brett.

363. You ended that by saying would not have -- TransCanada, from its perspective, if the Board had agreed with it, would not have seen the need to bring forward a fulsome application. The IR response says you wouldn't have seen the need to file "an" application, which I took to be any application.

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364.           **MR. YATES:** With respect, Mr. Chairman, if are going to discuss this, we should discuss it accurately. The statement says "application for a change in the rate of return --" I should say "... rate of return on equity or capital structure ...", is what it says.
365.           **MR. SCHULTZ:** Well, I was asking Mr. Brett, Mr. Chairman, to clarify what he meant by the distinction between fulsome and what is said here, and I assume he can do that, so I would hope that that is the same.
366.           **MR. YATES:** My only point, Mr. Chairman, was if the questions are going to be put, they should be put fairly. The statement refers to an application for a change. The IR response says TransCanada wouldn't be applying for a change if it had received what it applied for in 2001.
367.           **MR. SCHULTZ:** Well, Mr. Chairman, I really do take exception to Mr. Yates jumping up.
368.           The witness has the sentence right in front of him, and as was obvious from the last answer, is quite capable of putting the gloss on because the witness came right back to the sentence that I didn't quote but invited him to speak to, so I don't know why we are having these interjections at this stage in the proceeding.
369.           **MR. YATES:** We're having the interjections at this stage of the proceeding, Mr. Chairman, because the question has to be put fairly, and the way that Mr. Schultz is putting the question to the witnesses was not a fair way to put the question.
370.           **THE CHAIRMAN:** Give us a moment, please.
- (A short pause/Courte pause)
371.           **MR. CHAIRMAN:** So Mr. Schultz, perhaps to restart with a clean slate, why don't you ask your question again being mindful of the need for accuracy in quoting the Applicant's case.
372.           **MR. SCHULTZ:** Thank you, Mr. Chairman.
373.           Can you explain what you mean by fulsome, Mr. Brett?
374.           **MR. BRETT:** Fulsome, I think, would be -- this Application would be representative of a reasonably fulsome application.
375.           What I was trying to convey, sir, is really there are -- the challenge we had in responding to this request is, as I've said before, there are too many imponderables. It is difficult for me to imagine, had the Board set ROE at 12 and-a-half and equity thickness at 40, that TransCanada would, for 2004, have applied for a change.

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376. Having said that, you're talking about an alternate universe where we would be dealing with a materially different decision, with materially different reasons and potentially materially different start and end dates.
377. **MR. SCHULTZ:** So what would a -- assuming the second sentence here, which is your perspective, which is what you distinguished between the imponderables, which is the final sentence, and your perspective, which is you wouldn't have seen the need to file an application for a change, what would a non-fulsome application be in that context where it's your perspective on this?
378. **MR. BRETT:** I can't know that, Mr. Schultz.
379. I don't believe anybody could. As I have stated before, there are just too many imponderables and too many assumptions and too many potential paths in your alternate universe for the company to provide you with a response to that question.
380. **MR. SCHULTZ:** Mr. Brett, you told us that from the company's perspective, if the Board had agreed with TransCanada in RH-4-2001, then TransCanada would not have seen a need to file an application for a change in ROE and deemed capital structure; correct?
381. **MR. BRETT:** That's what it says.
382. **MR. SCHULTZ:** No, no, that's what you just told us. Is that -- oral.
- 382.1. **MR. YATES:** He said that's what he said.
383. **MR. SCHULTZ:** Okay, I'm sorry. I thought you said that's what it says.
384. **MR. GIRLING:** I thought what Mr. Brett said was you could never say never, or words like that. I think the answer to the question is a we would not have filed question, but I think he opened with you never say never.
385. Based on the circumstances at the time of the Board's decision, the hypothetical circumstance of 12 on 40 or 12 and-a-half on 40, we can't see a reason as to why we would be filing for a change in equity thickness or capital structure. But not knowing what those circumstances are, we can't say definitively that we wouldn't do it or that we wouldn't be making an application.
386. I don't know how much further I can go in answering your question that.
387. **MR. SCHULTZ:** Mr. Girling, TransCanada's own evidence, and by that I mean the totality of its evidence, including its experts, is that the cost of capital has declined since RH-4-2001; is that right?
388. **MR. GIRLING:** That's correct.

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389.           **MR. SCHULTZ:** Given that, would TransCanada, had the Board agreed with it in RH-4-2001, considered that it should have applied in 2004 to reduce its cost of capital?
390.           **MR. GIRLING:** That's probably a very good question, but I suspect your clients would have beat us to the punch on that.
391.           **MR. SCHULTZ:** Well, CAPP doesn't make the applications unless it's a complaint, Mr. Girling.
392.           I am asking you what the company would have done in the face of declining cost of capital. Would it have applied to adjust its rates, or does the answer stand, as it would appear in CAPP 6, that having received the RH-4-2001 decision, it wouldn't have come back in assuming that the Board had agreed with your view in that case, from your perspective?
393.           **MR. GIRLING:** I think your earlier point. And TransCanada is very prudent about ensuring that we collect only the costs that we incur in our operation of our system. To the extent that we are overcollecting our costs, then I think that there would be reason for us to not ask to overcollect our costs. But given -- you know, the circumstances that you've outlined may have other factors than just the reduction in the cost of capital. There may be other risk factors which offset that.
394.           So what I am saying is that, you know, your earlier questions as to whether or not we should collect a penny more than our costs, and I answered that as accurately as I could, that we should not collect more than our costs. If we're collecting more than our costs, and one of those costs being our cost of equity capital is higher than it should be, then we should apply to reduce -- or apply for a reduction in our costs.
395.           **MR. SCHULTZ:** Thank you.
396.           **MR. BRETT:** Just to clarify, Mr. Schultz, one thing I think that needs to be pointed out is that you can't, I don't believe, and I don't think anybody would ever assert that you can measure the cost of capital to the penny.
397.           We, for convenience or as a practical matter, use -- all parties use point estimates for cost of capital, whether -- however you phrased it. But we know and we acknowledge that there is an amount of judgment involved, so you can't say definitively, I think, that the cost of capital is X and so there is a range there. So I just -- we can't measure it to a penny, so we can't -- when we get 45 cents over, we can't immediately say: Oh, well, we better change our costs. There's an element of judgment there.
- 397.1.       **MR. SCHULTZ:** Well, Mr. Brett, I was going to move on, but I'm not.
398.           You applied for a 12 and-a-half percent ROE on 40 percent equity in

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RH-4-2001 and had that expressed as 7.5 percent ATWACC; is that right?

399. **MR. BRETT:** That's accurate.

400. **MR. SCHULTZ:** And your January application in this case was for 11 percent return on equity on 40 percent equity expressed as 6.9 percent ATWACC; is that correct?

401. **MR. BRETT:** That's correct.

402. **MR. SCHULTZ:** What would you say about the difference between those two sets of numbers with respect to what you were just telling us about: Scope for judgment and reasonable range?

403. **MR. BRETT:** Well, just that in both instances the evidence of the company was that the 7.5 or the 6.9 would have represented a mid-point or a best estimate, and that in both cases there would have been a range of reasonableness around each.

404. **MR. SCHULTZ:** I understood your interjection, Mr. Brett, to be that determining what the company might do had some qualification around it in the sense that there is room for judgment and that there is some scope for reasonableness.

405. So I'm asking you: With those two sets of numbers in front of you, to give me your thoughts on where the range of reasonableness would come into play in respect of my question and Mr. Girling's answer.

406. **MR. BRETT:** It's an interesting question, because under your alternate universe, I can't imagine any circumstance where we would have undertaken the effort and the considerable expense to go through the comprehensive effort that we went through for this application to make another estimate of what the range was.

407. So in your circumstance, there wouldn't be a 6.9. We would be faced with the situation where we had asked for and received either 7.5 or 12 and-a-half on 40, and we wouldn't have a 6.9. None of this evidence would exist.

408. So we would have had a situation where we would have had to have made our best judgment based on the other evidence that we see, which would be the -- what we observe in the marketplace, as to whether that 7.5 and whether that 12 and-a-half on 40 would be reasonable.

409. My view would be that if we had to make that determination based on the evidence we had in front of us, looking at the returns that we get on investments of similar risk, which really would be all that we would have under that scenario, I think it would be reasonable to assume that we would assume that the 12 and-a-half on 40 was reasonable. The 6.9 wouldn't exist.

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410. **MR. SCHULTZ:** Thank you, Mr. Brett.

411. Mr. Girling, I have a question that arises from a line in your Reply Evidence. It's the overview portion of the reply, Exhibit B-54, and it's on the very first page.

412. **MR. GIRLING:** Could you repeat that reference, Mr. Schultz?

413. **MR. SCHULTZ:** Yes, sir.

414. It's the fair return overview, Reply Evidence, Exhibit B-54, the first page. It is the very first piece of the Reply Evidence.

415. **MR. GIRLING:** Okay, I have it.

416. **MR. SCHULTZ:** Okay.

417. And what I am referring you to is line 10 of page 1, where TransCanada says the following:

*"TransCanada does not accept any of the positions of CAPP that are contrary to TransCanada's views."*

418. Are you with me there?

419. **MR. GIRLING:** No, I'm not. Is this page 1 --

420. **MR. SCHULTZ:** Page 1 of 4, fair return overview Reply Evidence.

421. **MR. GIRLING:** I'm there now, Mr. Schultz.

422. **MR. SCHULTZ:** Okay. Line 10. Would you like me to read it again?

423. **MR. GIRLING:** Yes, please.

424. **MR. SCHULTZ:** Okay.

425. The sentence reads:

*"TransCanada does not accept any of the positions of CAPP that are contrary to TransCanada's views."*

426. Do you see that?

427. **MR. GIRLING:** Yes.



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428. **MR. SCHULTZ:** So does that imply that there might actually be something that TransCanada and CAPP agree on?

429. **MR. GIRLING:** Just let me read that. I'm not sure that that's what it says.

--- (A short pause/Courte pause)

430. **MR. GIRLING:** I don't think that it says one way or the other whether we have points of agreement or not.

431. **MR. SCHULTZ:** Okay.

432. It could be that there is absolutely nothing in this proceeding on which TransCanada thinks there is agreement between CAPP and TransCanada? Would that be one way of --

433. **MR. GIRLING:** Certainly, on the principles that I've reviewed, it doesn't seem like there is alignment.

434. **MR. SCHULTZ:** Now -- well, we won't get into this too much more because we're going to have fun with semantics.

--- (A short pause/Courte pause)

435. **MR. SCHULTZ:** And I would just like to confirm for the record, Mr. Girling, that in TransCanada's view the fair overall return is -- or can be expressed as 6.9 percent ATWACC?

436. **MR. BRETT:** It's not our evidence in this hearing, Mr. Schultz.

437. **MR. SCHULTZ:** That's not your evidence, that the fair overall return can be expressed as a 6.9 percent ATWACC?

438. **MR. BRETT:** Uh-hum, it's not what we're applying for.

439. As to whether it's still on the record or not in this hearing, I'm not -- it's quite possible that some document that says 6.9 is still on the record. I have to admit that I'm not familiar with which exhibits were retained from Phase I in the original applications and which were not, so...

440. **MR. SCHULTZ:** Okay.

441. Could you look up then -- this is Exhibit B-46. It's your response to CAPP Information Request 3(b).

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--- (A short pause/Courte pause)

442.               **MR. SCHULTZ:** So that is TransCanada's response to CAPP 3(b) from Exhibit B-46.

443.               **MR. GIRLING:** We have it.

444.               **MR. SCHULTZ:** Okay.

445.               This is a response that was initially filed September 20th. And then following some correspondence from CAPP to your counsel, it was revised in October of 2004. And it's a two-paragraph answer. So take a minute to read it and then we'll talk about it.

--- (A short pause/Courte pause)

446.               **MR. GIRLING:** I had a chance to read it, Mr. Schultz.

447.               **MR. SCHULTZ:** Thank you.

448.               My reading of this is as follows, and if you can tell me if I'm misreading it. In January TransCanada applied for an 11 percent return on equity on 40 percent deemed equity which, in TransCanada's evidence, would be equivalent to an ATWACC of 6.9 percent. Is that correct?

449.               **MR. GIRLING:** That is correct.

450.               **MR. SCHULTZ:** In July, TransCanada re-filed on the basis of the NEB formula 9.56 percent ROE, but retained its request for deemed equity of 40 percent. Is that correct?

450.1.           **MR. GIRLING:** That's correct.

451.               **MR. SCHULTZ:** Okay.

452.               The combination of 9.56 percent ROE and 40 percent equity results in an overall return on capital of 6.3 percent; is that right?

453.               **MR. GIRLING:** That is correct.

454.               **MR. SCHULTZ:** Okay.

455.               And that 6.3 percent is another expression of ATWACC, just as 6.9 percent was an expression of ATWACC; is that right?

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456.           **MR. GIRLING:** Yes, I think it's more of an expression of return of capital is the way the 6.3 is calculated.
457.           **MR. SCHULTZ:** All right.
458.           But you had no difficulty in January using ATWACC terminology to identify what the 6.9 percent was? I take it that you don't have any difficulty in -- so that we can put this on an apples-to-apples basis. The 6.3 percent is the same -- is to be seen in the same light as 6.9 percent? In other words, it's an ATWACC figure?
459.           **MR. GIRLING:** I think -- for the purposes of the question, I think that's fine.
460.           The ATWACC -- my understanding is the 6.9 was an ATWACC calculated by Dr. Kolbe, who will be here to speak about that on our third panel. The 6.3 is a calculation of return on total capital. But I think for the purposes of this conversation, we can say that they're apples-to-apples comparisons.
461.           **MR. SCHULTZ:** Okay.
462.           I believe I understand -- the distinction you are making, just so we don't fall into forbidden universes, is that you calculated the 6.3 using a similar arithmetic formula as was used for the 6.9, but you plugged in as -- a different variable, the 9.56 percent ROE, and the math gives you 6.3?
463.           **MR. GIRLING:** Yes.
464.           The 6.9 is the same calculation. If you take the 11 on 40 and a forecast of market interests, or debt costs, and apply that capital structure to it, you would get a number that looks like 6.9. If you made that same arithmetic with 9.56 on 40, you would get 6.3.
465.           The ATWACC is the only term that I guess I am suggesting has a different definition, and it was calculated by Dr. Kolbe using his methodology. But you can get to the 6.9 using the 11 on 40 and the traditional method that the Board has used, and you can get to the 6.3 the same way.
466.           **MR. SCHULTZ:** Thank you.
467.           Now, I also take it that it is TransCanada's view that 6.3 percent overall return on capital falls short of a fair return; is that right?
468.           **MR. GIRLING:** That would be correct.
469.           **MR. SCHULTZ:** Okay.

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470. And I understood from this response that, based on the evidence that TransCanada has in respect of this proceeding, that TransCanada's view remains that 6.9 percent overall return on capital is a fair return?

471. **MR. GIRLING:** That is correct.

472. **MR. SCHULTZ:** Okay, thank you.

473. **THE CHAIRMAN:** Mr. Schultz, would this be a convenient time for you to break --

474. **MR. SCHULTZ:** Yes, sir.

475. **THE CHAIRMAN:** -- at this time? Thank you.

476. So we will break for 20 minutes, until 10:50.

477. As indicated in the opening statement, we would be grateful if counsel and parties' representatives could discuss with Board counsel -- meet with Board counsel and discuss any procedural or timing issues that they may face. Thank you.

--- Upon recessing at 10:35 a.m./L'audience est suspendue à 10h35

--- Upon resuming at 10:50 a.m./L'audience est reprise B 10h50

478. **THE CHAIRMAN:** Mr. Schultz, are you ready to proceed?

479. **MR. SCHULTZ:** Thank you, Mr. Chairman.

