

**Review of TransCanada's  
Corporate Integrity and Business Ethics  
As Required by  
The Alaska Gasline Inducement Act**

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**Report prepared by**

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## **Review of TransCanada's Corporate Integrity and Business Ethics per AS 43.90.170(c)(5)(B)**

### **Introduction**

The Alaska Gasline Inducement Act requires the Commissioners of the Departments of Revenue and Natural Resources to evaluate all applications deemed to be complete, under AS 43.90.140, and consider public comments received under AS 43.90.160(a) concerning the applications. See AS 43.90.170(a). Upon completion of this review, the Commissioners must then rank each application according to the net present value of the anticipated cash flow (as determined by AS 43.90.170(b)), weighted by the project's "likelihood of success" as determined by AS 43.90.170(c). When evaluating a project's likelihood of success, the Commissioners must consider, among other things, the applicant's "record of integrity and good business ethics." See AS 43.90.170(c)(5)(B). The Application submitted by TransCanada Alaska Company and Foothills Pipe Lines Ltd. (referred to herein, along with TransCanada Corporation, as "TransCanada") was the sole application judged to be complete by the Commissioners and the public review period for that application ended on March 6, 2008. Despite the singular complete application, as part of the review process required by AGIA, the Commissioners must still consider the issues of business ethics and integrity as part of determining whether to award the AGIA license to TransCanada.

The purpose of this memorandum is to present a representative summary of the research findings obtained from the due diligence review of various materials, including public comments, concerning TransCanada's business ethics practices and corporate integrity. The review covered, among other things, publically available information concerning the company's corporate governance policies and practices, its safety and customer service record, its environmental practices, the outcome of any enforcement proceedings before regulatory agencies, and whether there are instances of general corporate malfeasance, such as indictments of company officials and pending litigation or investigations, in an attempt to obtain an accurate picture of how TransCanada conducts business. The research was conducted by reviewing TransCanada's Application for a license pursuant to AGIA, its filings with Canadian and U.S. regulatory agencies, its annual reports and other company materials, various agencies' records and compiled statistics, and trade and press articles.

### **Corporate Governance**

In its Application, TransCanada addresses the issues of business ethics and integrity generally in Section 2.9.4. See Application at 2.9-13. TransCanada asserts that it meets all corporate governance standards required of companies listed on the New York Stock Exchange and the Toronto Stock Exchange. TransCanada operates under a Code of Ethics, approved by its Board of Directors, concerning issues of compliance with laws, fair dealing, health and safety, the environment and fraud or criminal conduct. The company provides annual training in the Code to all employees. In its Application, TransCanada also emphasizes that it adheres to the strict inter-affiliate codes of conduct prescribed by U.S. and Canadian regulators prohibiting any non-regulated affiliates from receiving any unfair competitive advantage from any of its regulated affiliates. See Application at 2.9-13. Neither the Federal Energy Regulatory Commission, nor the

National Energy Board, which have authority over these matters in the U.S. and Canada respectively, have initiated any proceedings against TransCanada concerning this issue.

TransCanada's policies for corporate disclosure have been recognized by the Canadian Coalition for Good Governance, a group comprised of institutional investors who believe "that good governance practices contribute to a company's ability to create value for its shareholders." In 2006, TransCanada received an "Honourable Mention" for the Governance Gavel for Excellence in Director Disclosure awarded annually by the Coalition.<sup>1</sup> According to TransCanada, its corporate disclosure policies comply with all relevant securities and regulatory agencies to which it is subject. TransCanada publishes its Corporate Responsibility Report on its website, available at <http://www.transcanada.com/social/responsibility/2006/>, and included the most recent version of the report in its Application. See also TransCanada's Application at 2.9-15 - 2.9-16.

