

# Tolls, Tariff, Facilities & Procedures Committee

## Resolution

T2009-01: TTFP Procedures Review

### Resolution

The Tolls, Tariff, Facilities & Procedures Committee (TTFP) supports adoption of the revised TTFP Procedures as attached.

### Background

On June 17, 2008, TransCanada filed an Application with the National Energy Board (NEB) to effect recognition that the TransCanada Alberta System is by law properly within Canadian federal jurisdiction and subject to regulation by the NEB. On February 26, 2009, the NEB rendered Decision GH-5-2008 acknowledging that the Alberta System is by law within Canadian federal jurisdiction.

In order to be consistent with NEB Guidelines for Negotiated Settlement of Traffic, Tolls, and Tariffs, amendments to the TTFP Procedures are required.

The following is a summary of the changes contained in the revised Procedures:

- Change all references of regulator to 'NEB'
- Change references to EUB GRA to NEB Rate Applications
- Remove sections related to EUB Guidelines for Negotiated Settlements
  - Initiation of Process
  - EUB approval to negotiate
  - Role of EUB Staff
  - Fairness assessment
- Remove reference to BC Shippers Committee
- Update annual membership notice section
- Clarify legal counsel participation in TTFP and Task Force meetings
- Modified definition of Hard Opposed voting result

### Next Steps

NOVA Gas Transmission Ltd. will file the revised Procedures with the NEB for information.

# Tolls, Tariff, Facilities & Procedures Committee

## Procedures

### 1.0 PURPOSE

1.1 Following the general intent of the National Energy Board's (NEB) Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs (Guidelines) the Tolls, Tariff, Facilities & Procedures Committee (TTFP or Committee) will facilitate the effective, efficient, and timely exchange of information among involved parties and will proactively address and attempt to resolve Issues related to the tolls, Tariff, facilities and operating procedures of the TransCanada's Alberta System. The parties will work together to build consensus on the resolution of an Issue and to reduce the adversarial aspects of NEB hearings. In addition, the TTFP will endeavor to reach consensus on TransCanada's Alberta System facility planning and policy Issues. The intent of this Committee is to not only reduce hearing time and costs but to also achieve better outcomes through collaboration.

### 2.0 SCOPE

2.1 Provides a forum to proactively plan and consider improvements to how gas transportation service is delivered in the Western Canadian Sedimentary Basin - collaborative long term thinking, not just short term problem solving. The long term vision of where industry wants to go will set direction and provide a guide to short term and single Issues. The use of the term "Issue" shall be used in the Procedures to describe subjects for discussion and investigation or subjects leading to a decision requiring action.

2.2 The scope of tolls, Tariff and operating procedures Issues that may be addressed include any and all items that will need subsequent regulatory approval via an Alberta System Rate Application as well as operational Issues that are of general interest and impact to a broad cross section of industry. This includes, but is not limited to: the Alberta System cost of service, rate base, service offerings, rate design, terms and conditions of service, Tariff and operating procedures.

2.3 The scope of facility planning and policy Issues that may be addressed includes the TransCanada's Alberta System Annual Plan, facility applications facility design criteria and philosophy, forecast methodology and assumptions that impact facility design and requirements, alternative facility build-ups under different forecasts or assumptions, facility design or facility requirements arising from system operational needs or service offerings, environmental and public participation issues, and purpose and necessity of facilities. These Issues will be discussed and advanced through the Facilities Task Force defined in Section 3.1(iii).

### **3.0 ORGANIZATIONAL MATTERS**

3.1 The TTFP will have three subordinate standing task forces:

(i) **Business Process Task Force (BPTF)** - will be responsible for Issues arising from TTFP priorities regarding operating procedures, aspects of service offerings, and aspects of the terms and conditions of service as they pertain to operating practices;

(ii) **Alberta Tariff Task Force (ATTF)** - will be responsible for Issues arising from TTFP priorities regarding the Tariff, cost of service, rate base, rate design, and aspects of service offerings, aspects of the terms and conditions of service; and

(iii) **Facilities Task Force (FTF)** - will be responsible for Issues arising from TTFP priorities regarding facility planning and policy Issues as described in Section 2.3.