**P.R. CARPENTER, Resumed**

**P.J. MURPHY, Resumed**

**A.M. ENGEN, Resumed**

**G.S. LACKENBAUER, Resumed**

**R.K. GIRLING, Resumed**

**S.M. BRETT, Resumed**

--- **EXAMINATION BY/INTERROGATOIRE PAR MR. SCHULTZ: (Cont./Suite)**

480. **MR. SCHULTZ:** Gentlemen, just to continue on where we left off, we were talking about the --

481. **MR. YATES:** Excuse me for a moment, Mr. Schultz.

482. At the break, Mr. Brett indicated to me that he had misspoken himself and wanted to clarify before you carried on.

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483. **MR. SCHULTZ:** Oh, please.

484. Mr. Brett, please.

485. **MR. BRETT:** Yes.

486. I believe I indicated to you that we had asked for the 40 percent equity thickness effective June 30th of this year. If I said that, which I'm pretty sure I did, that would be incorrect. We applied for the 40 percent for the entire year, and I apologize the misstatement.

487. **MR. SCHULTZ:** I thought it was a Christmas present.

488. Thank you, Mr. Brett.

489. Just picking up where we left off before the break, we were talking about the overall return on capital and the figure of 6.9 percent, and I just wanted to end that conversation, hopefully, with confirmation that if I'm looking for the support in the evidence for the 6.9 percent, it would come from the analysis done by Drs. Kolbe and Vilbert. Would that be right?

490. **MR. GIRLING:** I think that would be one place that it would be.

491. The other place where you would find it is in the comparable investments where we have shown a number of investments similar or lower risk that have returns in excess of 6.9 percent.

492. **MR. SCHULTZ:** Thank you.

493. In your response to another CAPP information request -- this is also in Exhibit B-43 and it's just a couple along in the series. This CAPP 5(b). So CAPP 5(b) in Exhibit B-43. This also is in the area of what constitutes a fair return.

494. And if you have that in front of you, I am going to -- you might want to take a minute just to make sure you've read it, but I'm going to be referring you to the words at the bottom which relate to this issue that we were talking about; namely, that 9.56 on 40 falls short of TransCanada's view of a fair return. And then the words that I wanted to refer you to are the following at the very bottom:

*"...it would move the Mainline closer to a standard combination of risk and return".*

495. Are you with me there?

496. **MR. GIRLING:** Yeah. Yes.

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497. **MR. SCHULTZ:** Okay.

498. So my question is: What does standard combination of risk and return mean?

499. **MR. BRETT:** If you can just give us a moment, Mr. Schultz, there's a reference in that IR response to the business risk evidence. I think we would like to pull that up as well.

--- (A short pause/Courte pause)

500. **MR. SCHULTZ:** And just to be clear, I am on CAPP Information Request 5(b), September 20th, 2004, and it's part of Exhibit B-43. And Mr. Brett is now referring us to page 60, I believe, of Appendix B-3, Business Risk, which would be part of Exhibit B-40.

--- (A short pause/Courte pause)

501. **MR. GIRLING:** I will do my best to try and answer your question as to what it means. I think what our point there is that the 9.56 on 40 leads you to 6.3 percent.

502. Our return on total capital, which falls short of what we believe is a fair return, which is represented by the 6.9 but -- you know, 6.3 is greater than where we are today, so we move closer to where we think it should be. And I think that's all we're referring to in terms of a standard combination of risk and return is closer to where the market risk return balance is for a pipeline or an investment of this type of risk.

503. **MR. SCHULTZ:** So if we recognize that -- your view that 6.3 moves you closer, then we should understand standard combination of risk and return to refer to the 6.9. Would that be a correct reading of this?

504. **MR. GIRLING:** Yeah, I think that's probably directionally correct.

505. Like I said, the words "standard combination", I am struggling with them as you are, Mr. Schultz. I'm not sure exactly what they are intended to mean. I think our position, though, is that that's representative of a standard market -- or not a standard market, but a comparative market investment of similar quality.

506. **MR. SCHULTZ:** The thought that had crossed my mind when I read it, but then it didn't seem to fit, was that the standard combination -- if I had stopped reading it there or put the emphasis on standard combination, one thing that popped into my mind was whether that was a reference to the 11 percent ROE on 40. Is that a possible reading? Or would you say that's not what TransCanada meant by this?

507. **MR. GIRLING:** I think that the 11 on 40 gets you to 6.9 as well, so I don't know that they are different.

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508. They are the same combination of -- the combination, I think, refers to risk and return, is the balance of risk and return on a comparable investment basis. Not the combination of ROE and equity thickness, but the combination of 11 on 40 does get you to 6.9 as well.
509. **MR. SCHULTZ:** Thank you.
510. Mr. Girling, can you explain what change from the traditional method of landing on capital structure you are asking -- you being TransCanada -- you are asking the NEB to make?
511. **MR. GIRLING:** I think what we are asking is not for a change.
512. There is the traditional approach of finding a correct equity thickness or an appropriate equity thickness by analyzing business risk and then analyzing ROE and combining the two together to give you your return on total capital is one approach that's been used.
513. And we are not advocating that we change that. What we are suggesting is that there are several approaches that can be used, and the one that we have put forward as an addition to that is to determine what a fair return on total capital is, and once you have determined what a fair return on total capital is, if you know what your return on equity is, you can calculate the equity thickness.
514. I think the way that Mr. Yates described it a couple days ago was an  $A$  times  $B$  equals  $C$ , with  $A$  being the ROE, if I remember correctly,  $B$  being the equity thickness, and  $C$  being the return on total capital -- return on total equity capital.
515. What we're suggesting, I guess, is that an alternate route of getting there would be to determine  $C$ . Once you know  $C$ , and if you know  $B$  -- I mean if you know  $A$ , then you can calculate  $B$ . It's just simple math and different ways of coming at it.
516. It's trying to find benchmarks in each of  $A$ ,  $B$ , and  $C$  to determine fairness, and I guess it would be our view that the only real market benchmark for determining fairness is when you calculate  $C$ , return on equity capital. And actually, if you eliminate the impacts of debt, return on equity capital is a return on total capital. And that's a comparative number in the marketplace that we can compare to other investments of similar quality.
517. It's much more difficult to compare either  $A$  or  $B$  in isolation without having  $C$ . Competitive benchmarks or comparable benchmarks are, I guess, at best difficult to determine if you're just looking at  $A$  and  $B$  alone.
518. **MR. SCHULTZ:** Okay.

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519. Well, just so we're all clear, or the record is completely clear on what is in the building blocks of 6.23 or 6.9, whichever number one uses, the variables include a market cost of debt; is that right?
520. **MR. GIRLING:** That's correct.
521. I guess we can extend the A, B, C analogy. I think what I was trying to do is simplify it to say -- suggest that remove debt from the equation and then equity -- return on equity capital is equal to return on total capital. But for fullness, you should have a debt component as well, which just extends the equation.
522. **MR. SCHULTZ:** But I just simply want to be clear.
523. I understand that you were simply giving us an illustration to help us understand your thinking, but I just wanted to be clear for the record that the 6.9 or the 6.3 is calculated out of components, or alternatively one can derive components from it that include, firstly, the debt rate, which is a market debt rate; is that correct?
524. **MR. GIRLING:** That's correct.
525. **MR. SCHULTZ:** Okay.
526. And one also needs to know what the income tax rate is?
527. **MR. GIRLING:** That's correct.
528. **MR. SCHULTZ:** Okay.
529. And one also needs to know what the income tax rate is?
530. **MR. GIRLING:** That's correct.
531. **MR. SCHULTZ:** Okay.
532. And then the other two variables that are in the algorithm are the capital structure and the return on equity; right?
533. **MR. GIRLING:** That's correct.
534. **MR. SCHULTZ:** Okay.
535. Now, if we take the 9.56 percent return on equity as a given and we take the market cost of debt and the tax rates as they are given in the various places in the evidence, that, when combined with the 40 percent equity ratio, gives you the 6.3 that we were talking about; correct?



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536. **MR. GIRLING:** That's correct.
537. **MR. SCHULTZ:** Okay.
538. So if it were the case, and this is a hypothetical, if it were the case that the fair overall return was 6.9 percent and if the 9.56 percent ROE is fixed, if the debt and the tax rates are fixed, then the algorithm would tell us that the equity ratio should be, I believe, 51 percent?
539. **MR. GIRLING:** Subject to check the math, but I suspect it would be in that range.
540. **MR. SCHULTZ:** Okay.
541. So my question then is: What do you want the NEB to do in this case if it were persuaded by your 6.9 percent figure, as representing a fair return, what do you want the NEB to do with the difference between 40 percent and 51 percent?
542. **MR. GIRLING:** If the NEB -- that is not what we've applied for.
543. But to the extent that the NEB saw in our evidence that the fair return resulted in an equity thickness of the approximate 51 percent that you mentioned, I would suspect that they would have the authority to award us 51 percent if they saw fit to do that.
544. **MR. SCHULTZ:** Is that what you -- would you consider 51 percent equity what you require for your company?
545. **MR. GIRLING:** Could you repeat that, sir?
546. **MR. SCHULTZ:** Is 51 percent equity what you require for your company?
547. **MR. GIRLING:** I think what we suggested is that 6.9 percent is the return that is comparable to returns on similar investments of similar risk. And when you calculate through a fixed formula, which includes the three fixed components that you talked about, including the 9.56 ROE, it gets you to that 51, approximate, percent.
548. And we would say that that would be a fair return. But that's not what we've applied for.
549. **MR. SCHULTZ:** Right.
550. Well, then, my question really then comes back to: Is 51 percent what you require for the deemed equity in the Mainline capital structure, or is it 40 percent?

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551. **MR. GIRLING:** To achieve a fair return, that is what we believe would be required with a fixed 9.56.
552. **MR. SCHULTZ:** Why didn't you apply when you had the opportunity to amend your application for 51 percent?
553. **MR. GIRLING:** Quite frankly, I mean, I think what we're trying to do is be consistent and practical.
554. Forty (40) percent is 700 basis points away from our current 33. If I add on another 10 to that, it makes this whole process extremely difficult.
555. We've applied for 40 percent equity thickness in 2001. We've applied for it in the NGTL rate case. Directionally, that is where the rating agencies are telling us we need to be, is approximately in the neighbourhood of 60 percent debt. So we think that's what's reasonable and what's supportable at the current time and, therefore, that is why we applied for what we applied for.
556. Certainly, our math can get us to 51 percent. Do we think that we can get there in this process? I guess my practical answer is: No, I don't.
557. What we're trying to be is constructive, I guess, in trying to come to an answer that everybody can live with.
558. **MR. SCHULTZ:** Okay.
559. So if I understand, then, where this puts you, I understand you to be saying that you believe that 40 percent deemed equity from the company's perspective is reasonable?
560. You have taken the 9.56 percent ROE as a given because that's what the formula says it must be for 2004 in the circumstances that we're in today? So that the result is that you are asking the NEB to award a return that your own evidence would say is not fair; is that right?
561. **MR. GIRLING:** I have to make sure I have understood every word that you said in there.
562. But I think directionally what we are saying is that a fair return is the 9.56 percent. I don't think I said that the 40 percent was reasonable, I think was the words that you used.
563. I think what we suggested is the 40 percent in combination with the 9.56 gives us 6.3, which gets us directionally closer to what we think a fair return is. It is better than where we are today and probably better for us to be able to manage things like the rating agencies on a go-forward basis.

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564. The question of a reasonableness isn't anything that I suggested in there. Our position is that 6.3 is closer to 6.9 than 5.8 is.

565. **MR. SCHULTZ:** Okay.

566. Mr. Girling, I gather the company is not seeking any provision in this application to recover what it would consider the lost return in any future period beyond 2004? And by "lost return" I mean the difference between 6.9 percent and 6.3 percent; is that right?

567. **MR. GIRLING:** I think what we have applied for is 6.3 percent.

568. To the extent that the Board was to award us 6.9 in this hearing, in a back calculation that got us to 51 percent equity thickness, if that's the number, if that resulted in a number that the Board felt wasn't manageable or, you know, that the parties, being TransCanada and shippers, wasn't manageable in the current year, then it could adjust its tolls to spread those costs out over a longer period of time.

569. If that's the question you were asking. I'm not sure if that was what you were asking, or not, Mr. Schultz.

570. **MR. SCHULTZ:** Not quite, but I appreciate the answer.

571. My question was that TransCanada is not seeking in its application any provision to recover what I characterized as lost return, being the difference between the 6.9 percent that we have been talking about and the 6.3 percent. And just to give it to you again, the company is not seeking any revision to recover any lost return in any future period, lost to 2004?

--- (A short pause/Courte pause)

572. **MR. GIRLING:** If your question is -- we were just discussing what we think the question might be. If your question is: Are we, in a subsequent proceeding, going to request the difference between 6.3 and 6.9 as a foregone revenue in a past period, the answer to that question is no. What we have applied for in this case is the 6.3.

573. **MR. SCHULTZ:** Okay, thank you.

574. **MR. GIRLING:** Did I answer the question correctly?

575. **MR. SCHULTZ:** I think we are getting there. I'll take your answer and move on, so thank you.

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576. Now, given your view on the 6.9 percent that we have talked about, is TransCanada intending to take action quickly to correct what I presume you would view as an injustice; namely, a return that is less than fair, in your view?
577. **MR. GIRLING:** Unless what you're referring to is immediate action.
578. We're here today applying for 6.3, which gets us directionally closer to 6.9. Unfortunately, there isn't anything immediate I can do about it, except for incrementally make our case as to why we think 6.9 is a fair return.
579. **MR. SCHULTZ:** And my question was: Given your view about 6.9 and that you're only applying for the 6.3 here, but taking 6.9 as your view of fair, I'm asking what the company's intention is with respect to taking action to move the return to the point where it would say it was fair.
580. **MR. GIRLING:** I don't have any plans at the current time, except for to, as I said, just move directionally closer to 6.9 over time. There is no immediate plans as to how we will achieve that or whether that is feasible or not.
581. And, you know, one of the considerations the company will like to have is, based on the words and direction from the Board, is what are other parties' views of this and what are the avenues that we have to pursue that objective. We will have to assess those in the future as those events unfold.
582. **MR. SCHULTZ:** Thank you.
583. Mr. Girling, bearing in mind what we have been discussing about your evidence with regard to 6.9 percent overall return, my question is: What does TransCanada want the NEB to do if the NEB were to find that, using the traditional approach, the equity ratio should be some number less than 40 percent deemed equity?
584. **MR. GIRLING:** Could I get you to repeat that?
585. **MR. SCHULTZ:** Yes.
586. This is building on what we have been talking about with respect to the company's views about 6.9 percent overall return as the fair return and the company having applied for 40 percent equity ratio in this case, deemed equity.
587. And I am asking you: Should the Board find, using its traditional approach, that the deemed equity ratio should be some number less than 40 percent, what do you want the NEB to do?
588. **MR. GIRLING:** It is not up to me to tell the NEB what to do.