### **Customer Satisfaction**

As a part of its Application, TransCanada describes its efforts in 2003 to survey its stakeholders (landowners, key community opinion leaders, shareholders and employees) concerning their views on the company. Among these stakeholders, TransCanada received high marks in the category of Social Responsibility. See TransCanada's Application at 2.9-13. These statistics and survey results support the general sentiment in the energy industry, exemplified by comments made by a representative of ConocoPhillips, that TransCanada is a "fine company" and highly regarded as a "valued business associate". See Letter to The Honorable Sarah Palin, Governor of Alaska from J.L. Bowles, President ConocoPhillips Alaska, Inc., at 5 (dated Jan. 24, 2008). Additionally, the company, in conjunction with Ipsos Reid, a Canadian market research company, conducts an annual Customer Satisfaction Survey to receive feedback from its customers on its Canadian pipelines and found high levels of overall customer satisfaction. See TransCanada's 2006 Annual Report at 19.

A good reputation for customer service is important to a company such as TransCanada that operates a business that depends in part on the long-term commitments of its customers. In its 11<sup>th</sup> Annual Natural Gas Pipeline Report of natural gas pipeline customer value/loyalty published in 2007, Mastio & Company ranked TransCanada's pipeline group 4<sup>th</sup> out of 10 in customer satisfaction.<sup>2</sup> Mastio ranks TransCanada's Mainline System 8<sup>th</sup> out of 16 "mega" pipelines in customer satisfaction ("mega" denotes pipelines of more than 3,500 miles and 1 trillion cubic feet, or TCF, in deliveries). Among Major Pipelines (pipeline of at least 3,500 miles serving at least 3 states), Mastio ranks TransCanada's Mainline 10<sup>th</sup> out of 23.<sup>3</sup>

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<sup>1</sup> Information about this group and the award is available at: <http://www.ccg.ca/best-practices/governance-gavel-award/past-governance-gavel-winners/>.

<sup>2</sup> Mastio & Company has conducted research in the United States and the United Kingdom for 18 years and counts among its client a variety of energy industry-related companies including ExxonMobil, ConocoPhillips, BP, Chevron, Kinder Morgan and Sempra Energy.

<sup>3</sup> Press Release, MASTIO & Company, MASTIO Publishes the Eleventh Edition Natural Gas Pipeline Report (April 17, 2007) (available at, <http://www.mastio.com/press/gsplpres.html>).

## **Environment**

In its Application, TransCanada describes its programs and procedures designed to support and sustain compliance with environmental regulations and company policies concerning the environment. The company has developed and maintains programs designed to outline statutory and regulatory requirements and industry best practices for employees to follow. The company regularly conducts internal audits to assess compliance with these standards. Its Application provides examples of TransCanada's commitment to the "environmental stewardship" that it promotes in all of its business sectors. Examples of TransCanada's ongoing commitment to the environment are: its partnership with the NEB to form the Canadian Pipeline Environmental Committee; the implementation of methane gas reduction techniques that have reduced pipeline methane emissions by 75% since 1990; its 20+ years of supporting the conservation of the caribou; and the receipt of the 2006 Richard G. Forbis Award from the Archaeological Society of Alberta for the preservation of archaeological resources. See Application at 2.9-4.

In addition, TransCanada was named to the Global 100 sustainable corporations during the World Economic Forum in 2007 and 2008, which recognizes corporations that demonstrate an ability to manage environmental, social and governance risks. TransCanada was one of only 11 energy/utility companies to achieve this distinction in 2008 and one of ten in 2007.<sup>4</sup> The company was also named a member of the Dow Jones Sustainability Index in 2006, as recognition for its practices in the areas of climate change, corporate governance, and labor practices, among others. See Application at 2.9-14.<sup>5</sup>

Concerning its pipeline construction operations, in its 2006 Annual Report, TransCanada discussed the development of a technique to reduce the cost and environmental impact of constructing a new pipeline by reducing the need for large amounts of water. The technology has already been used by the company and has been accepted by the National Energy Board of Canada. See 2006 Annual Report at 19. Its Application also described its ongoing site remediation program for sites of currently operational facilities. 2006 Annual Report at 35.