3.2 TransCanada will provide a Chairperson for each of the TTFP, BPTF, ATTF and FTF, who will schedule meetings, arrange meeting places, prepare and pre-circulate agendas, prepare and circulate meeting notes, maintain and distribute a membership list, provide orientation to new members, provide facilitation within meetings, keep meetings on task and on time, serve as a single communication point for members to identify agenda items prior to meetings and to forward any information for circulation to members and provide coordination and integration between other committees and task forces under the collaborative process umbrella.

### **4.0 MEMBERSHIP**

4.1 Notice will be provided yearly as an invitation to Alberta System Customers and current TTFP members to join the TTFP.

4.2 Membership is open to TransCanada and any affected party that would directly experience implications of importance due to outcomes achieved by this Committee. A non-regulatory government organization with active interests in TransCanada's Alberta System and an individual or organization that represents a party or parties eligible for membership also all qualify for membership.

4.3 Unless otherwise agreed to, legal representatives for a member will not be entitled to attend or participate in any TTFP meetings and/or Task Force meetings.

4.4 Membership pertains to the organization and not an individual representing that organization. Participants are expected to clearly identify the member organization that they are representing and will be expected to be acting on behalf of and be accountable for representing and articulating the position of the organization they represent.

4.5 Members agree to abide by these Procedures and participate in good faith.

4.6 While parties are encouraged to make their interest in becoming a member known at an early point in time subsequent to a notice, no affected party will be prohibited from joining at any time. Affected parties may choose to become active to pursue a single Issue of importance to them.

- 4.7 Membership on a task force created by the TTFP will be open to any affected party. An opportunity to participate will be given by direct notice from TransCanada to all of the members of the TTFP.

## **5.0 MEETING NOTES**

- 5.1 Meeting notes which will provide a summary form of what Issues were discussed and any agreed to next steps, will be provided only to registered members. Members will take reasonable efforts to preserve the without prejudice nature of this communication, if distributing meeting notes or any other TTFP-related information within their organizations.
- 5.2 Meeting notes will not include the names of an individual or party with respect to a position being taken or comments made regarding an Issue. A party may, however, be identified in the meeting notes upon that party's request or prior approval. Furthermore, the meeting notes will not include vote counts or the names of parties supporting or opposing; they will only express the results of the vote. A visible notation will be shown on the notes indicating that they are for discussion purposes only and are provided on a without prejudice basis.
- 5.3 Meeting notes will not be provided to the NEB.

## **6.0 WITHOUT PREJUDICE**

- 6.1 To facilitate free and open communication in the discussion and settlement of Issues, participation by all parties in regard to the TTFP or any related task force will be conducted on a "without prejudice" basis. This means that, subject to Section 6.3, any documents and any communications, written or oral, that are created or made as part of the TTFP process shall be considered to be confidential and shall not be filed, referred to or quoted from in any hearing or other proceeding before any regulatory tribunal or any court of law, without TTFP consent through a unanimous or unopposed vote, unless so ordered by a court of law.
- 6.2 In order to preserve the without prejudice basis before the NEB, in addition to the foregoing, members will not comment on the status of any Issue before the TTFP (except as specifically provided for in this Section of the TTFP Procedures), including whether or not an Issue is being addressed unless the TTFP, by a unanimous or unopposed vote, agrees to disclose certain aspects of the Issue in advance of a regulatory proceeding. This limitation also pertains to Issues tabled, but not adopted, by the TTFP. A member may express its opinion regarding the appropriateness of the TTFP as a forum for addressing an Issue, however, no member has the right to express the collective view or position of the TTFP without the consent of the TTFP.
- 6.3 Two exceptions to Section 8.0 shall apply: no member of the TTFP shall submit to the NEB any submission, position, evidence or information provided by a party on a without prejudice or confidential basis, put forward in the TTFP, without the express consent of that party; and, that any member of the TTFP may submit or refer to documents created or made by that member.
- 6.4 Prior to any TransCanada relevant regulatory proceeding (e.g.; Rate Application), the TTFP shall discuss the nature of the upcoming proceeding and shall determine

the extent to which any submission, position, or information provided under the auspices of the TTFP can be referred to by any party in that proceeding. As outlined above, a unanimous or unopposed vote will be required before any TTFP-related information can be provided to the NEB.