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589. If it determines, through going through all of the evidence that is filed, that some number less than 40 percent equity thickness in combination with the 9.56 ROE results in a return that they believe is fair, I guess the best I can ask for is for them to explain how that is fair and what benchmarks and tools they used to get themselves to that point.
590. **MR. SCHULTZ:** Well, I have suggested to you that they have gotten there by the additional approach and this being only a capital structure application, and we'll put the debt piece aside, but this being an application in respect of capital structure but not return on equity, the traditional approach doesn't get the Board to 40 percent.
591. We have just had a discussion that says that -- in which we have talked about 6.9 percent with a 9.56 percent ROE getting 1 to 51 percent equity. You say 6.3 percent is the result of combining the 40 percent that you are applying for with 9.56 percent ROE. And I've now put a scenario in front of you where the traditional measures of capital structure only get the Board to some equity ratio less than 40 percent. So I'm asking you what you want the Board to do in light of your view that 6.9 percent is the fair overall return.
592. **MR. GIRLING:** I'll try to answer with just respect to the -- what we refer to as the traditional approach.
593. But, you know, to the extent that they just determine what equity thickness is, what the equity thickness is based on, I think what I understand CAPP's view to be of the traditional approach, which is determine equity thickness based on assessment of business risk, I guess if it is some number less than 40 percent, we would like to understand how they calculate it or how they got from the business risk evidence to 40 percent and what tools they used to get there.
594. I think my last answer was the same, except for applied to the whole of -- you know, once you put that in combination with the ROE, you get a number which is a return on total capital, or a return on equity capital, then that's the number in combination with the debt, as you mentioned, that is applied in the fair return standard.
595. And that's -- you know, that's the test that we're looking to past. And the situation is the fair return standard, is what number passes the fair return standard.
596. So I guess what we would like to understand is how you go from a calculation of equity thickness based on business risk alone somehow gets you to a number, which is return on total capital, and what pops out of that is then, you know, somehow determined to be a fair return. And we passed the three fair return standards.
597. I guess what we are looking for is the explanation on how the evidence supports that conclusion.
598. **MR. BRETT:** Just if I could follow up, Mr. Schultz.

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599. I think in that scenario, if the Board came to the conclusion that the traditional financial integrity and business risk analysis would suggest an equity thickness that was less than 40 percent, then what we would ask the Board to do is to consider a few things: Firstly, consider whether there is merit to our position, which is the fair return -- which is that the fair return standard calls for a comparison of returns available on investments of similar risk, even when just the equity thickness is at issue.
600. So the Board needs to make a determination as to whether it agrees with that position or not. If it does find that there is some merit to that, then it needs to turn its mind to whether we have put forward evidence which would suggest that, looked at from that perspective, an equity thickness of 40 percent or higher is justified.
601. And let's take, for a moment, that they would accept our evidence that the alternate investment approach suggests an equity thickness of at least 40 percent. Then the Board needs to make a final -- so we made two -- they have made two determinations.
602. Then they need to determine what weight they give to each approach: the traditional approach and what we would call the even more traditional, you know, dating back to 1929, of looking at alternate investments. And they need to determine the extent to which this new/old approach merits a change or a higher equity thickness.
603. And that is mechanically how I see the process working.
604. **MR. SCHULTZ:** So if I can just bring that down to what I would take to be a simple point.
605. It's TransCanada's position, given its view that 6.9 percent would represent the fair overall return, that if the traditional measures used by the Board would get the Board to an equity ratio less than 40 percent, TransCanada would wish the Board to move the equity ratio to 40 percent, nonetheless, because of TransCanada's evidence on the overall return; is that right?
606. **MR. GIRLING:** I think that's correct is what we believe the standard is.
607. We're trying to determine this return is a fair return and it has the components of equity thickness and ROE.
608. And I guess my understanding of the traditional approach is one whereby you calculate the ROE and the equity thickness, and then you combine them to determine what the return on equity capital is. And that is the return that you compare in the fair return standard in terms of financial integrity, capital attraction, and comparative investment. I don't believe that there is a test for equity thickness alone.
609. So I am not sure that there is much difference in an approach between our approach and the Board's approach. Our starts at calculating C, if you will, and back

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calculates to B, given that we know what A is in the terms that we talked about earlier; versus the bottom-up approach, which is A times B equals C. You get the same number that needs to be compared.

610. My understanding is that the fair return standard doesn't speak to equity thickness alone as being the thing that you compare from a comparable investment standpoint, nor is return on equity, it is return on total investment.
611. So I think the traditional approach that you refer to and our approach are pretty similar. It is just a direction, whether you come from the bottom up or the top down.
612. **MR. SCHULTZ:** Thank you, Mr. Girling.
613. Mr. Girling, given what you have just said --
614. **MR. MURPHY:** Mr. Schultz, I wondered if I might just supplement Mr. Girling and Mr. Brett's comments.
615. **MR. SCHULTZ:** Just pop in.
616. **MR. MURPHY:** I would just make the observation for the Board's benefit and for those in attendance that the alternate description that they just made is, in fact, the way utilities today determine how they invest their capital in the capital markets. Utilities do not look at their equity structure and/or their ROE in isolation, they look at a total rate of return on the investment.
617. And, in fact, when investment bankers and advisors do analysis for utilities to assist them on strategic transactions, be it acquisitions or investments, that is the type of approach that is most commonly used. And it is done that way because the corporation needs to assess the total cash flows coming in from an investment and not just a segment attributable to debt or equity, because it is the total cash flow that is required to service the enterprise's debt and equity returns.
618. And so the approach that I think the representatives of TransCanada, that they have discussed here, is, in fact, squarely in line with actual practice in the capital markets today.
619. **MR. SCHULTZ:** Mr. Murphy, in your description, I take it that when utilities are making those investment decisions, they are looking at all of the moving parts at the same time, including the ROE as well as what the capital structure may be. Would that be fair?
620. **MR. MURPHY:** They are looking at the total pictures; that's right.

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621.           **MR. SCHULTZ:** And the constraint that we are operating with, from a procedural perspective, in this case, Mr. Murphy, I take it you would understand, is that ROE has not been put into issue in this Application, it's given by the formula; is that right?
622.           **MR. MURPHY:** I do appreciate that, Mr. Schultz.
623.           I understand that the Board's traditional construct has been to work on the equity risk premium as a formula for return on equity and that we're talking about a deemed equity thickness here today as a second part of the Board's traditional formula.
624.           The point, I think, that representatives from TransCanada were making is that each of those in isolation can't be looked at alone. It's the combined impact of both of them together that gets to a return on capital decision that is what corporations and utilities use today for investment decisions.
625.           **MR. SCHULTZ:** Thank you.
626.           **MR. LACKENBAUER:** If I could just supplement that as well, just the point you just raised about the constraint we are working with, the constraint is the 9.56, because that has been fixed, and so one component of the whole thing. It doesn't mean to imply -- and I think that may be where the disconnect is between at least some of your -- or CAPP's positions and TransCanada's.
627.           It isn't just a matter of arithmetic that you add the two. It has to be judged against the return on total capital to see what's appropriate, and that's why the 51 percent gets pushed out when you use 9.56 as a fixed. It would be 40 if it was 11.
628.           So the whole point about the equity ratio is that it's governed, in part, by the return on equity -- well, it's governed in whole by the return on equity, other things being equal. As soon as you start moving other things, then it becomes more fluid.
629.           But at this point our strong views are, from a capital markets perspective, is that you do not look at 9.56 and then simply say: Well, the equity ratio is what it is, then let's just see what the debt costs are and add that up and that's the return. It has to be judged as everybody in the capital markets, including the rating agencies, lenders and equity investors do, on the basis of the total risk package and the breakdown. So that is where we are coming from in this Application.
630.           **MR. SCHULTZ:** Thank you, Mr. Lackenbauer.
631.           My question, Mr. Girling, is how TransCanada sees the NEB distinguishing return on equity from capital structure in the approach that is being presented here and has just been discussed by you, Mr. Girling, as well as other members of your witness panel.



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632.           **MR. GIRLING:** Could I get you to repeat that?
633.           **MR. SCHULTZ:** Yes.
634.           I am just asking how TransCanada thinks the NEB should distinguish return on equity from capital structure, given what we have been just discussing in the last few minutes.
635.           **MR. GIRLING:** I am not -- is -- I'm not sure what you mean by distinguished, but I will give it a try. Is it -- under their traditional approach, we'll present, and we have presented, business risk evidence and financial integrity evidence which would give the Board what it has traditionally had in coming to an equity thickness.
636.           And then when you combine that with the ROE that they've determined, which is already in play, you come to a return on total equity capital that then is applied to the fair return standard.
637.           I guess that -- you know, the distinguishing factors is there is an A and there is a B and there is a C. They are all distinct from one another and there's different ways at coming at them. The one that I personally have the most difficulty with is how just based on business risk evidence and financial integrity evidence, you have come to a number of equity thickness, because it's insufficient to conclude what a fair equity thickness is because the equity thickness is then combined with the ROE and calculate your total return on capital.
638.           I don't understand the mathematical link between business risk, supply/demand evidence, financial integrity, to be able to come up with a number. The best example I can think of off the top of my head is, you know, what equity thickness applies to a trading company, what equity thickness applies to a mining company, what equity thickness applies to a bank.
639.           If you were to compare all of those stand-alone and just say: We're just comparing equity thicknesses, there is no grounding to ground yourself to, is that they all have different ROEs, and thus, you know, different return on total capital. It's that total return you compare, and then if you compare difference in risk between them, you actually have something that you can work with.
640.           But stand-alone equity thickness, if you told me the equity thickness of all of those companies, I couldn't tell you which one was the better investment or the more risky investment just by telling the equity thickness alone of those businesses. I need more information than that.
641.           So all I'm suggesting is that they're combined to come up with a total return on equity capital, and more importantly, total return on total capital for the

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enterprise. Once I have that number and then I understand the business risks of each of those entities, I can give some value judgment as to which one is better or worse.

642. But equity thickness or ROE in isolation of one another, there isn't enough to compare.

643. **MR. BRETT:** It's the compartmentalization, Mr. Schultz, that we don't think is going to give the best possible result. We think that alternate investments, business risk, financial integrity, all of these considerations are all relevant if you are only talking about equity thickness.

644. We also would be of the view that if equity thickness was fixed and we were talking about rate of return, all of these considerations, business risk, financial integrity.

645. So the challenge for us is understanding how we can get to the best possible result, the right answer, with a compartmentalized approach which says: Well, when we're talking about A, we're only going to talk about alternate investments, and when we're talking about B, we're only going to talk about business risks. Our view would be that all of these elements are relevant to a discussion of either.

646. **MR. SCHULTZ:** Given what you have just told me, gentlemen, Mr. Girling, why didn't TransCanada try to put return on equity in play in this proceeding by bringing a review application so the Board would have all the moving parts in front of it?

647. **MR. BRETT:** We didn't -- sorry.

648. **MR. GIRLING:** I don't really see the need to do that.

649. The Board has come to the conclusion that the equity risk premium methodology calculates an ROE that they believe is representative of a return on equity in the marketplace given that what we're seeking is return on total capital, there really isn't a need to review that number.

650. **MR. SCHULTZ:** So --

651. **MR. BRETT:** Mr. Schultz, just when you add onto that, just from a practical matter, we didn't quite see as a practical matter how you could have a hearing to talk about both rate of return and equity thickness when each item would be governed by a different evidentiary standard, and as I understand it, governed by two different sections of the *NEB Act*.

652. I mean, as a practical matter, I mean, it doesn't make any sense to me. I would have to say: Well, this comment relates to equity thickness and so the evidentiary standard is this, and that comment relates to both, so the Board needs to decide which --

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to weigh evidence with two different evidentiary standards, so both from a pragmatic perspective, as Mr. Girling has approached it, and also just from a process perspective, it just didn't make any sense to us how we could do both at the same time.

653.           **MR. SCHULTZ:** Thank you, Mr. Brett. So let's see if we can understand what the company is saying in a nutshell here.
654.           If we go back to my hypothetical that started this discussion, that we have the traditional approach -- or, I think, perhaps, Mr. Brett, you used the words compartmentalized approach -- gets the NEB, in my hypothetical, to the view that the equity ratio should be something less than 40, applying its traditional measures, TransCanada's position is that the Board should look at the overall return number and then top up whatever the NEB came up with by the traditional means and land on 40 as the final outcome. Is that what it comes down to?
655.           **MR. GIRLING:** That would be correct, because what we believe the Board's job is to determine a fair return on total capital invested as it compares to investments of similar risk. That is the only test that I understand that we're trying to get over. It is the only hurdle to get over.
656.           There isn't a hurdle that I understand that is a stand-alone equity thickness test that determines that equity thickness stand-alone is fair. The only test, that I'm aware of, is the one that tests return on total return -- total capital return for the corporation.
657.           **MR. BRETT:** And it may just have been the way that you phrased your statement, Mr. Schultz, but we're not suggesting that the Board come up with: Well, we're at 33 and then we're going to go to 36 on the basis of the traditional approach and add another four.
658.           So when you say "top up", I'm sure you're speaking generally as opposed to -- and if that's the case, we would agree. If, on the other hand, we're suggesting that they could somehow compartmentalize, I don't think we'd agree with that. We would say that they'd have to look at all of the evidence in whole.
659.           **MR. GIRLING:** What we're looking for is the number in total that passes the fair return standard.
660.           And to your point earlier, it's the number that is our actual cost and that we should have a right to recover what our actual cost is, and that actual cost is determined by the fair return standard.
661.           **MR. SCHULTZ:** Thank you, Mr. Girling.
662.           Mr. Brett, I thought I understood the company's position, now I'm a little less clear after your clarification, so let's take your hypothetical.

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663.           What I heard you talk about was the NEB gets to 36 using the traditional approach, and then I got confused about what you said you did or didn't want the NEB to do after that or what you weren't agreeing with in mine.
664.           So take your hypothetical, the NEB gets to 36 by the traditional approach. What do you want it to do with the difference between 36 and 40, given the company's view that 6.9 percent is the fair overall return?
665.           **MR. BRETT:** Taking for a moment your presumption as a fair one, in that the Board could compartmentalize its thinking in that respect, then if they came to the conclusion that the traditional approach on business risk and financial integrity merited a 36 and if they came to a determination that the alternate investment approach suggested a number -- let's pull something out of the air -- of 45, then it's up to the Board to determine, firstly, whether it wants to take a mathematical approach of waiting or whether it simply wants to do a qualitative judgment.
666.           If it makes a qualitative adjustment, then that's all -- judgment, then that's all there is to it. And if it decides to do it on a quantitative basis, then the Board has to determine how much weight to give to each element.
667.           **MR. GIRLING:** I guess my view is I don't know that the Board has -- if what you're saying is that the Board calculates, just to pick your number, 36 percent, you say fair return or fair equity thickness.
668.           Then if you combine that number with the ROE of 9.56 percent and it comes out to a number that looks like 6 percent -- I don't know what the math is, but say 6 percent -- and the Board determines that 6 percent isn't a fair return, then I think it's up to the Board to determine what a fair return is and back calculate what a proper equity thickness is. Because if that number that they have calculated at 36 percent doesn't give you a fair return, then we're not being allowed to recover our costs.
669.           So is the only test that exists is the test of whether or not we're achieving a fair return, and the only way you get there is by combining the equity thickness with the ROE to calculate return on total capital, and then you have a comparative number.
670.           So if the Board determines that there's a disconnect between those two numbers, then I think the Board has to reconcile that disconnect between those two numbers, but in my mind, there can't be a disconnect between the two numbers.
671.           **MR. SCHULTZ:** Now, my question was framed around what you want the Board to do as the Applicant, and I just want to be perfectly clear about it.
672.           The "36", for the record, I believe will be seen to have come out of Mr. Brett's mouth, and I adopted it for the purpose of my question, so we could at least have some starting point of a universe that we could begin a dialogue within.