## **Employee and Pipeline Safety**

In its 2007 Annual Report, TransCanada outlines its employee Health and Safety programs. Its Board of Directors monitors conformance with these programs through regular formalized reporting, which in turn is used to notify management of any issues in this regard. These programs are also assessed by a third-party firm every three years to ensure their effectiveness. See 2007 Annual Report at 61. TransCanada's Application contains an overview and summary of its employee safety record. In comparing the company's employee safety record against Canadian and American pipeline groups, TransCanada's Total Recordable Case Rate is well below industry average. See Application at 2.9-2. TransCanada's emphasis on employee safety is also extended

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<sup>4</sup> It was 1 of 3 Canadian companies to be listed in 2008 and 1 of 5 in 2007. The list of companies recognized as the Global 100 is available at: <http://www.global100.org/>.

<sup>5</sup> Registration is required to view the results of the DJSI assessments which are available at: <http://www.sustainability-indexes.com/default.html>.

to its contractors. TransCanada undertakes a rigorous prequalification process for contractors, rejecting more than 25% of new contractors who fail to meet TransCanada's safety standards. Application at 2.9-3. Overall, it appears that TransCanada's emphasis on employee safety, as stated in its Annual Reports and Application, has translated into a better than average performance compared against the industry.

Also according to its Application, TransCanada employs an integrity management program and risk assessment to monitor and identify potential safety threats on the pipeline. According to its Application, under this program, referred to as its Integrity Management Process for Pipelines or IMPP, all of TransCanada's pipeline facilities are inspected annually to assess risk and prioritize maintenance and mitigation activities. Application at 2.4-3. This program includes pro-active advancements in the detection of Stress Corrosion Cracking that can replace the more costly hydrostatic testing on some pipelines. TransCanada's AGIA License Application accounts for the installation of compressor and metering stations that would facilitate in-line inspections of any facilities built in both Alaska and Canada. See Application at 2.1-7, 2.1-10. In addition to the self-regulated IMPP, TransCanada is subject to periodic audits by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, with the most recent audit having been conducted in 2006. Application at 2.9-38. According to its 2007 Annual Report, TransCanada expects to spend approximately \$120 million in 2008 for pipeline integrity on its wholly owned pipelines. This figure represents a slight increase from the amount spent in 2007 due mainly to the acquisition of new pipeline systems. 2007 Annual Report at 61.

The installation of this integrity management program has led to a decline in pipeline incidents since the mid-1980's (Application at 2.9-45) and, according to TransCanada, "top-quartile results in pipeline safety and reliability." Application at 2.7-4. Its Annual Reports include references to pipeline failures or "line breaks" that occurred during the each report's respective year. The Annual Reports from 2001-2007 indicate the pipeline experienced seven line breaks that were material to the company's operations during that time period, an average of 1 per year. Statistics on pipeline ruptures compiled by the National Energy Board of Canada concerning its regulated pipelines support the conclusion that failures on TransCanada's pipeline are rare.<sup>6</sup>

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<sup>6</sup> See National Energy Board - Canadian Regulated Pipelines - Pipeline Ruptures, available at: <http://www.neb.gc.ca/clf-nsi/rsftyndthnvrnmnt/sfty/pplnrptrs/pplnrptr-eng.xls> (updated in December 2007). This chart lists 10 pipeline ruptures on TransCanada's Canadian pipelines since 1992. (From the chart, it is evident that all of the line breaks listed therein occurred on pipelines constructed before the mid-1980's, when pipelines began the practice of coating pipe with more modern and effective substances, like polyethylene and fusion-bonded epoxy, in an effort to reduce corrosion and line breaks. See Brian Rothwell, Staff Engineer, TransCanada PipeLines, Presentation to PHMSA Public Meeting (March 21, 2006), *History and Operating Experience of Design Factors Above 0.72 in Canadian Gas Transmission Policies*, available at: <http://primis.phmsa.dot.gov/meetings/FilGet.mtg?fil=8>).