- 6.5 In response to an NEB directive that has been accepted for consideration by the TTFP, it will be permissible for members to acknowledge within a regulatory proceeding (application, pre-hearing conference, response to Information Requests, supplementary evidence, or oral evidence adduced during direct or cross examination) whether or not the Issue is being addressed by the TTFP and provide a copy of the Issue Statement section of the Issue Summary in order to be clear as to what is the Issue being addressed. Members will not disclose information pertaining to alternatives being discussed, positions of members, expected outcomes or expected timeline for an outcome.
- 6.6 Certain summary information pertaining to the title and description of Issues being addressed may be provided, on a "without prejudice" basis, to non members. Members are also encouraged to inform industry participants who may have an interest in a particular Issue of any plans to deal with that Issue in the TTFP, so they can be directly involved in the process if they choose.
- 6.7 TransCanada and other TTFP members may provide TTFP information to other committees under TransCanada's collaborative process umbrella, including, but not limited to, the Tolls and Tariff Task Force (TTF) and the Foothills System Shippers, provided the parties receiving the information agree to fully recognize and abide by the without prejudice provisions of the TTFP.

## **7.0 RAISING AND PROGRESSING ISSUES**

- 7.1 An "Issue" is defined as any item of concern or interest raised by a member concerning items described under the section entitled "Scope" in these Procedures, which is duly raised with the TTFP in the manner described in these Procedures.
- 7.2 Members who wish to raise an Issue through the TTFP must ensure that proper documentation is provided to the Chairperson for inclusion with the agenda for the next meeting. To the extent possible, the documentation provided should identify the Issue, describe the member's concern and proposed resolution. An Issue template, that will serve as a guideline for content and format, is appended as "Attachment 1" to these Procedures. TransCanada agrees to make a reasonable effort to provide information where required in order to assist in fully delineating an Issue.
- 7.3 The member who raises the Issue is the Issue Sponsor unless otherwise agreed to by another member who explicitly agrees to be the sponsor.
- 7.4 The TTFP will review each Issue and will adopt the Issue for further discussion only if accepted by a majority vote (greater than 50% of those members in attendance are in favour).
- 7.5 Once an Issue has been adopted, the TTFP will determine whether the Issue should be addressed by the TTFP or referred to a task force. A task force, other than the three standing task forces identified in Section 3.1 will only be established if supported by a majority vote (greater than 50% of those members in attendance are

in favour). The TTFP is intended to be a working group and not just a steering group. Therefore, task forces will be minimized and used only when required to carry out more detailed work to support the TTFP.

- 7.6 When an Issue is adopted at the TTFP and the process identified to address the Issue is to work details at a task force, the TTFP will endeavor to have the Issue worked at one of the standing TTFP task forces. The TTFP will also have the ability to strike a task force specifically to address unique Issues that would not necessarily be best addressed by one of the standing task forces.
- 7.7 In the spirit of working together endeavoring to reach agreement on Issues, members are expected to identify and communicate corporate concerns at an early stage.
- 7.8 Upon determination that an Issue is to be progressed, either to a task force or by the TTFP, all members who have voted against the progression of the Issue should be prepared to articulate their organization's position/concern at the time of the vote. Further, if any member irrespective of their vote, has potential serious concerns, thoughts, or intentions to litigate, these concerns, thoughts or intentions should be made known at the earliest possible time after the vote.
- 7.9 There is an expectation that a member who has serious concerns or thoughts with respect to an adopted Issue will participate on the task force or designate a representative to participate on the task force on their behalf.
- 7.10 It is expected that once an Issue has been accepted for consideration by the TTFP it will be processed in an expeditious manner. Issue status will be discussed on a minimum of a quarterly basis at the TTFP meetings. With respect to Issues that may be referred to a task force, the Issue will be referred back to the TTFP for a vote once resolution has been achieved at the task force. The TTFP may send an Issue back to the task force for further consideration.
- 7.11 The Sponsor of an Issue can withdraw their Issue by notifying the Chairperson of the TTFP.
- 7.12 An issue can be placed in abeyance if it can be determined that its disposition, though still relevant to the TTFP, is not a priority. If an Issue is in abeyance for one full calendar year it shall be deemed to be withdrawn upon one month's notice to the TTFP. The Chairperson of the TTFP will notify the TTFP of any Issues that are put into abeyance or deemed to be withdrawn.