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673. So we have the Board getting to 36 by its traditional means or its compartmentalized approach, as I believe Mr. Brett characterized it. TransCanada's view is that if given its view that 6.9 percent overall return is the fair return, the Board should then go back and bring that equity thickness from 36, which the traditional approach would have led the Board to in this hypothetical, to 40?
674. **MR. GIRLING:** Our opinion on 6.9, I guess is what I'm suggesting, is not that relevant to the Board's decision.
675. It's what the Board concludes their equivalent of the 6.9 to be, and whatever that number is has to back calculate into an equity thickness based on the 9.56. It's them that have to pass the test of fair return.
676. And if they determine that that number, just for example's sake, is 6.5, then they have to back-calculate to an equity thickness that gets us a fair return of 6.5 percent.
677. **MR. SCHULTZ:** What is it you want the Board to do if the traditional approach gets it to 36 ---
678. **MR. GIRLING:** The traditional approach ---
679. **MR. SCHULTZ:** --- assuming -- based on your view of fair return.
680. **MR. GIRLING:** The disconnect that we have here, I think, Mr. Schultz, is I believe that the traditional approach is one of calculation of ROE, calculation of equity thickness, combine the two to come up with a number, and that number is then compared on the fair return standard.
681. I don't think the traditional approach is I calculate equity thickness and ROE in isolation and I forget about return on total capital. So I think we have probably a disconnect on our views as to what the traditional approach is.
682. My belief is the traditional approach has always been A times B equals C and then we test C.
683. **MR. MURPHY:** And Mr. Schultz, I would just add that I think some of the confusion from the questioning here relates to your hypothetical, which is that let us assume that the Board determines that 36 percent is the appropriate deemed equity component. That hypothetical is taken in isolation. That doesn't exist in the real world.
684. As Mr. Girling has just said, capital determination, when it comes to determining return on capital, has to be done in the context of both equity thickness and return on equity.

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685. So it's difficult to answer your question without you telling us as a panel: What is it that caused the Board to determine that the 36 was the right percent to begin with. Because a determination of 36 has imbedded within it a determination of what a fair return on capital is. They are, in fact, part and parcel of the same thing.

686. **MR. SCHULTZ:** Mr. Lackenbauer, how would you characterize the Board's traditional approach to capital structure?

687. **MR. LACKENBAUER:** I was going to raise the same point exactly that Mr. Murphy rose with you -- raised with you, and I think I was trying to address that point when I made the earlier comment, which is that you need to look at return on total capital.

688. Indeed, Dr. Booth has that in his own evidence. And then you determine based on business risk and based on taxes and so on and so forth what the appropriate level of debt is.

689. That is not something that is frozen in time. That is something that is a reflection of business risks at the time that you make the decision. And as those things evolve, you have to look at the whole package.

690. It has never occurred to me, and I was going to ask you prior to some of the statements that Mr. Girling just made, what you meant by the traditional approach that was different, because I didn't know what that was. And I think I have been around long enough to say that I understand the traditions; or at least I think I understand the traditions.

691. And I have always thought, at the very least implicitly, and what my fear has been in recent years, is that the Board has lost sight of the implicit and has gotten locked on to the common equity and it has become more of an arithmetic exercise than it should have. Not just this Board, all regulators in Canada.

692. Because the business risks get revisited always in the context of, at least explicitly, in the context of just focusing on equity ratios and has gotten away from talking about overall business risks. Until the last -- somewhere in the last five to ten years, there wasn't any real disconnect. I think that a disconnect has occurred in that regard, certainly in the last five years, and it is something that the Board needs to refocus on if it hasn't been focusing on it properly. And it is certainly my understanding that historically that was always done.

693. So I would say tradition in terms of applying financial practice and financial theory correctly is you can't do it any other way. And, therefore, I can't even imagine a hypothetical like you and Mr. Brett were discussing where the Board would come out and say: Well, we found 36 to be the number, but it's not fair and, therefore, we're giving you 40. I mean, if 36 wasn't fair, then why did you find it?

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694. I mean, you're going to find out and come out with what, in your judgment, is the appropriate equity ratio. I can't imagine parsing it in public in a decision saying: This is what we came up with, but it's not fair so we're going to adjust it.

695. **MR. SCHULTZ:** Mr. Lackenbauer, how do you characterize cases in which regulators have decided to reflect some aspect of risk that they might otherwise have reflected in capital structure but don't and then increase the ROE to compensate for that?

696. **MR. LACKENBAUER:** It is one or the other.

697. I mean, you can do it both ways because what it comes back to, again, is the return on total capital. And so if you -- and, I mean, just to pick a number for illustration here, let's just say, you know, for round numbers that 10 percent was the ROE that was in place and 35 percent was the equity ratio that was in place and a determination had been made that business risk had increased and the Applicant had sought higher equity ratio as a result, but not a change in the ROE. In other words 10 percent -- let's say 40.

698. Let's say we were asking for 40 against 35, but the 10 percent was going to stay constant. If instead the 35 was maintained but the 10 was raised so that you got the same end result, I would say you're in the same place and your return on total capital is where it should be.

699. So you can do it either way. You don't have to do it one way or the other.

700. **MR. SCHULTZ:** You're aware of instances where regulators have done it by reflecting an additional amount on return on equity, are you?

701. **MR. LACKENBAUER:** Yes, generally. I can't say specifics.

702. But I understand, for example, that BCUC does some of that.

703. **DR. CARPENTER:** Right.

704. And, Mr. Schultz, similarly, the U.S. practice is to define a range of reasonableness for return on equity given an equity thickness that is either determined by the pipeline's actual capital structure or the parent's capital structure, and then they adjust the return for differences in business risk within the zone of reasonableness. That is the traditional approach there.

705. **MR. SCHULTZ:** Thank you, Dr. Carpenter.

706. Mr. Lackenbauer, can you give us any instance you're aware of of a regulator in Canada that did the reverse of what we were talking about: took a situation where the return on equity was lower than it might otherwise have been?

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707. In other words, less than the regulator might otherwise have been prepared to award and then compensated for the gap with an addition to capital structure, more equity in the capital structure?

708. **MR. LACKENBAUER:** I can't say anything -- or nothing comes to my mind at the moment. But if you want to help me out in that regard for purposes of the discussion, I would be happy with that.

709. **MR. BRETT:** Mr. Schultz, I think it is, although not exactly the same, I think it is fair to say that in RH-2-94 the Board first established the ROE formula and then set about to adjust for differences in business risk for the various companies through changes in capital structure.

710. So I acknowledge it's not the -- exactly the same as what you have described, but conceptually the notion is the same: The Board accepts one element as a given and then makes adjustments only to the other.

711. So it is -- I think there is evidence in the past of adjustments being made to either so as to allow for the business risk.

712. **MR. SCHULTZ:** So let's start with that then, Mr. Brett, and see if we can get to the end of this line of questioning.

713. Let's take the RH-2-94 approach, where the Board looks at business risk and financial integrity. Would you agree that those are the two factors that the Board was broadly considering in RH-2-94 in respect of capital structure?

714. **MR. BRETT:** Yes.

715. **MR. SCHULTZ:** And now the Board, looking at business risk in the same way that it was in RH-2-94 and financial integrity in the same way, and by that I mean methodologically the same way as it was in RH-2-94, comes to using your example of 36 percent as the right capital structure.

716. Is that the end of the matter from TransCanada's perspective?

717. **MR. BRETT:** Mr. Schultz, my point was not to suggest that that is the approach that should be taken.

718. What I was trying to get across is that the Board has in the past taken an ROE as fixed and then made specific adjustments for business risks of different companies.

719. I am certainly not going to attempt to tell you what happened in RH-2-94, but my understanding of the general concept as opposed to how it may or may not have



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been applied in that case is that the Board has in the past accepted the general concept that one can fix one element and then vary the other so as -- vary the equity thickness so as to compensate for differences in business risk.

720. Now, you will say that in RH-2-94 did they do it in one manner and are we suggesting a different manner? I would probably have to agree with you there. But the point remains that the Board has in the past shown a willingness to fix one element and then vary the other for business risk. We're suggesting that it do that.

721. The only potential difference, and it's not even clear to me that there is a difference, is with respect to -- there certainly is a difference between our position and CAPP, with respect to the evidence it considers in determining how to vary that one element.

722. **MR. SCHULTZ:** Mr. Girling, is it TransCanada's position that the capital structure of the Mainline should be adjusted from year to year in light of changes in fair return?

--- (A short pause/Courte pause)

723. **MR. GIRLING:** Some semantics, but the -- to the extent that return on -- a fair return changes from year to year and ROE is fixed, then the onus is upon us to apply for a change in equity thickness, if that is the component that is the moving part.

724. **MR. SCHULTZ:** I am sorry. Was that a qualified yes to my question?

725. **MR. GIRLING:** I think if I understand what your question was, and as I was sort of thinking through my mind the comments from either side here, was: Should we apply for a change in equity thickness on an annual basis if there is a change in fair return on an annual basis? And I think the answer to that question is yes.

726. **MR. SCHULTZ:** Thank you.

727. Is that something you think would be -- would make your investors comfortable, knowing that capital structure could bounce around from year to year?

728. **MR. GIRLING:** It wouldn't make them any more comfortable than knowing that the ROE bounces around from year to year based on movements and interest rates.

729. **MR. LACKENBAUER:** The point, just to be clear on what Mr. Girling and you were just discussing, is if the fair return isn't going to change -- or the fair return changes, you can change it either through change lowering the fair return or through changing the equity component of the capital structure.

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730. I mean, there are two ways you can do it. If you have the business risks right and there has been no material change in the business risks, there is no reason to change the capital structure, you know, within a very modest range. It can't hold these things to perfect point estimates, except that is what the deeming does, but in real life what you do is would you drop your rate of return. But if -- I don't know why you would change your capital structure.
731. **MR. SCHULTZ:** Thank you.
732. **MR. LACKENBAUER:** What we're talking about here is -- in this case is a recognition of the change in business risks combined with a change in the cost capital. The environments change, the rates are lower, as you discussed earlier.
733. And as we discussed earlier, there are two ways that you can change your overall rate of return: The combination of debt and equity or the rates on a particular combination. But they get you to the same place if they're done correctly.
734. **MR. SCHULTZ:** Thank you.
735. Mr. Girling, I am going to give you four little bits of what I take are not controversial facts, but, if they turn out to be controversial, I guess we can break them down one at a time.
736. TransCanada applied for a 40 percent deemed equity for the Mainline in RH-4-2001, combined with a 12.5 percent ROE. That was its alternate application.
737. In the EUB generic cost of capital hearing, it applied for 40 percent deemed equity for the NGTL system, the Alberta system, combined with an 11 percent ROE.
738. In its January application to this Board for the Mainline, TransCanada applied for a 40 percent deemed equity combined with an 11 percent return on equity.
739. And then it amended that in July, and the application became 40 percent deemed equity for the Mainline combined with a 9.56 percent ROE for 2004. I take it I have recited the history of this accurately?
740. **MR. GIRLING:** Yes.
741. **MR. SCHULTZ:** Thank you.
742. My question then, sir, is: How does TransCanada arrive at 40 as the right deemed equity ratio?
743. **MR. GIRLING:** For which application?

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744. **MR. SCHULTZ:** For any of these.
745. **MR. GIRLING:** As I said before, we -- my practical, pragmatic approach is I look at the return on capital employed or at the total return from the investment. In each of these cases, that is how we concluded what the number is. So in the first one, in the RH -- or the 2001 case, we calculated based on what we thought comparable investments were of similar risk. That number was about 7 and-a-half percent.
746. The equity thickness was driven by a direction of where we needed to have the balance sheet and how much leverage the company could take on for the kinds of business risks that we had.
747. Directionally, we believe that number is around 40 percent and the rating agencies believe that number is around 40 percent. You can take on approximately 60 percent leverage for the kinds of businesses that we are in. If you have a 12 and-a-half percent return, it gives you the debt service calculations that you need.
748. Time has passed. That number has dropped from 7 and-a-half to 6.9 based on, for the most part, a decline in interest rates.
749. And that is how we calculated the 11 on 40 in both the NEB cases that we originally applied for and the EUB case for NGTL.
750. As we said, our belief is still that 6.9 percent is the right number and that 40 percent equity thickness is about where the rating agencies have it. So it's -- where they would like us to get to is about a 60 percent debt level.
751. Overall, our company has about the same risk, whether you're talking about our power business or our pipeline business. From their perspective, it is about the same. So the overall capitalization of the company is trending towards that 40 percent type level.
752. So that is how we came to the 40 percent. In the last case of 9.56 on 40, we've discussed that already. You know, it is a practical view that at 9.56 you could probably calculate a number that is closer to 50, but my view is that is probably not something that would be very fruitful to argue about.
753. **MR. SCHULTZ:** Thank you.
754. If we could just move on to something else for a moment and then -- it's in Exhibit B-40, which is your July filing, and it's your fair return standard evidence, page 32.
755. So I think that is Appendix B-2, if I've got my assorted appendices right.

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--- (A short pause/Courte pause)

756. **MR. SCHULTZ:** So this is Exhibit B-40, the July filing of the fair return standard evidence. And I am looking at page 32 of 33.

--- (A short pause/Courte pause)

757. **MR. SCHULTZ:** And I want to refer you to the discussion that begins at line 12, at the end of answer 41. And this is talking about the junior subordinated debentures.

758. And don't start reaching for your junior subordinated debenture file because I have cross-examination on that coming some other day.

--- (Laughter/Rires)

759. **MR. SCHULTZ:** This is a very simple question.

760. You talk about your proposal to replace the junior subordinated debentures with a mix of common equity and senior debt with a result that would have:

*"... no material impact on the 2004 revenue requirement."*

761. Do you see that in lines 14 and 15?

762. **MR. GIRLING:** Yes.

763. **MR. SCHULTZ:** Okay.

764. And what in your mind, Mr. Girling, is the relevance of the -- of noting that this change would have no material impact on the revenue requirement?

--- (A short pause/Courte pause)

765. **MR. GIRLING:** I think that the relevance there was -- it's obviously not relevant to the Board's ruling. Its impact on tolls aren't something you take into consideration, just what the actual cost is.

766. But, nonetheless, we put forward this proposal, which we thought was something that everybody could get their heads around, which was we have 10 percent preferreds, or preferred securities, in our Mainline capital structure today. Their value for a number of reasons is declining. We only get 30 percent equity credit for those instruments.

767. So what we tried to do was devise a proposal which would achieve a revenue neutrality, if we could. It would be, you know, good for the shippers, good for

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TransCanada. And so what we came up with was this proposal whereby we would replace the JSDs with 30 percent of that -- of the total that was there with common equity and 7 percent debt. That would make the rating agencies happy because it gives them approximately a sound amount of credit.

768. TransCanada revenues to TransCanada would increase and the shippers would benefit from a large FX gain and -- or an elimination of FX risks on a go-forward basis.

769. So it seemed to be a win for the shippers, a win for TransCanada, and a revenue neutral for all shippers on the system. So it seemed like a fairly reasonable approach.

770. So that's the reason for the words of talking about material impact, is we think that it's a -- you know, a good overall proposal on a stand-alone basis, irrespective of the business risks arguments that are taking place in this proceeding.

771. **MR. SCHULTZ:** Thank you.

772. **MR. LACKENBAUER:** Stated differently, it's not a back-door approach to try and thicken the equity ratio.

773. **MR. SCHULTZ:** Thank you.

774. Mr. Girling, was part of your answer saying, in essence, your customers like to know if their tolls are likely to be going up or down as a result of some change you are proposing?

775. **MR. GIRLING:** Very much so.

776. I think that the shippers are very interested in the direction of our tolls.

777. **MR. SCHULTZ:** Thank you.

778. Mr. Chairman, I am going to shift gears to another topic.

779. **THE CHAIRMAN:** Then we will take our mid-day break, and we'll be back here at 12:15.

780. **MR. SCHULTZ:** Thank you, sir.

--- Upon recessing at 12:05 p.m./L'audience est suspendue B 12h05

--- Upon resuming at 12:15 p.m./L'audience est reprise B 12h15

781. **THE CHAIRMAN:** Mr. Schultz...?

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782.           **MR. SCHULTZ:** Thank you, Mr. Chairman.