The NEB chart is not inclusive of some of the more recent "line breaks" described by TransCanada in its annual reports, supra. Research into Canadian news reports of pipeline ruptures resulted in finding 4 additional ruptures since 1998 that are not included in the NEB's chart, but are accounted for in TransCanada's annual reports. Only minor injuries were reported as a result of any of these pipeline ruptures and the reports for the majority of the incidents discussed above indicate no injuries. When accounting for duplication of the reporting of these incidents

In the United States, the Department of Transportation Pipeline and Hazardous Materials Safety Administration's Office of Pipeline Safety monitors pipelines and enforces safety regulations using a variety of warning letters and corrective actions backed by civil penalties.<sup>7</sup> In recent years, with its acquisitions of Gas Transmission Northwest and North Baja in 2004 and ANR in 2007, accounting for about 13,000 miles of pipeline in the U.S., TransCanada has become subject to the DOT's oversight. Since the purchase of each, only GTN has been assessed a civil penalty of a nominal amount (ANR Pipeline was issued a warning letter in 2007 which did not result in a civil penalty).<sup>8</sup> In a Pipeline and Hazardous Materials Safety Administration Final Order issued in 2005, GTN received a \$12,500 civil penalty. The details concerning the nature of this enforcement action are unavailable.<sup>9</sup> To establish some perspective on the amount of that fine compared against the industry, the total amount of fines levied against the industry in 2005 was \$1,368,950. (The highest single civil penalty assessed in 2005 was \$250,000 to BP Pipeline (North America) Inc.)<sup>10</sup> In 2007 and 2008, GTN and ANR responded to other inquiries concerning the safe operation of their pipelines and addressed Office of Pipeline Safety's ("OPS") concerns through corrective action without incurring a civil penalty. TransCanada has been able to resolve other OPS inquiries with corrective action and, as of the time of this memorandum, has not been assessed another penalty by OPS for any of its U.S. assets. As discussed above, TransCanada's Application and Annual Reports contain examples of proactive measures it has taken to improve pipeline safety both during the construction and operation of a pipeline.

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from the various sources discussed in this summary, there appears to have been 9 material reported pipeline ruptures since 1998 on TransCanada's Canadian systems, an average of less than one per year.

<sup>7</sup> See Office of Pipeline Safety's website, available at <http://primis.phmsa.dot.gov/comm/reports/enforce/Enforcement.html>.

<sup>8</sup> The Office of Pipeline Safety has assessed penalties against ANR and GTN prior to TransCanada's acquisition of those facilities, however, those incidents are not included in this summary. The information discussed above is available on the Office of Pipeline Safety's website, available at: [http://primis.phmsa.dot.gov/comm/reports/enforce/FOCP\\_opid\\_0.html#\\_TP\\_1\\_tab\\_4](http://primis.phmsa.dot.gov/comm/reports/enforce/FOCP_opid_0.html#_TP_1_tab_4). PHMSA/OPS may conduct non-public investigations and conduct non-public enforcement action which are not considered in this report.

<sup>9</sup> See [http://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail\\_cpf\\_520041007.html#\\_TP\\_1\\_tab\\_2](http://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_520041007.html#_TP_1_tab_2).

