

January 20, 2017

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BY E-MAIL

TransCanada Pipelines Limited

www.aer.ca

**Attention: Murray Sondergard, P. Eng.
Director, Regulatory Services
Commercial Development, Liquid Pipelines**

Dear Mr. Sondergard:

**RE: Regulatory Appeals 1866028 and 1866029
Gibson Energy Inc. and Husky Oil Operations Limited
Environmental Protection Order dated July 7, 2016**

This letter is the decision of the panel considering Regulatory Appeals 1866028 and 1866029 (the “appeals”) regarding TransCanada Pipelines Limited’s (TransCanada’s) request to participate in the appeals. That request is made by TransCanada on its own behalf and on behalf of TransCanada Keystone Pipeline GP Ltd. (“Keystone”). The request seeks limited participation for TransCanada – receipt of communications in the proceeding contemporaneously with the other parties, the ability to monitor the proceeding and the ability to make closing comments to the panel.

Gibson Energy Inc., Husky Oil Operations Limited and the AER Closure & Liability Group responded to TransCanada’s request. None of these parties objected to the limited participation proposed by TransCanada. Gibson’s non-objection is contingent on Gibson being permitted to provide further comment should the panel consider granting to TransCanada participation beyond what TransCanada is seeking in its request to participate.

TransCanada’s application to participate was made pursuant to section 32.1(2) (c) of the *Alberta Energy Regulator’s Rules of Practice (Rules of Practice)* which states that a request to participate must contain:

- (c) if the person [applying to participate] will not be directly and adversely affected by the decision of the Regulator on the regulatory appeal, an explanation of how
 - (i) the person’s participation will materially assist the Regulator in deciding the matter that is the subject of the regulatory appeal,

- (ii) the person has a tangible interest in the subject-matter of the regulatory appeal,
- (iii) the person's participation will not unnecessarily delay the regulatory appeal, and
- (iv) the person will not repeat or duplicate evidence presented by other parties,

The panel notes that TransCanada's request describes its and Keystone's interest in the subject-matter of the appeals and how its proposed participation will not delay the appeals and will not duplicate of the other parties' evidence. However, nothing is provided to demonstrate that TransCanada's participation will assist the panel in making a decision on the appeals. For this reason the panel declines to grant participation to TransCanada on the requested basis, that its participation will materially assist the panel.

The *Rules of Practice* also indicate in section 32.1(2)(b)(i) that a request to participate in a regulatory appeal must contain:

- (b) a concise statement indicating
 - (i) why the person may be directly and adversely affected by a decision of the Regulator on the regulatory appeal,

Given the nature of TransCanada's and Keystone's interests in this matter and the possible effects of the plume on their assets, the panel concludes that its decision on the appeals could directly and adversely affect TransCanada or Keystone.

For the above reason, the panel is prepared to allow TransCanada, on its own behalf and on behalf of Keystone, to participate in the appeals on a limited basis. TransCanada may receive copies of all communications in the proceeding at the same time that Husky, Gibson and AER Closure & Liability Group receive them and it may provide closing comments to the panel. Any member of the public may monitor an AER hearing and so there is no need for the panel to confer the right to monitor this hearing to TransCanada. If TransCanada does provide closing comments, the other parties will be permitted to respond to those comments.

Should TransCanada want to participate in the appeals on the basis described above, please confirm this in writing with the undersigned on or before January 27, 2017 by advising Greg McLean at greg.mclean@ aer.ca.

Yours truly,

inquiries 1-855-297-8311
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emergency 1-800-222-6514

Meighan LaCasse
Counsel

cc: Bennett Jones LLP, Attn: Blake Williams
Blake, Cassels & Graydon LLP, Attn: David Tupper
AER Closure & Liability Group, Attn: Karen Lilly
Greg McLean, AER
Alison Koper, AER