**P.R. CARPENTER, Resumed**  
**P.J. MURPHY, Resumed**  
**A.M. ENGEN, Resumed**  
**G.S. LACKENBAUER, Resumed**  
**R.K. GIRLING, Resumed**  
**S.M. BRETT, Resumed**

**--- EXAMINATION BY/INTERROGATOIRE PAR MR. SCHULTZ: (Cont./Suite)**

783.           **MR. SCHULTZ:** Mr. Girling, you had a discussion with Mr. Stauff in the EUB generic hearing about how you got to 40 percent capital structure that I'd like to talk to you about.

784.           And I should say, Mr. Chairman, that in the interest of expedition and as a courtesy to all, I gave Mr. Yates a number of documents Saturday afternoon, and I know that some of his witnesses didn't get here till last night, but I'm leaving them alone to get over their jet lag today.

785.           But I have -- this is one of the documents I hope was in the bundle that I gave to Mr. Yates. It's an extract from Transcript Volume 18 from the EUB hearing, December 5th, 2003, and I have got a four-paged extract that has as the first page on the top left 2511, so I -- I do have some copies that I will hand around, if you don't have it handy.

785.1.       **MR. GIRLING:** We've have got one handy.

786.           **MR. SCHULTZ:** I did will distribute those, then, Mr. Chairman, to you and your staff.

**--- (Document distributed/Document distribué)**

787.           **MR. SCHULTZ:** And Mr. Girling, I take it you recall this discussion with Mr. Stauff?

788.           **MR. GIRLING:** Upon reading it, I remember being there but ...

789.           **MR. SCHULTZ:** And the response you were giving to a question from Mr. Stauff -- and the question begins at 2513. And his question is:

*"The premise of my question, though, was just that you persuaded this Board and the NEB to give you deemed 40 percent equity. Why would that require you to change anything about your actual capital structure? All that does is set how much equity capital*

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*ratepayers are paying fort, it doesn't influence how much there actually is?"*

And then the answer that is recorded by you is as follows:

*"MR. GIRLING: You're correct in that statement but what we've said is -- and the rating agencies are expecting -- is as our business evolves, given that as you've pointed out 15 or \$14 billion of it is regulated business, they're expecting, over time, that we will migrate our capital structure to 40 percent equity. That's what S&P has outlined as their target.*

*And certainly from an internal perspective, that's what we have as a target as well. We want to get there."*

790. I'm going to stop there, but obviously if there is more here that you think is pertinent, you'll bring my attention to it. I take it you recall that discussion?

791. **MR. GIRLING:** I can certainly speak to it.

792. I don't recall having the conversation exactly, so I don't want to say that I recall having this conversation with Mr. Stauff, but that is exactly -- you know, it would be an accurate statement of what I would have said.

793. **MR. SCHULTZ:** Okay.

794. So I take it that that was an accurate statement as of December 5, 2003, that the company has as an internal target migrating its capital structure to 40 percent?

795. **MR. GIRLING:** Correct.

796. **MR. SCHULTZ:** Okay.

797. And does that remain true today?

798. **MR. GIRLING:** Yes, it does.

799. **MR. SCHULTZ:** And is that something the company is trying to get to as a target in the sense of: you get to 40 percent, you have achieved your target?

800. **MR. GIRLING:** It's a continually moving -- the ground is moving underneath us all the time.

801. As the risks increase in our business, what we have found is that we need to increase our equity thickness to ensure that our bond rating agencies continue to rate us as an A grade company.

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802.           The circumstances in the marketplace change, and they can dictate that that should either be greater than 40 percent appropriate where it is today or less. But under sort of current circumstances, the direction of the market is for greater equity thickness rather than less equity thickness.
803.           **MR. SCHULTZ:** So then based on the circumstances as you appreciate them today with the knowledge you possess today, is 40 percent, then, the target, and once you get to 40, then you would say you've achieved your target and the intent would be to remain at 40?
804.           **MR. GIRLING:** Based on where the marketplace is today, that would be correct
805.           **MR. SCHULTZ:** Thank you.
806.           Now, when you say in this discussion with Mr. Stauff that S&P is expecting this -- I take it that is what you're saying?
807.           **MR. GIRLING:** S&P, and I think the other rating agencies as well, and sort of the market realities that we work in.
808.           If we were to finance a new project today that has similar and even in some cases less risk than this, the overall return on capital that we're looking for is something in that, you know, 6.9 percent range that I talked about.
809.           So that's just what's required, and from that you can back-calculate how much leverage you can actually put on the investment and still attract an A grade rating, and therefore be able to raise capital at the cheapest possible rate -- debt capital at the cheapest possible rate that you can.
810.           **MR. SCHULTZ:** Okay.
811.           Now, we're going to be talking about the bond rating reports also another day, so we will get into the various reports that are in the file here and have some discussion about those.
812.           So my question here is really quite a precise one which is: Will I find, when I read the various S&P reports that we have in this proceeding somewhere where S&P specifically says that their target for TransCanada is a 40 percent common equity ratio?
813.           **MR. GIRLING:** I think I'll let Mr. Brett follow up on my the answer, but I think they characterize it more from a debt perspective than an equity perspective, as their target is between 55 and 60 percent debt.



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814. **MR. BRETT:** That's correct.

815. **MR. SCHULTZ:** And when they talk about debt, what do they mean by "debt"?

816. **MR. GIRLING:** I think what they're referring to is senior debt of the corporation

817. **MR. SCHULTZ:** Thank you.

818. I am going to continue talking about what the company has -- may or may not have said about capital structure, but I am done with this particular document.

819. I don't know, Mr. Chairman, if your wish is to mark these so that we have them as they have been referred to, recognizing that I have only addressed a portion of what is in this transcript, or if you wish the transcript to simply stand as it is without this document being entered.

820. **THE CHAIRMAN:** Mr. Yates...?

821. **MR. YATES:** The only comment I would make, Mr. Chairman, is this: What is implicit in what Mr. Schultz just said is, I think, a sharing of the understanding that I have, which is that if documents are put to witnesses, while it becomes evidence even if the document is marked, but becomes evidence is the portion of the document that is actually put to the witness and it's not appropriate for other portions of the document to turn up in argument later on without the witnesses having had an opportunity to respond to them.

822. Now I understand Mr. Schultz takes the same position on that as I do. That being so, I'm not fussed about whether the document gets marked as an exhibit or whether it is left to stand on the record with a discussion, and I think that is really a matter of your view on ease of -- or your view on what you think is a better way to have the record.

823. The only other thing I would say at this point, Mr. Chairman, is to confirm -- and Mr. Schultz and I did talk about what, to use this phrase, would be the rules of engagement in respect of the documents being put to the witnesses in advance, and we have agreed that all of those documents should go to the witnesses in advance, which is little bit different from the usual methodology, but I think we got there because of the -- shall we say the paper trail in this case.

824. But having said that, I do have some issues with some of the documents that Mr. Schultz has provided, and we may have to discuss that if he chooses to go there.

825. **THE CHAIRMAN:** Thank you Mr. Yates.

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826. Mr. Schultz, do you have the same understanding as to: if this were accepted as an exhibit, what portion is properly labelled as evidence?

827. **MR. SCHULTZ:** Yes, sir.

828. **THE CHAIRMAN:** Thank you.

--- (A short pause/Courte pause)

829. **MR. CHAIRMAN:** Yes, Mr. Schultz, we would prefer to accept this document as an exhibit for ease of identification and in referencing, and we do subscribe to your common view as to that part of the document which is proper in terms of evidence in this proceeding.

830. **MR. SCHULTZ:** Thank you, Mr. Chairman

831. **MR. CHAIRMAN:** So let's proceed with giving this document an exhibit number.

832. **THE CLERK:** This will be Exhibit C-1-33. Pièce numéro C-1-33.

--- **EXHIBIT NO./N<sup>o</sup>. DE LA PIÈCE C-1-33:**

*Page 2513, lines 22-25, and page 2514, lines 1-9, of an extract from  
Transcript Volume 18 from the EUB generic hearing December 5th, 2003*

833. **MR. SCHULTZ:** Thank you.

834. Mr. Girling, TransCanada, in February 2000, went on a road show, I believe; is that correct? A road show to speak to investment analysts.

835. **MR. GIRLING:** Quite possibly.

836. **MR. SCHULTZ:** Okay.

837. Do you go on a lot of these road shows?

838. **MR. GIRLING:** Yes, I do.

839. **MR. SCHULTZ:** And when you speak to analysts, is it your expectation that they will take the information you give them, reflect on it, analyze it and then report to their clientele what they see fit to be advising their clientele?

840. **MR. GIRLING:** What we seek to do is to disclose publicly information that is relevant to our stakeholder group; in this case, to our shareholder group.

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841. One of the avenues of doing that is to provide it to sell side analysts, but we also go directly to the buy side analysts and talk to them directly.
842. So there's -- we don't necessarily have an expectation as to how the sell side analysts are going to disseminate the data. My concern is one of accuracy, ensure that they are getting the data correct.
843. But to the extent that they have their own opinions, and those kinds of things, they make those and that's what their clients are looking for. We just want to get our information out from the company and we want to get it out as broadly as possible.
844. **MR. SCHULTZ:** And I take it it's normal for these analysts to report out to their own clientele their views, which will include information provided by the company? That is normal in your business; is that right?
845. **MR. GIRLING:** That's correct.
846. And I guess the subtlety I was referring to is, you know, to the extent that our views differ from theirs, we do communicate directly to our investor group. One of the ways that they get their information is through sell side analysts, but we also provide it directly. And then they can judge the difference of opinion, if any, between ourselves and the analysts.
847. **MR. SCHULTZ:** So it would be fair, then, to say that while, obviously, the analysts decides what to report, you go to the analysts because they are a convenient and an important place for you to disseminate information because you know they have other clients with whom they communicate?
848. **MR. GIRLING:** There is no selectivity in providing that information. They desire the information from us. They represent stakeholders, and we provide the information to them. But it's no different than us providing the information directly.
849. There really isn't -- we might be different in this regard, but it really isn't an issue of convenience providing information to sell side analysts. They are stakeholders, and they ask us a lot of questions, and they do their in-depth analysis, and they have their own reasons for getting that and marketing it to their clients. They are just one stakeholder, and they get the same information as any other stakeholder would get from the company.
850. **MR. SCHULTZ:** Yes, thank you.
851. And I wasn't suggesting selectivity; I was trying to suggest the opposite, which is that this is an important vehicle for you to get information out to a broader audience and to fulfill your disclosure obligations.
852. **MR. GIRLING:** That's not really our intent of going to them.

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853. **MR. SCHULTZ:** Okay.

854. **MR. GIRLING:** Obviously, if they're -- they want to collect information from us and deliver it to their clients, and so we give them that information. But we don't use them as a tool, per se, to try to disseminate the story of the company.

855. They may or may not have similar views to the company, and we may or may not agree with them. So that's not a way that we attempt to market the company, through analysts, through sell side analysts.

856. **MR. SCHULTZ:** Yes, I understand what you're saying. I appreciate that. Thank you.

857. And the flip of that being that when you talk to them, it's not with some implied confidentiality. The information you're giving them and talking about is something that, in principle, you would be prepared to talk to any interested person about? Would that be fair?

858. **MR. GIRLING:** That's correct.

859. **MR. SCHULTZ:** I would like, then, to talk about a road show that you did in February 2000. This was the subject of discussion in the RH-4-2001 hearing between the TransCanada witnesses and Mr. Davies. And the first document I am going to refer to -- and, again, it was in the material that I provided your counsel on Saturday -- is an RBC Dominion Securities report by Maureen Howe dated February 10, 2000. So if you have that in front of you.

860. **MR. GIRLING:** Just give me one second here.

861. **MR. SCHULTZ:** This was Exhibit C-1-17 in the RH-4-2001 hearing.

862. And assuming it doesn't fall into one of the documents that my learned friend might have a reservation about, I'll proceed to distribute it beyond the small circle that presently have it.

--- (Document distributed/Document distribu )

863. **MR. SCHULTZ:** So if you have that now in front of you, Mr. Girling. This is RBC Dominion Securities, February 10, 2000. A report by Maureen Howe, Ph.D. And then there is a discussion of an event, which is described as follows:

*"TransCanada's senior management met with sell side analysts in Toronto yesterday to explain the Company's strategic vision for the future and add further detail and explanation to their year-end financial results."*

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864. Is that a correct description of a meeting held with RBC Dominion Securities at which Dr. Howe would have been at?
865. **MR. GIRLING:** Yes. I suspect it wouldn't have been with RBC Dominion Securities themselves, but, you know, it easily could have been. I suspect it was probably broader than that.
866. **MR. SCHULTZ:** Okay.
867. So when the report says "sell side analysts", it would have -- you might have invited a number of people from different companies to an event?
868. **MR. GIRLING:** I suspect it would have been a group of sell side analysts from all of the major investment firms.
869. **MR. SCHULTZ:** Okay.
870. And were you in attendance at that event?
871. **MR. GIRLING:** I believe I was, because I think the one we're referring to is the one we are talking about in RH-4-2001, where I was at that meeting.
872. **MR. SCHULTZ:** Okay, thank you.
873. Then the report goes on as follows:
- "The essence of the Company's strategy is to seek higher tolls on its regulated transmission system to reflect a higher equity component, a higher return on equity and other regulatory items such as a recovery of deferred income taxes."*
874. Would you say that is an accurate summary of what the essence of the company strategy was as presented at that meeting?
875. **MR. GIRLING:** I can certainly speak to the higher equity component and higher return on equity.
876. Other items such as deferred income taxes, you know, my thought would be we don't collect those until we actually pay them. So I'm not sure that we would have a higher toll based on those, except for as those unfold in the future.
877. But certainly our strategy at the time was to seek a higher equity component and a higher return on equity.
878. **MR. SCHULTZ:** Okay. Thank you.

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879. The report then goes on to say:

*"Once a toll increase is achieved, management stated that they would look for a price cap regulatory methodology that would include the Company incurring throughput risk on the system."*

880. Did management say that at that meeting?

881. **MR. GIRLING:** Again, I think we -- I looked at the transcript from the RH-4-2001 just briefly last night that you gave us as well, and at those meetings like I don't remember actually discussing price cap methodologies with shippers -- or I mean with sell side analysts.

882. It is certainly something that we calculate as a company; have talked to our shippers about, or at least at that point in time had talked to our shippers about, and there really wasn't an appetite for that kind of risk.

883. Because, obviously, if you take on that kind of risk, then your equity -- you know, equity thickness has to increase and your return equity has to increase commensurate with the risk that you're taking on. You know, I think the feedback from our shipper constituents was that's not in anybody's best interests because that leads to a rise in tolls. To the extent that there are those risks, they're probably not best borne by TransCanada.

884. So those conversations didn't really get any traction. So I'm not sure at this point in time, in 2000, how Maureen got that from the meeting, that that was one of our main thrusts of the discussion.

885. **MR. SCHULTZ:** It would be correct to say, would it not, that you were in negotiations with your stakeholders at the time this meeting occurred, on February 9th, 2000? And by that I don't mean there was a meeting of the stakeholders occurring, but that negotiations were proceeding through that timeframe?

886. **MR. GIRLING:** I don't recall, but it is probably -- you know, we are in a continuous conversation usually with our shippers, so it's not bad to assume that we were trying to negotiate something at the time.

887. **MR. SCHULTZ:** Okay.

888. You yourself weren't directly involved in those negotiations? You weren't at the table for TransCanada?

889. **MR. GIRLING:** No, I wasn't.

890. **MR. SCHULTZ:** Okay.

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891. Can you just -- can you tell us who else was at this February 2000 road show meeting?

892. **MR. GIRLING:** I don't recall.