## **8.0 VOTING GUIDELINES**

- 8.1 Each member organization of the TTFP will have one vote. Members have to be in attendance during the vote in order to vote except in exceptional circumstances as per Section 8.5. A member that does not cast a vote either in favour or against a proposed resolution will be deemed to have abstained from voting. If a member's normal representative is unable to attend a meeting in order to cast a vote, an alternate representative may vote, provided that notice has been provided to the Chairperson.

- 8.2 Formal notice of an impending vote will be given at the TTFP meeting immediately preceding the meeting at which the vote is to be taken. Reasonable prior notice will be made to all members by distributing the meeting notes at least 10 business days in advance of the meeting at which the vote will be taken.
- 8.3 A vote may be held on an amended resolution during a current TTFP meeting in the event that the amendments to the circulated resolution are minor in nature and the members in attendance agree (by majority vote) that the vote should be taken.
- 8.4 In exceptional circumstances (for example, to meet a regulatory deadline), a vote on a resolution may be held on less than ten days notice with the majority agreement of the members in attendance. Alternatively, an extraordinary meeting of the TTFP may be convened in order to vote on a resolution on less than ten days notice.
- 8.5 In exceptional circumstances an electronic vote may be conducted. All members of the TTFP will be polled electronically by the Chairperson of the TTFP and with the support of a majority of the respondents the vote can proceed as per Section 8.2.
- 8.6 There will be a majority where the number of votes “for” or “against” exceeds the number of votes “against” or “for”, without regard to the number of abstentions.
- 8.7 A member’s vote will not be construed as representing a binding irrevocable position. It will, however, be construed as representing the position of the member organization at that time. The TTFP is not a decision making body - no party loses its recourse to the NEB; no party is bound by their vote or a majority vote; the NEB is the final decision maker.
- 8.8 The result of a vote on any proposed resolution will be categorized as follows:
- (i) **Unanimous:** all votes in favour of the proposed resolution.
  - (ii) **Unopposed:** a majority of votes in favour of the proposed resolution with those voting against indicating that will not actively oppose the proposed resolution or propose an alternative to the regulator.
  - (iii) **Opposed:** a majority of votes against the proposed resolution.
  - (iv) **Hard Opposed:** Members voting against the resolution and indicating that they are prepared to actively oppose the proposed resolution before the NEB and may propose an alternative to the NEB.

## 9.0 TTFP REPORTING TO NEB

- 9.1 With the exception of an NEB directive that has been accepted for consideration by the TTFP, details of settled Issues (unanimous or unopposed) will be submitted to the NEB. The details to be provided would include a copy of the resolution.
- 9.2 With respect to an NEB directive that has been accepted for consideration by the TTFP, a report of the Issue will be provided to the NEB upon completion of the TTFP’s deliberations (whatever the outcome). In the case of a “unanimous” or “unopposed” resolution the report will include a copy of the resolution. In the case of an “opposed” resolution or “hard opposed” resolution the report will simply indicate that the TTFP has considered the Issue and did not reach consensus.

## **10.0 PROCEDURES**

- 10.1 These Procedures may be filed for information purposes with the NEB as part of a Rate Application or if a settled Issue is being submitted to the NEB. These Procedures are considered to be public information and may be provided to any party.
- 10.2 It is understood that the TTFP will review these Procedures on an as required basis.
- 10.3 Adoption of and amendments to these Procedures requires an Issue to be raised by a member and adopted by the TTFP. An outcome of either "unanimous" or "unopposed" will be required to effect a change to these Procedures.

# Tolls, Tariff, Facilities & Procedures Committee

## Issue Summary

### 1. Issue Sponsor

### 2. Issue Statement

- Provide a name for the Issue, and a brief and clear statement of the area of concern.

### 3. Background

- Provide some background on how the Issue arose, what the problem is with the status quo, etc.

### 4. Process for Addressing the Issue

- Briefly describe a tentative process for dealing with the Issue, for example:
  - can the Issue be dealt by the TTFP or a task force?
  - what would an expected timeline be for resolving the Issue?
  - how might the Issue fit in with the NGTL's Rate Application process?

### 5. Potential Outcome or Alternative

- Briefly describe what a potential outcome on the Issue might be, or some alternative outcomes that the Committee might consider.

### 6. Anticipated Benefits

- Briefly describe the specific benefits that will result from successful resolution of the Issue.