<sup>10</sup> See [http://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail\\_cpf\\_520005013.html](http://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_520005013.html). In 2006, BP blamed corrosion for leaks in its Prudhoe Bay oil transit line from Alaska's North Slope. See <http://www.bp.com/genericarticle.do?categoryId=2012968&contentId=7020563>. The corrosion resulted in leaks of an estimated 210,000 gallons of oil, the largest crude oil spill on Alaska's North Slope. Pursuant to a settlement, BP will pay \$20 million in fines and restitution and plead guilty to a misdemeanor violation of the Clean Water Act. See Lara Jakes Jordan, BP Settles Cases for \$373 Million, Wash. Post, October 26, 2007, at D2. The settlement also addressed a March 23, 2005 explosion at BP's refinery in Texas City, Texas, which killed 15 and injured more than 170. By the settlement, BP will pay \$50 million and plead guilty to a felony violation of the Clean Air Act. Id. BP initiated an independent company-wide review of its U.S. refineries following the explosion at its Texas City refinery. The panel was chaired by former Secretary of State James A. Baker, III. The panel's complete report is available at: [http://www.bp.com/liveassets/bp\\_internet/globalbp/globalbp\\_uk\\_english/SP/STAGING/local\\_assets/assets/pdfs/Baker\\_panel\\_report.pdf](http://www.bp.com/liveassets/bp_internet/globalbp/globalbp_uk_english/SP/STAGING/local_assets/assets/pdfs/Baker_panel_report.pdf). The largest monetary portion of the settlement resulted from BP's payment of \$303 million in fines and restitution to the U.S. DOJ, CFTC and USPS resulting from an alleged scheme to inflate the price of propane by withholding supply. Id. See also Julia Werdigier and Stephen Labaton, BP, Under New Chief, to Pay a Big Settlement, N.Y. Times, Oct. 26, 2007, available at: <http://www.nytimes.com/2007/10/26/business/26settle.html>.

## **Litigation**

Like most major companies, TransCanada is involved in routine, ongoing litigation on a variety of matters from time to time. For example, a TransCanada affiliate, along with many other companies, was named in a lawsuit filed by the State of California attempting to mitigate the damage it suffered and recoup its losses from the Western Energy Crisis of 2000-2001. The suit alleged that TransCanada and other parties failed to file market rate reports and overcharged customers at rates above fair market prices. The suit was dismissed at the District Court level and again by the Ninth Circuit on appeal.<sup>11</sup>

In an action unrelated to the Western Energy Crisis, TransCanada was subject to a suit under Ontario's Class Proceedings Act of 1992, brought by the Canadian Alliance of Pipeline Landowners' Associations and two individual landowners arising under Section 112 of the NEB Act. This suit was dismissed in November of 2006 and was appealed. The Ontario Court of Appeals heard the appeal in December of 2007 and has not issued a decision. The company states that the claim, which concerns damages alleged to arise from the creation of a control zone within 30 meters of the pipeline pursuant to Section 112 of the NEB Act, is without merit and that it will continue to defend against the action. In its Annual Reports, TransCanada cautions that it and its subsidiaries are subject to legal actions that arise in the normal course of business, but that the company believes these actions will not have a material impact on the company. See, e.g., 2006 Annual Report at 62.

## **FERC Authority**

The Federal Energy Regulatory Commission ("FERC") was granted increased penalty authority in the Energy Policy Act of 2005 to enforce its rules and regulations under primarily the Federal Power Act and the Natural Gas Act. To date, TransCanada has not been subject to any penalty authorized by the Energy Policy Act.<sup>12</sup>

## **Conclusion**

This paper attempts to provide a brief summary of a representative body of evidence, focusing on the past ten years, that accurately describes TransCanada's record in the areas of business ethics and integrity as required by AS 43.90.170(c)(5)(B). As discussed in this memorandum, TransCanada appears to conduct business in an ethical manner. TransCanada has won awards for its corporate disclosure programs, environmental compliance and protection measures, and ranks above the industry average for safety and customer satisfaction. It has not been subject to any FERC civil penalties and has not been the subject of any significant penalties imposed by the Office of Pipeline Safety. In fact, TransCanada appears to have a proactive

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<sup>11</sup> *California ex rel. Lockyer v. TransCanada Power L.P.*, 110 Fed. Appx. 839 (9th Cir. 2004) (unpublished decision affirming dismissal of district court).

<sup>12</sup> A complete listing of the civil penalty enforcement actions taken pursuant to this authority is available at: <http://www.ferc.gov/legal/civil-penalty.asp>. It is also important to note that FERC may conduct non-public investigations and conduct non-public enforcement actions which are not considered in this report.

pipeline safety record. In addition, ConocoPhillips has referred to TransCanada as a “fine company”. Our review of TransCanada’s record of integrity and business ethics revealed nothing that would conflict with that view.