893. It would have been, you know, normally a contingent of myself and the CEO.

894. And to the extent that we were talking about specific strategies in any one of our business units, we usually take along one of our business unit heads. So at this point in time the head of the transmission business unit was a fellow named Gary Mihaichuk. I don't know whether he would have been there or not, but I suspect if we were getting into any detail at all around tolling structure and those kinds of questions that people might have, we would have brought an expert along with us.

895. **MR. SCHULTZ:** Thank you.

896. We see, then, some discussion about achieving this objective through a negotiation or litigation and an indication or a statement that the company doesn't believe it can achieve its objective through negotiation and that hearings at the NEB/Alberta Energy and Utilities Board may be the result. Is that an accurate statement of what the company discussed at that meeting?

897. **MR. GIRLING:** I don't know that it would have been an agenda point from our perspective if we were asked the question as to what we think the probability of an outcome similar to the one that we were seeking was from a negotiated settlement. The answer might have been something that "it looked like this", but I can't really tell you the context of how she came to this conclusion.

898. At the time, I guess, like I said, I wasn't involved in any negotiations, but an outcome or a change in equity thickness and equity return hasn't been something that we've been able to settle with our shippers in the past. So it's probably not a bad conclusion to come to from a meeting. And we would have answered it as accurately as we could have at the meeting if we were asked the question as to what the probability of a negotiated settlement was.

899. **MR. SCHULTZ:** Thank you.

900. The report then goes on to indicate that it may take some time for these things to be resolved.

901. And then the report states:

*"During this period, management stated that it expects the utilization on the Mainline to decline from the current rate of*

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*approximately 93% to 85%, implying that the Company is forecasting an additional 8%, or 600 million cubic feet per day ... to be decontracted from its system."*

902. Can you tell me if that's an accurate report of what was said at the meeting?

903. **MR. GIRLING:** No, I can't.

904. You know, I would have to take a look at our supply/demand forecast at the time, if that's what we presented.

905. The word "decontracting", I'm not sure we would have had -- you know, with certainty we would have known what our decontracting potential was at the time and what we thought non-renewals would be.

906. I suspect what they're referring to is more throughput than contracting, because contracting and throughput don't necessarily go hand in hand. So I think what we might have been saying is we were expecting a reduction in throughput from 93 to 85 percent.

907. And just given the time of this, this would have been pre-Alliance, if I remember correctly. So we would have been expecting a decline in our volumes in our system.

908. **MR. SCHULTZ:** Okay, thank you.

909. And I take it one reason you have -- perhaps have some difficulty with this is this wasn't an area that you would have been speaking to, it would have been someone else on the team?

910. **MR. GIRLING:** That would be correct.

911. **MR. SCHULTZ:** Okay, thank you.

912. Under the heading "Implication" we see a statement:

*"A significant component of the presentation made by TransCanada yesterday centred on the competitive position of the TransCanada/NOVA system versus the Alliance Pipeline to move gas from western Canada into Toronto."*

913. Would you say it was a significant component of the presentation?



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914.           **MR. GIRLING:** I said -- it's hard for me to recall the presentation in its entirety. I think it's -- is it the one presentation that you gave us yesterday as well? It's titled "February 2000 Road Show"? It was in the package from yesterday.

915.           **MR. SCHULTZ:** Well, I am relying on TransCanada for that because Mr. Davies asked TransCanada for the road show presentation, and that was what was produced.

916.           **MR. GIRLING:** Okay. That's the one we're referring to here.

917.           Then going through it, it looks like one of the components of the discussion around the transmission business was, from the slides, is the competitiveness of the TransCanada Pipeline system delivered into the Ontario market.

918.           **MR. BRETT:** Mr. Schultz, I count 4 slides out of 22 talking about competitiveness of Alliance versus TransCanada. I will leave it to you as to whether that is significant or not.

919.           That, of course, doesn't speak to how much time was actually spent discussing it.

920.           **MR. SCHULTZ:** Thank you.

921.           Then if we turn the page, we'll see some tolling comparisons that Dr. Howe, or her group, calculated. And I won't read it all, but just simply note that those appear to be her calculations and not TransCanada's.

922.           I take it we can agree on that?

923.           **MR. GIRLING:** Sure.

924.           **MR. SCHULTZ:** Okay.

925.           And then we see on the second page, under the heading "Impact of Regulatory Changes", the following statement:

*"TransCanada will seek an increase in its ROE of 200 basis points to approximately 12% and an increase in its common equity component of rate base of 5% (to 35%)."*

926.           Do you see that?

927.           **MR. GIRLING:** Yes.

928.           **MR. SCHULTZ:** And can you tell us if TransCanada stated at that meeting that that was what it would seek?

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929.           **MR. GIRLING:** I'm not sure that we would telegraph that directly, what was going to be in our application before it was put together, because I would suggest that we probably hadn't landed on that ourselves.

930.           So I'm not sure how she would have surmised that. As you're aware, I mean very shortly thereafter we did apply for 12 and-a-half percent on 40.

931.           So, again, I don't think we would talk specifically about our regulatory strategy in numbers with analysts before we had put that strategy together.

932.           **MR. SCHULTZ:** When you said you shortly afterwards made application, I believe your RH-4-2001 application, as it related to cost of capital, was in the spring of 2001, perhaps June. Would that fit with your recollection?

933.           **MR. GIRLING:** Those are probably the dates, so my characterization of "shortly" is probably a year and a half.

934.           **MR. SCHULTZ:** Thank you.

935.           We then see, in the discussion of Impact of Regulatory Changes, a series of various toll impacts related to various components of the regulatory change that are attributed to management. And if one takes the three components of ROE, a 5 percent increase in equity component and also something referred to as "other regulatory issues," one gets then to an additional 11 cents on the combined toll to Toronto if that were all approved by the regulators. Do you see that?

936.           **MR. GIRLING:** Yes

937.           **MR. SCHULTZ:** Okay.

938.           And did management provide a breakdown of an 11-cent toll increase in that manner to the analysts?

939.           **MR. GIRLING:** I don't recall.

940.           And I don't know, and we might have given them some rules of thumb, which they could have calculated themselves, you know, for every, you know, X basis points of increase in ROE is equal to, you know, X cents per GJ of toll.

941.           And similarly with the equity component, we might have given them some rules of thumb, or they might have calculated them on their own. They are all publicly available numbers. They could have calculated these numbers with -- I guess what you need to know is the throughput, but you can calculate the increase in revenue requirement required very, very quickly.

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942. So we might have given them some benchmarks like that. We do talk about benchmarks with our customers as to, you know, what a hundred basis points of increase in equity thickness is equivalent to in dollar terms.
943. **MR. SCHULTZ:** Thank you.
944. So it's possible that you did provide rules of thumb that look like this --
945. **MR. GIRLING:** Very possible, yeah.
946. **MR. SCHULTZ:** Thank you.
947. Now under the heading "Further Decontracting on the TransCanada/NOVA System", we see -- we see a discussion, and we see in the middle of the paragraph what we might call a rule of thumb, or as Dr. Howe would call it, a sensitivity. And I will quote it:
- "However, in previous material presented by the Company, the sensitivity to the TransCanada toll to 100 mmcf/d leaving the system was stated as 1.5 cents per GJ on the Mainline and 0.4 cents per GJ on the NOVA system."*
948. Do you see that?
949. **MR. GIRLING:** Yeah.
950. **MR. SCHULTZ:** Okay.
951. Is that the kind of rule of thumb the company provides analysts?
952. **MR. GIRLING:** I think it's something that we could easily talk about.
953. I don't remember having these exact numbers and this conversation, but yeah, these are numbers -- you know, the kinds of things that we would talk about with analysts if they wanted to know what the impact of a volume decline on the system would be in terms of tolls. That's a calculable number, so we would share that with them.
954. **MR. SCHULTZ:** Thank you.
955. Then Dr. Howe goes on to talk about an offsetting factor relating to fuel savings and refers to a TransCanada chart on system fuel ratios. Do you see that?
956. **MR. GIRLING:** Yeah.
957. **MR. SCHULTZ:** And is that something that you would have provided at that meeting?

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958.           **MR. GIRLING:** I think, actually, that chart is in here.
959.           There is a chart that -- I don't know how specific the numbers get. Let me just take a quick look at it.
960.           Yeah, there is a chart in here that gives them a sensitivity to throughput and fuel costs on a cents per GJ basis.
961.           **MR. SCHULTZ:** Thank you.
962.           And then we will see, if we turn the page again, under the heading -- this is now page 3 -- "The Outlook For TransCanada is a Function of deliverability of Natural Gas From the WCSB." We see a statement by RBC as follows:
- "We continue to be conservative in our view of incremental natural gas production..."*
- and then it goes on.
963.           And that would then be Dr. Howe's opinion being communicated to RBC's clientele. Would that be fair?
964.           **MR. GIRLING:** I assume the whole thing is a communication to RBC's clientele.
965.           **MR. SCHULTZ:** Yes.
966.           The critical part of my question was that that is distinct from the parts of this that are purporting to report on what TransCanada has told the analysts. This now is Dr. Howe expressing the RBC view.
967.           **MR. GIRLING:** Okay. That's fair. Yeah.
968.           **MR. SCHULTZ:** Okay. Thank you.
969.           And again, under the "Conclusions", we find in the middle a view as follows:
- "However, we do not expect the Company will be successful in getting its entire 'wish list' and continue to expect a reduction in the total revenue collected by the combined NOVA/TransCanada system, which will translate into an earnings impact."*
970.           Are you with me there?

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971. **MR. GIRLING:** I'm with you. I'm just reading it. Okay
972. **MR. SCHULTZ:** And that, again, is the RBC view; it's not something that -- well, let's leave it at that. That -- you would agree with me that clearly appears to be the RBC view?
973. **MR. GIRLING:** Correct.
974. **MR. SCHULTZ:** Simply their opinion?
975. **MR. GIRLING:** When she refers to "we", I don't think she is referring to TransCanada.
976. **MR. SCHULTZ:** Thank you.
977. The "we" being RBC, in your understanding?
978. **MR. GIRLING:** I assume that's what she means.
979. **MR. SCHULTZ:** Thank you.
980. Mr. Chairman, perhaps we could mark this, then, as an exhibit.
981. **MR. YATES:** Mr. Chairman, I didn't object to this when this started. It was an exhibit in RH-4-2001, but I have to admit, I am struggling with the relevance of this to what the Board is to decide in this case.
982. We have had a dialogue between Mr. Schultz and Mr. Girling, which essentially consists of "I don't remember" and "that might have happened," and there is some speculation as to what would have happened, and I don't see that as being particularly helpful to the Board in determining the cost of capital for the Mainline for 2004, particularly considering that this happened over four years ago.
983. So my -- I guess where I am with this is to try to get some idea from Mr. Schultz as to what relevance this might have to the case that's before you today. And if there is relevance, I'm not going to object to the filing of it as an exhibit, but if there isn't relevance, which appears to me to be the situation on its face, then I do have a problem with it
984. **THE CHAIRMAN:** Mr. Schultz, can you be of assistance to Mr. Yates?
985. **MR. SCHULTZ:** Probably not, Mr. Chairman.
986. This is cross-examination, and if the witness is only able to respond with "perhaps" or "possibly", then that is the answer that the witness is giving us, but the

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purpose of this is to test the evidence in this case, and that is the goal of cross-examination. I am using the document for that purpose.

987. Mr. Yates has embarked, in my respectful submission, on a bit of argument as to the weight you may or may not want to give this, but I'll save my comments on weight till we get to the end of the proceeding, but I don't believe I am obligated to disclose the thrust of my cross-examination.

988. **THE CHAIRMAN:** Mr. Yates...?

989. **MR. YATES:** I am a little surprised at that response, Mr. Chairman, but let me say this: In my respectful submission, any cross-examination has to be shown to be relevant to the issues to be decided by the Board; otherwise, the evidence, by definition, is not to be included in the record and not to be considered by the Board.

990. In my respectful submission, there is absolutely no indication through this cross-examination that this document or this discussion has any relevance to the determination of a cost of capital for the Mainline for 2004, and if Mr. Schultz is not prepared to enlighten us on that, then my respectful submission is that the document is irrelevant, should not be marked as an exhibit, and nor should the Board pay any attention to the discussion that's been going on for the last half an hour.

991. **THE CHAIRMAN:** So Mr. Schultz, I think now we have an objection. Would you like to make any comment on the objection?

992. **MR. SCHULTZ:** I think, Mr. Chairman, if one looks at all the topics that have been discussed, they are all topics that we're talking about in this hearing, every one of them: competitiveness, loss of throughput, capital structure. Everything we have talked about here is an issue in this hearing.

993. So I just simply think, with all due respect to my friend, he is simply trying to require me to disclose the thrust of my cross-examination, and the purpose of my cross-examination is to test the evidence on all these issues, and I'm entitled to the latitude to do that.

994. **THE CHAIRMAN:** Anything to add, Mr. Yates?

995. **MR. YATES:** I don't think that I suggested that they weren't topics that are being discussed -- topics in this document that are being discussed in this proceeding. My suggestion about relevance is a temporal one, and I haven't seen any indication that a presentation that was made more than four years ago is relevant to the determination of the cost of capital of the Mainline in 2004.

996. **THE CHAIRMAN:** Thank you. Give us a moment.

--- (A short pause/Courte pause)

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997.           **MR. CHAIRMAN:** Mr. Yates, the Board would like to have the document marked for identification purposes, and we will decide later on the weight to be given to what it has produced.

998.           **MR. YATES:** Thank you.

999.           **MR. SCHULTZ:** Thank you, Mr. Chairman.

1000.          **THE CHAIRMAN:** We can give it an exhibit.

1001.          **THE CLERK:** Exhibit No. C-1-34.

**--- EXHIBIT NO./N<sup>o</sup> DE LA PIÈCE C-1-34:**

*RBC Dominion Securities February 10, 2000 Morning Comment*

1002.          **THE CHAIRMAN:** Mr. Schultz...?

1003.          **MR. SCHULTZ:** Thank you, Mr. Chairman.

1004.                 I am now going to move on and discuss a report by another analyst who attended that meeting on, I gather, February 9th, Peter Case. And this is also in the material that I provided my learned friend with on Saturday.

1005.                 And assuming there is no objection to that, I will distribute it.

1006.                 **MR. YATES:** Given your ruling, Mr. Chairman, I don't have an objection to that. I just have a question. Is this reference at the top to the exhibit number in RH-4-2001?

1007.                 **MR. SCHULTZ:** My understanding, Mr. Chairman, is this was part of Exhibit B-15 in RH-4-2001, hence the note at the top "found in Exhibit B-15".

**--- (Document distributed/Document distribué)**

1008.                 If you have that in front of you, Mr. Girling, this is a comment by Peter Case of Nesbitt Burns dated February 9, 2000, headed "TransCanada Hosts Analyst Breakfast", and then it refers to a presentation by TransCanada senior management on February 9th.

1009.                 I take it that would be the same meeting that we were just discussing that Dr. Howe was reporting on?

1010.                 **MR. GIRLING:** I am assuming it is as well.

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1011.           **MR. SCHULTZ:** It's unlikely that TransCanada senior management would have -- well, I guess it could be two meetings on the same time day if they are not both breakfast.
1012.           **MR. GIRLING:** It could be.
1013.           I suspect what it was is if this one is accurate, TransCanada Hosts Analyst Breakfast, we would have hosted all of the sell side analysts at the same time.
1014.           **MR. SCHULTZ:** Okay. Thank you.
1015.           Even if it had been two different meetings on the same day, you are presumably using the same presentation materials, and so on?
1016.           **MR. GIRLING:** I would assume so.
1017.           **MR. SCHULTZ:** And conveying the same information and requests to questions?
1018.           **MR. GIRLING:** I would assume that would be correct.
1019.           **MR. SCHULTZ:** Thank you.
1020.           We will see that under "Details and Analysis", that Mr. Case reports on TransCanada's calculations of its competitive advantage over Alliance based on total cost to deliver gas to Toronto; is that right?
1021.           **MR. GIRLING:** Reading the sentence in the middle, it says:  
  
*"TransCanada calculates that it has a competitive advantage over the Alliance Pipeline"?*
1022.           **MR. SCHULTZ:** That's it.
1023.           **MR. GIRLING:** Okay. Is there a question?
1024.           **MR. SCHULTZ:** Well, I just wanted to make sure we had the same -- on the same page and asking you if that was indeed something that TransCanada said to analysts at that meeting.
1025.           **MR. GIRLING:** It's probably based on information that we would have given them at the time.
1026.           We could have calculated under certain scenarios that TransCanada would have a lower toll landed in Toronto from the Western Sedimentary Basin than Alliance would. We could have easily had that conversation.



