

Requests for Information

1 **Q. In response to CA - NP - 202, NP provided information regarding the decision of the**
2 **NEB to initiate a review on its RH-2-94 multi-pipeline cost of capital decision.**
3 **Please provide any further information that has become available regarding the**
4 **timelines or process that has been set by the NEB for this review.**
5

6 A. Attachment A is a copy of NEB's notice of July 3, 2009 announcing its initiation of a
7 review of the RH-2-94 multi-pipeline cost of capital decision.
8

9 The notice requests comments be provided by September 18, 2009.
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11 Attachment B is a copy of NEB's letter decision of October 8, 2009 arising from the
12 review of the RH-2-94 multi-pipeline cost of capital decision. The letter decision
13 indicates that the NEB's RH-2-94 multi-pipeline cost of capital decision will not continue
14 to be in effect.

**NEB
Review of the Multi-Pipeline Cost of Capital Decision (RH-2-94)
October 8, 2009 Letter Decision**

National Energy
Board



Office national
de l'énergie

File OF-Tolls-TollsGen-COC 01
8 October 2009

To: Parties Named in the Attached Distribution List

Review of the Multi-Pipeline Cost of Capital Decision (RH-2-94)

On 3 July 2009, the Board initiated a review of the RH-2-94 Decision. Enclosed is the Board's decision on this matter.

For ease of reference, the Board has decided to issue this decision, and the Board's related letters dated 23 March, 1 May and 3 July, all 2009, together in a single blue book document later this year.

The Board directs companies in Part A of the attached Distribution List to serve a copy of this letter and the enclosed decision on their shippers and interested parties, including parties to their latest tolls decision or settlement. They need not serve a copy on any person listed in Part B.

Parties are advised that copies of correspondence related to this process can be found on the Board's Regulatory Documents Repository (accessible by visiting the Board's Internet site at www.neb-one.gc.ca. Click on the "View" link under the Regulatory Documents heading). In the Repository, click on "Group 1 Gas" or "Group 1 Oil". Then click on "Multi-Client Cost of Capital (RH-2-94)"; then click on "1994-06-20 Cost of Capital (RH-2-94)"; and finally click on "2009-03-23 - Request for Comments on Review of RH-2-94 Decision".

Yours truly,

A handwritten signature in black ink that reads "AnneMarie Erickson".

Anne-Marie Erickson
Acting Secretary of the Board

Attachments (2)

Review of the Multi-Pipeline Cost of Capital Decision (RH-2-94)

Reasons for Decision

Background

On 23 March 2009, the National Energy Board issued a letter advising that it had decided to consider whether it should initiate a review, pursuant to section 21 of the *National Energy Board Act*, of the RH-2-94 Decision¹. The Board solicited comments from interested persons on whether they believed that the RH-2-94 Decision should be reviewed, and set a deadline for comments of 25 May 2009.

On 3 July 2009, after considering the submissions received, the Board initiated a review of the RH-2-94 Decision by seeking comments on the continuing applicability of the RH-2-94 Decision, and possible outcomes of the review. The Board indicated that parties need not file any further submissions unless they had supplementary comments not covered by their earlier filings. The Board invited parties to comment on the following possible outcomes and to suggest alternative outcomes.

- The RH-2-94 Decision remains in effect, without prejudice to parties filing company specific applications to depart from the RH-2-94 Decision.
- The RH-2-94 Decision will not continue to be in effect and an appropriate method of and timing for transition for any pipeline still subject to the RH-2-94 Decision, and those pipelines utilizing the RH-2-94 Formula, will be implemented.
- The initiation of a generic process, which could be a formal generic hearing, or any other process developed by interested parties, to examine the manner in which, going forward, the Board should address the cost of capital.

The Board set a deadline for comments of 18 September 2009. The Board considered the submissions from all parties in reaching a decision.

Views of the Board

The initial decision that the Board must address is whether there is a doubt as to the correctness of the RH-2-94 Decision.

¹ National Energy Board, RH-2-94 Reasons for Decision, TransCanada PipeLines Limited, Westcoast Energy Inc., Foothills Pipe Lines Ltd., Alberta Natural Gas Company Ltd, Trans Québec & Maritimes Pipeline Inc., Interprovincial Pipe Line Inc., TransMountain PipeLine Company Ltd., Trans-Northern Pipeline Inc. Cost of Capital, March 1995.

In the RH-2-94 Reasons for Decision, the Board stated that it was "not setting a limit on the life of the [adjustment] mechanism and it does not expect to reassess the rate of return on common equity in a formal hearing for at least three years."² Further, the Board stated that it "also expects that the capital structure set in this hearing for each of the pipelines will endure for an extended period of years."³ Thus, it is clear that the Board expected the RH-2-94 Decision to remain in place for at least some time. However, in the Board's view, 15 years is a significant passage of time in the context of financial regulation. The Board notes that since 1994, there have been considerable changes in financial and economic circumstances.

Based on these considerations, the Board is of the view that there is a doubt as to the ongoing correctness of the RH-2-94 Decision.

Having reached this conclusion, the Board must turn to how it should proceed with respect to cost of capital determinations.

The Board is of the view that the circumstances surrounding cost of capital decisions today are different from those which faced the Board and industry prior to 1994. The Board notes that leading up to the RH-2-94 proceeding, litigated rate cases were the norm. Since that time, negotiated settlements have become common practice. The Board notes that parties have diverging views as to the role of the RH-2-94 Decision in facilitating settlements. In the Board's view, it cannot be determined whether the facilitation of settlements was due to the RH-2-94 Decision alone, or also as a result of the Board's decision in August 1994 that it would accept or reject settlements in their entirety⁴, or for other reasons such as the development in that era of pipeline/stakeholder task forces. Whatever the reason, given the vast experience the industry has gained in reaching negotiated settlements over the past 15 years, the Board is of the view that it is neither necessary nor appropriate to replace the RH-2-94 Decision with another multi-pipeline cost of capital decision at this time. Accordingly, the RH-2-94 Decision will not continue to be in effect.

The Board's decision not to pursue a multi-pipeline approach does not preclude the Board from doing so at a future date.

Given the reference to the RH-2-94 Formula in some current settlements, for the convenience of parties the Board will continue to publish the return on equity resulting from the Formula in late 2009 (2010 result) and 2010 (2011 result), and, if requested by parties, beyond 2010.

² *Ibid.*, at p. 32

³ *Ibid.*

⁴ National Energy Board letter dated 23 August 1994 "Negotiated Settlements of Traffic, Tolls and Tariffs", File No. 4600-1000-3.