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1027. **MR. SCHULTZ:** Okay.

1028. And was Toronto the reference point for comparisons that the company was using in that time frame, as you can recall?

1029. **MR. GIRLING:** I think for the purposes of this discussion -- actually, it's on the slide.

1030. It says: "Landed costs to Toronto", and then the guys just, you know, try to put things into a frame of reference that the audience could understand. We don't actually deliver gas to Toronto, and Alliance doesn't, either. It was to be illustrative.

1031. Go on, sorry.

1032. **MR. SCHULTZ:** Thank you.

1033. We'll see, then, in the next paragraph under the heading "Going forward" some comments about the company's -- what I would take to be company's strategy. It says:

*"Going forward, TransCanada expects to achieve growth through regulatory change, capitalizing on expected growth in supply from the Western Canadian Sedimentary Basin and increased connections to growing markets - especially those in the west and U.S. Northeast."*

1034. Is that something the company said at that meeting?

1035. **MR. GIRLING:** I can understand the growth from connecting new supply in new markets.

1036. I don't really understand the achieved growth through regulatory change, unless he's referring to a growth in income as a result of change in equity thickness and ROE, but that doesn't physically grow the company.

1037. So I think that the last two are certainly components of our strategy, which was, you know, connect as much supply as we can and connect as much new market as we can to make sure the system remains viable.

1038. **MR. SCHULTZ:** Did the company talk about achieving growth in its income through regulatory change at the meeting?

1039. **MR. GIRLING:** I don't see it on -- there's a Slide 21. It talks about growth, and it doesn't refer to growth in income; it refers to -- cost savings is the only sort of financial component that I can see in that slide.

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1040. **MR. SCHULTZ:** Thank you.

1041. And then we see Mr. Case's report on the discussion of regulatory changes as follows:

*"The regulatory changes that TransCanada expects to achieve include a higher allowed return on equity (12%-14% vs. 9.9% today), a thicker equity ratio (at least an extra 500 basis points), term differentiated tolls and the ability to recover previously unrecorded deferred taxes from both firm and short-item transportation contracts."*

1042. Did the company communicate those kinds of regulatory changes at the meeting?

1043. **MR. GIRLING:** Subject to the caveats that I talked about when we were talking about Dr. Howe's report, is we would have communicated, you know, directionally where we wanted to go in terms of equity thickness and ROE based on competitive market benchmarks.

1044. I don't think we would have given necessarily specifics about numbers and strategy. And as I said as well earlier, I don't really understand the comments with respect to deferred taxes.

1045. Some of the other issues like term differentiated tolls are certainly things we would have been discussing at the time with our shippers in the context of what incentive can we give our shippers to sign longer term contracts with us, those kinds of things that would, again, solidify the viability of the pipeline for a longer period of time.

1046. So with those caveats, I mean, those are the generalities that we discuss at analyst meetings.

1047. **MR. SCHULTZ:** Would you say, then, it's possible that these are the things that were talked about at the meeting as reported here?

1048. **MR. GIRLING:** Like I said, the specifics around the numbers I have difficulty with. I don't understand the deferred taxes. Other than those -- there are things that we could have easily generally talked about at the meeting.

1049. **MR. SCHULTZ:** All right.

1050. You don't, then -- you don't think it's possible, then, that you talked about a thicker equity ratio, at least an extra 500 basis points?

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1051.           **MR. GIRLING:** I think we would have talked -- all I'm saying is that if that was a number that we were pressed on in the conversation, they said: What are you looking for, and we said at least 500 basis points, that might have come up, but I really don't recall exactly what was said at the meeting.
1052.           When I look at the slides, there is nothing in our slides that communicates to them what numbers we had in the back of our minds. We probably did talk about thicker equity. We probably did talk about greater ROE. And I suspect, by looking at this, they must have asked questions, and we probably gave them some direction on that front. But it wouldn't have been our specific strategy, because, as I said, we hadn't developed it totally at that point in time.
1053.           **MR. SCHULTZ:** We see, then, in the next sentence a reference again to a price cap regime.
1054.           Are you able to help us any further as to whether the company did indeed discuss a price cap regime at that analyst breakfast?
1055.           **MR. GIRLING:** It's interesting that both of them have that notion in it. I can tell you that there's very fleeting moments that we think about that inside the company; certainly something that was raised in the context of discussions with shippers.
1056.           Some of our shippers suggesting that the only way to come to a new negotiated model was to take on volumetric risk; but, you know, at the end of the day, both ourselves and our customers have come to the conclusion that that's not a very viable thing to pursue.
1057.           So it's interesting that both of these analysts latched on to that comment, if it was made in the conversation as to whether or not we have considered -- you know, the question could have come up at the meeting: Have you considered taking volumetric risk? The answer could have been: Yes, we have.
1058.           I don't know exactly how they come to that notion, because as far as I'm aware, it's never been part of company's strategy. And you can test the witnesses on Panel 2 as well. It has never been a core part of our strategy to pursue volumetric risk. I don't know how that came up in the context and how many more analysts' reports, before this and after it, include those kinds of references.
1059.           **MR. SCHULTZ:** In February of 2000, I think you indicated it was Mr. Mihaichuk who was directing the -- or who was responsible for the negotiations with stakeholders. Was that what I understood you to say?
1060.           **MR. GIRLING:** That's correct.
1061.           **MR. SCHULTZ:** And he was not going to be with us at this hearing?

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1062. **MR. GIRLING:** No.

1063. As far as I know, we haven't asked him to join us. But, you know, this was -- if I remember the time frame of this correctly, we had just announced to the world that we were going to sell -- exit our international business, exit our midstream business. We cut our dividend. And if I remember these meetings correctly -- I mean, they weren't the funnest meetings I've had in my life, and I don't remember us talking too much about transmission.

1064. Our stakeholders had a lot of other issues on their mind. Some of them were seized by these issues on our transmission system, but the bulk of it were -- you know, the bulk of our analysts' concerns at the time, if I remember correctly, were related to, you know, can you sell the assets, are you going to be able to get your capital spending in line, those kinds of things.

1065. Do we dramatically change the price of the stock from -- just looking a Peter Case's report, the stock was at 10.95, and next to it the 52-week range is 23.15 to \$10.00. Our shareholders had a lot of concerns, and they were not that focused on the competitiveness of our transmission system. They were concerned about the viability of the enterprise, and that's probably where the bulk of the conversation was at these meetings, at least from my perspective.

1066. **MR. SCHULTZ:** Okay.

1067. Well, we'll come -- we'll pick up on that when we actually look at the slides.

1068. If we turn the page now. We see -- actually we should start at the bottom of page 1 again. We see a statement attributed to management, that it would require both litigation and negotiation to achieve its goals.

1069. **MR. GIRLING:** Which line is that, sir?

1070. **MR. SCHULTZ:** I'm sorry. The very bottom of page 1:

*"... management acknowledged ..."*

1071. **MR. GIRLING:** I see that.

1072. **MR. SCHULTZ:** Okay.

1073. And that then leads into the discussion about taking on volume risk and then continuing with a discussion of some rules of thumb about the impact of 100-basis-point increase in ROE to delivered cost and a 500-basis-point increase in equity thickness, a rule of thumb about what that would add to the delivered cost to Toronto.

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1074. Can you help us any further than you have so far as to whether the company did provide those kinds of indications to the analysts?
1075. **MR. GIRLING:** Again, I mean, they both got them so I'm assuming that there was some rules of thumb talked about at the meeting, so ...
1076. **MR. SCHULTZ:** Okay, thank you.
1077. And then we see a comment that is not -- it would appear -- it would appear to be that of Nesbitt Burns because the next paragraph -- the very first full paragraph on page 2 starts:
- "In our view..."*
1078. And then there are four paragraphs that flow from that.
1079. And what we see is a paragraph that is after that "In our view..." that says:
- "To date, the supply growth in western Canada has fallen short of expectations and supply from the far north is likely at least five years away."*
1080. Would you see that as reporting something the company said or as an expression of Nesbitt Burns' view?
1081. **MR. GIRLING:** That looks like an observation of the marketplace that you're referring to, the "To date..." sentence?
1082. **MR. SCHULTZ:** Yes.
1083. **MR. GIRLING:** That looks like their observation of the marketplace.
1084. **MR. SCHULTZ:** Okay, thank you.
1085. And then we see the final paragraph, which reads as follows:
- "At its current price, TransCanada's stock price appears cheap relative to its earnings, dividend, or private market value. However, we do not expect significant upside in the stock until there is some resolution to the major uncertainties surrounding the company. These include its ability to realize the indicated \$3 billion in asset sales in a timely manner, the growth in gas supply out to western Canada and the future regulatory environment."*
1086. Do you see that?

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1087.           **MR. GIRLING:** I do.
1088.           **MR. SCHULTZ:** And you would understand that to be Nesbitt Burns' opinion?
1089.           **MR. GIRLING:** I would assume that is Nesbitt Burns's view.
1090.           **MR. SCHULTZ:** Okay.
1091.           Sir, would there have been any part of that in February 2000 that you would disagree with?
1092.           **MR. GIRLING:** No.
1093.           **MR. SCHULTZ:** Thank you.
1094.           Would it be fair to say that today the asset sales, today meaning December 2004, the asset sales are complete?
1095.           **MR. GIRLING:** The ones that were contemplated here were complete.
1096.           **MR. SCHULTZ:** Right, thank you.
1097.           TransCanada is no longer pursuing an agenda of comprehensive regulatory change; is that right?
1098.           **MR. GIRLING:** I guess I'm not sure what the definition of "comprehensive regulatory change" is.
1099.           We're still now -- the major issues that are talked about here are increases in equity thickness, increases in ROE, and a toll structure that makes our system more competitive. And we continue to pursue avenues to make our system more competitive, which had been talked about in other proceedings. As well, Panel 2 can talk specifically about those things.
1100.           I'm not sure if you refer to that as a comprehensive strategy, but the strategy hasn't changed materially since we did this. It's about getting a fair return for the system and ensuring its competitiveness over the long haul. That is what we worked very hard to do.
1101.           So the strategy is unchanged from this point in time.
1102.           **MR. SCHULTZ:** I take it that, as you have told us, whatever thought the company may have ever given to something like a price cap, that is no longer something the company would contemplate pursuing to the extent it ever contemplated it or to the

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extent the company ever contemplated taking volume risk? That is not anything the company is presently contemplating; would that be right?

1103. **MR. GIRLING:** We're not presently contemplating it to the extent that if a proposal is brought forward by our shippers that made sense, we would consider it.

1104. We're open to all ideas to make our system better for all of its users.

1105. But I guess I was giving you my observation, that practically speaking our shippers don't see value in it, and neither do we, at the current time. That's not to say that that can't change sometime down the road.

1106. **MR. SCHULTZ:** Okay, thank you.

1107. And as we sit here today looking back, we see that supply, would you say, has been relatively flat since 2000?

1108. **MR. GIRLING:** Again, that is a question better directed to our Panel 2, but I would say that supply has deteriorated since this presentation.

1109. When I look at this presentation, it has a pretty significant forecast of increase of volumes out of the Western Sedimentary Basin. I think it is about 4 or 5 billion cubic feet a day, and I don't think that our forecasts currently have that kind of increase built into them.

1110. **MR. BRETT:** And that is reflected in the analysts' report, where they talk about the supply refilling in three to five years. I don't think you would see that today.

1111. **MR. SCHULTZ:** Thank you, Mr. Brett.

1112. Mr. Chairman, might we have a number for this document?

1113. **MR. YATES:** I think you had the last one marked for identification, Mr. Chairman.

1114. **THE CHAIRMAN:** Yes.

1115. Our previous rule ---

1116. **MR. YATES:** I have no problem with that.

1117. **THE CHAIRMAN:** Yes.

1118. Our previous ruling was about -- in the matter that was discussed in respect of the RBC Dominion Securities document. That will be accepted as an exhibit

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for identification purposes, with the usual caveat that it will be given the weight that it warrants when we get to that stage.

1119. And I understand your view on the second document was similar to the first one. So on that basis, we accept the next document on the same basis.

1120. **MR. YATES:** Thank you, Mr. Chairman.

1121. **MR. SCHULTZ:** Thank you, Mr. Chairman. I might say, Mr. Chairman, I had put the emphasis on the Board's direction on the word "weight", that the document would be given weight.

1122. And in that sense the observation about it would be identified with an exhibit number wasn't meant to distinguish it from any other exhibit per se, other than you have taken note of Mr. Yates's concerns and the weight would be then taken into account.

1123. **THE CHAIRMAN:** Your understanding is correct, Mr. Schultz.

1124. **MR. SCHULTZ:** Thank you, sir.

1125. **THE CHAIRMAN:** So let's give it an exhibit number then.

1126. **THE CLERK:** Exhibit No. C-1-35. Pièce numéro C-1-35

**--- EXHIBIT NO./ N<sup>o</sup>: DE LA PIECE C-1-35:**

*Document from Nesbitt Burns dated February 9, 2000*

1127. **MR. SCHULTZ:** Thank you, Mr. Chairman.

1128. The next thing I would like to look at is the -- some extracts from the February 2000 road show, which I also provided to Mr. Yates on Saturday. And if there is no objection, then I will make that more widely distributed.

--- (Document distributed/Document distribué)

1129. **MR. SCHULTZ:** If you have that -- oh, pardon me.

1130. **MR. BRETT:** Mr. Schultz, just to be clear, the document we have is slides running from 1 to 6, and then there is a gap, and then it starts again at 15, and the slides run to 22.

1131. So it's not clear to us whether this is -- I mean, there is obviously something missing in the middle, and it's not clear to us whether there is anything after 22.



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1132. Do you have a different document?

1133. **MR. SCHULTZ:** No.

1134. I simply took extracts in the interest of focusing in on the matters I wanted to discuss and bearing in mind that we are -- have evolved to a system of ensuring that what we talk about is what we actually do talk about and not 30 or 40 pages of miscellaneous other material. So that was my selection.

1135. But I assume that since this was an exhibit in the RH-4-2001 hearing, it came in as Exhibit B-37, that if there -- that if there was something else there that you wanted to talk about, then, of course, we would do that. I do have a full copy -- I think I have a full copy with me.

1136. **MR. BRETT:** My question was only to clarify.

1137. **MR. SCHULTZ:** Yes.

--- (A short pause/Courte pause)

1138. **MR. SCHULTZ:** Just to be clear, Mr. Chairman, B-37 was a full copy of the road show.

1139. I'm only using a portion of it in this proceeding, but I have no objection to having the entire document go in as an exhibit if my friend has a desire to do that.

1140. **MR. YATES:** Well, Mr. Chairman, why don't we just see where it goes, and the witnesses can look at the full document seven minutes or so from now, and if they have a problem we'll know about it. Thanks.

1141. **THE CHAIRMAN:** Thank you, Mr. Yates.

1142. Please proceed, Mr. Schultz.

1143. **MR. SCHULTZ:** Thank you, Mr. Chairman.

1144. We'll see that the first slide is simply entitled "February, 2000 Road Show", and was provided by TransCanada in response to a request in RH-4-2001 to provide the slides that were used in the meetings that we have just been talking about.

1145. So we can agree, Mr. Girling, this is the -- these are the road show slides that were shown to the sell side analysts in Toronto?

1146. **MR. GIRLING:** That is correct.

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1147. And our assistants back here have given me a copy of B-37, so I have the entire presentation.
1148. **MR. SCHULTZ:** Thank you.
1149. And then we see in Slide 2 simply a description of what TransCanada is contemplating it will be.
1150. And, again, this is in light of the restructuring, but the indication at that point is it is going to be a transmission, power, and gas marketing company; is that right?
1151. **MR. GIRLING:** That is correct.
1152. **MR. SCHULTZ:** Okay.
1153. And since then the gas marketing business was sold and TransCanada has essentially become a transmission and power company?
1154. **MR. GIRLING:** That is correct.
1155. **MR. SCHULTZ:** Okay, thank you.
1156. And, in fact, when we were in the RH-4-2001 hearing, I believe we were aware that the gas marketing was going to be discontinued, and we were dealing with it on that basis?
1157. **MR. GIRLING:** That's correct.
1158. **MR. SCHULTZ:** Okay, thank you.
1159. We see, then, in the third slide what TransCanada is communicating to the analysts, its focus: Focus on strengthening the balance sheet, regulatory reform, grow from our existing base?
1160. **MR. GIRLING:** Correct.
1161. **MR. SCHULTZ:** Has anything changed in that since February 2000?
1162. **MR. GIRLING:** I would say that we have just expanded on those objectives, but they're pretty much the same; as this growing from our base has been expanded to individual objectives for the gas business and our power business. But essentially those strategies are the same.
1163. The other one that we have added is a focus on operational excellence and costs. But essentially the wording is slightly different, but it has this essence with those additions to it.

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1164. **MR. SCHULTZ:** All right.

1165. The regulatory reform objective has morphed, if I can use that word, since 2000, in the sense that we were discussing early earlier? There may have been things that were being talked about in 2000 that the company is not contemplating today?

1166. **MR. GIRLING:** I think the core part of our strategies are identical, as I said.

1167. The thrust of regulatory reform at this point in time, and it is today, is to seek a competitive return on our systems, ensure that we're aggressively pursuing new supply and market opportunities to keep it viable, and to ensure that the system service offerings allow the company to be competitive in its core markets. So I don't think that it's changed at all from this point in time. The core tenants of the strategy are identical.

1168. **MR. SCHULTZ:** Thank you.

1169. We then see, beginning on Slide 5, the first discussion of business unit, which is the transmission unit, and we then see that the key messages delivered to the analysts in February 2000.

1170. The first bullet:

*"Fundamentals support TransCanada system utilization  
approaching historic levels within 3 to 5 years."*

1171. The second bullet:

*"TransCanada tolls are competitive with Alliance before and after  
any expansion."*

1172. The third bullet:

*"Significant progress made in reducing organizational size and  
cost."*

1173. And the last bullet:

*"Growth in value expected from: changes in regulatory model,  
supply expansions, market connections."*

1174. Those were the key messages that you wanted the analysts to take away?

1175. **MR. GIRLING:** Correct.

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1176. **MR. SCHULTZ:** Okay.

1177. And the last three sub-bullets under the last bullet would you agree are the goals that were mentioned by Mr. Case in his report?

1178. **MR. GIRLING:** Yes.

1179. And, actually, I think I said I didn't know where the change in growth and change in regulatory model came from, but I see where they came from.

1180. Looking at this slide, I have to admit I still don't understand what that first sub-bullet under "Growth in value expected from changes in regulatory model" refers to.

1181. **MR. SCHULTZ:** Well, it would be value extraction from your customers as opposed to value creation; would that be right?

1182. **MR. GIRLING:** You're correct.

1183. **MR. LACKENBAUER:** No.

1184. It would be value extraction from getting fair returns, which are provided from the customers, but not extraction.

1185. **MR. SCHULTZ:** Thank you. Retiring, but not shy.

--- (Laughter/Rires)

1186. **THE CHAIRMAN:** And the tie that comes with that.

--- (Laughter/Rires)

1187. **MR. SCHULTZ:** And, gentlemen, we see that the company thought it was important to communicate its competitiveness with Alliance?

1188. **MR. GIRLING:** Correct.

1189. **MR. SCHULTZ:** Okay. Thank you.

1190. And then if we skip ahead to Slide 15, we then see what everybody likes to see, which is some kind of a map. So we see the -- some people can picture what is going to be discussed, which, in this context, is, as appears from Slide 16, the competitiveness of the transportation costs to Toronto. I'm paraphrasing here.

1191. Is that correct, Mr. Girling?

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1192.           **MR. GIRLING:** At the time, this probably would have been our view of the competitiveness of the two systems landed in Toronto.
1193.           **MR. SCHULTZ:** Okay.
1194.           And what the company was communicating was that it is competitive to Toronto as compared to Alliance on a cost-of-transportation basis?
1195.           **MR. GIRLING:** On a full-cost basis, those are the two tolls.
1196.           To the extent that Alliance had contracts, I would assume we would have said something like, you know, the marginal cost of shipping on Alliance relative to TransCanada would be such that Alliance would fill first. But, again, those are conversations for Panel 2.
1197.           This is a full-cost comparison. One system has contracts and one doesn't. I don't know what we would have said about that at that meeting.
1198.           **MR. SCHULTZ:** Okay.
1199.           And the Northern Border toll is also shown there, or the cost of a route using the Northern Border to Toronto is also shown; correct?
1200.           **MR. GIRLING:** That's correct.
1201.           **MR. SCHULTZ:** And the point here is that TransCanada is saying it's more competitive than either of the other paths to Toronto, Northern Border or Alliance?
1202.           **MR. GIRLING:** Again, on a full-cost basis, I don't know whether they -- the discussion here was around whether TransCanada was more competitive for the marginal Mcf or this was a representation that Alliance wasn't built because it was cheaper than TransCanada, it was built because we needed additional capacity out of the basin. This speaks to a full-cost comparison, which on a marginal Mcf basis doesn't say anything about competitiveness.
1203.           It says if people were to contract today, you would expect them to contract with TransCanada. But given that they have already contracted with Alliance, that sets up a different market dynamic; which, again, Panel 2 is a lot more qualified to talk about.
1204.           **MR. SCHULTZ:** All right, thank you.
1205.           Then the next slide, 17, we see the chart mentioned by Dr. Howe of fuel ratio relative to deliveries and then relating that to the -- to transportation?
1206.           **MR. GIRLING:** That's correct. I'm just reading the footnote here. I wish those days were back where fuel was only 2.94 a GJ.

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1207. So the graph would look different today; but, yes, this is essentially, on a percentage basis, the marginal fuel requirement on the system as you increase throughput.

1208. **MR. SCHULTZ:** Okay.

1209. And the message there is that the loss of throughput as a result of some load going to Alliance did have some offset effect through the -- through lower fuel cost on the system, which needed to be taken into account if one is doing relative cost of transportation?

1210. **MR. GIRLING:** Yes, relative full cost of transportation, correct.

1211. **MR. SCHULTZ:** Thank you.

1212. Then we see the calculation of the Alliance transportation cost as presented by the company. And you'll recall when we were going through Dr. Howe's report, she talked about the company's calculation, but then she had her own calculation. So it would be this calculation that she was commenting on would you understand?

1213. **MR. GIRLING:** Yes.

1214. **MR. SCHULTZ:** Okay, thank you.

1215. And now we see -- and just so we're -- now we see that the company presented a view of transportation costs to Toronto in the 2003/2004 period. Do you see that in Slide 19?

1216. **MR. GIRLING:** Yes, I do.

1217. **MR. SCHULTZ:** Okay.

1218. And then we see in green ink, under the TransCanada column --

1219. **MR. GIRLING:** I don't have any colours; mine's black and white.

1220. **MR. SCHULTZ:** You got a black and white one? Oh.

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1221. **MR. GIRLING:** Thank you.

1222. **MR. SCHULTZ:** I'm encouraged at these cost-saving measures.

1223. But I originally photocopied it in black and white as well and discovered that these various greens and things don't show up in a black and white copy.

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1224.           You'll see on Slide 19, under the TransCanada column, the last sub-item before you get to the total for 2003, you'll see an item related to regulatory change ---
1225.           **MR. GIRLING:** Correct.
1226.           **MR. SCHULTZ:** --- of 11 cents. Do you see that?
1227.           **MR. GIRLING:** I do.
1228.           **MR. SCHULTZ:** Okay.
1229.           And you'll recall that when we were talking about Dr. Howe's report, she referred to 11 cents, and then she provided a breakdown of what it represented. Do you remember that discussion?
1230.           **MR. GIRLING:** Yes.
1231.           **MR. SCHULTZ:** So we can at least agree that Dr. Howe was right about the 11 cents?
1232.           **MR. GIRLING:** I suspect she pulled it off the page.
1233.           **MR. SCHULTZ:** Okay.
1234.           And -- but you're not able to help us as to whether the company, then, provided a breakdown in response to a question from her or some other analyst?
1235.           **MR. GIRLING:** Again, I think back to Maureen's report. I mean, she used some rules of thumb on increases in equity thickness and increases in ROE to get you a dollar amount, and it would result in these changes. So I think from that -- I mean, her calculations are probably accurate.
1236.           I mean, it's just simple math to calculate an increase in equity thickness times the rate basis. She would know to give you a total dollar amount for each category.
1237.           **MR. SCHULTZ:** Thank you.
1238.           Then we see the discussion at Slide 21 of growth that has six items. One that involves:

*"Changing the regulatory model to reflect the new environment  
and increased risk*

*Cost savings*

*Attaching Northern supply to the system*

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*New services*

*Connecting new demand through alliances / joint ventures*

*Focussing on synergies between gas transmission, power  
generation and gas marketing."*

1239. And I take it those were an accurate description of the company's view of how it would grow value in February 2000?

1240. **MR. GIRLING:** In the transmission business, that would be true.

1241. **MR. SCHULTZ:** Okay.

1242. And what has changed in that view since that time?

1243. **MR. GIRLING:** I would say that the strategies all look sound.

1244. Like you said, we don't have gas marketing anymore, but I think the strategies are still sound today in terms of what we're pursuing.

1245. **MR. SCHULTZ:** Thank you.

1246. Mr. Chairman, may I have a number for this, recognizing my friend probably has similar concerns, or not, since this was a TransCanada document?

1247. **MR. YATES:** Since this is a TransCanada document, I don't have the same concerns as I expressed with respect to the other ones.

1248. **THE CHAIRMAN:** Thank you.

1249. So let's proceed with an exhibit number.

1250. **THE CLERK:** Exhibit No. C-1-36. Pièce numéro C-1-36.

**--- EXHIBIT NO./ N° DE LA PIÈCE C-1-36:**

*Extracts of the slides presentation entitled "February, 2000 Road Show"*

1251. **MR. SCHULTZ:** Mr. Girling --

1252. **THE CHAIRMAN:** Mr. Schultz, if I could just ask: Would that be a convenient time for you to break your cross-examination for today?

1252.1. **MR. SCHULTZ:** If I ask one last question, we are done this line.



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1253.           **THE CHAIRMAN:** I was checking with you. Please proceed, yes.
1254.           **MR. SCHULTZ:** Thank you, sir.
1255.           I was conscious of the time, and I should have -- I should have asked permission here before I kept pushing beyond your limits.
1256.           **THE CHAIRMAN:** No problem at all, Mr. Schultz. Please proceed.
1257.           **MR. SCHULTZ:** Thank you, sir.
1258.           My question, Mr. Girling, given that we have analysts who seem to think the company was looking for 35 percent common equity, is for you to tell us when did TransCanada decide that 40 percent equity was what it needed.
1259.           Obviously, it was before RH-4-2001, and it had to be before. The application for that was filed in June 2001. Was it after February 2000? Between February 2000 and the spring of 2001?
1260.           **MR. GIRLING:** I really have no idea in that period of time.
1261.           I don't even think these analysts' reports refer to it as being at 35 percent if you say that that's our point in time. Is what we knew at the time was that our overall return wasn't competitive with returns that we were seeing on alternate investments. The 7 1/2 kind of number, the 7 1/2, 8 kind of number, existed around that point in time. We hadn't translated that into an equity thickness number.
1262.           But from a personal perspective, I can tell you that the company's hurdle rate was in that sort of 7 1/2 to 8 percent range back in that period of time. And it remained in that level until we saw, you know, a large drop in interest rates the last, say, 12 or 24 months, and a competitive market change.
1263.           And you have seen that reflected in our request of 11 on 40 versus 12 on -- 12 and half on 40, which is really a change in hurdle rate in the marketplace.
1264.           That's how I calculate it. I mean, I don't think in terms of equity thickness stand-alone, except for as it pertains to the rating agencies. When I'm thinking about investment, which is what we're talking about here, is comparable return on investment, I think about it in terms of return on total capital employed, or IRR, and I look at all the opportunities that we have as a company to employ our capital and pick the ones that have the highest IRR and lowest risk.
1265.           And what we knew at this time was that our regulated pipelines, investment in our regulated pipelines, were at the very bottom of our investment opportunities. And we were concerned about that and needed to press for greater return.

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1266. But I would say that the -- you know, that the 40 percent came about as we put our filing together for RH-4-2001 as to how we then communicate that return expectation in the marketplace on total capital to one of equity thickness and ROE.

1267. I don't know the exact date as to when we came to that conclusion, but seven and a half percent, eight percent had been around for some time before I put the application together.

1268. **MR. SCHULTZ:** Thank you, Mr. Girling.

1269. Thank you, Mr. Chairman. This is a -- I am done this line of questioning. I appreciate the Board's indulgence.

1270. **THE CHAIRMAN:** Thank you, Mr. Schultz.

1271. So we will resume tomorrow morning at 8:30 et bon après-midi à tous.

--- Upon adjourning at 1:38 p.m./L'audience est ajournée à 13h38

**APPENDIX 2 - HISTORICAL COURT REPORTING FROM 2014/15 - 2016/17**

<b>Project Name</b>	<b>Year &amp; Month</b>	<b>Locations</b>	<b>Estimated No. of words</b>	<b>No. of Hearing Days</b>
Alliance Tolls	April 2015	Calgary AB	119,385	2
Enbridge Line 10 Replacement	June 2015, and Oct 2016	Hamilton ON	101830	2
Enbridge Line 3	Nov 2015 and Dec 2015	Calgary AB and Winnipeg MB	302,510	7
NGTL 2017 System Expansion	Oct 2015 and Nov 2015	Edmonton, Grande Prairie and Fort McMurray, AB	140,729	8
NGTL North Montney	Oct 2014 and Nov 2014	Fort St. John, BC and Calgary, AB	722,310	16
NGTL Towerbirch Expansion	May 2016 and June 2016	Calgary AB and Dawson Creek, BC	240,000	5
TCPL Contested Settlement	Sept 2016	Calgary AB	643,512	12
TCPL Energy East/Eastern Mainline	in progress	Canada wide; AB, SK, MB, ON, QC, NB	460,841	15
TCPL King's North Connection	March 2015	Vaughan ON	37,304	1
TCPL Vaughan Mainline Expansion	April 2016 and June 2016	Vaughan ON	90,508	4
TMPL Facility & Expansion TMX3	Jan 2016 and Feb 2016	Burnaby BC and Calgary AB	1,335,286	14
Plains Midstream EDS Tolls	Oct 2016	Calgary AB	27,257	1
TCPL Shared Transportation Services	Sept 2016	Calgary AB	164,525	4
<b>Grand Total</b>			<b>4,385,997</b>	<b>91</b>