



Bull, Houser & Tupper LLP
3000 Royal Centre
1055 West Georgia Street
Vancouver, BC V6E 3R3

T 604.687.6575
F 604.641.4949
www.bht.com

Reply Attention of: R. Brian Wallace, Q.C.
Direct Phone: 604.641.4852
Direct Fax: 604.646.2506
E-Mail: rbw@bht.com
Our File: 12-2752
Date: October 22, 2012

B.C. UTILITIES COMMISSION
6TH FLOOR - 900 HOWE STREET
BOX 250
VANCOUVER, BC V6Z 2N3

Attention: Erica M. Hamilton, Commission Secretary

Dear Sirs/Mesdames:

Re: British Columbia Utilities Commission
Commission Order G-20-12
Generic Cost of Capital Proceeding
AMPC/BC Utility Customers Request for Order Providing Access to
Confidential Material

We are counsel to the Association of Major Power Consumers of BC (AMPC) and the BC Utility Customers in this matter. As part of preparing for its participation in this proceeding, and in co-operation with other intervener groups, AMPC requests access to the following confidential material (Confidential Documents):

- A-13 Confidential Letter dated August 31, 2012 – Confidential Information Request No. 1 to FortisBC Utilities;
- A-19 Confidential Letter dated October 9, 2012 – Confidential Information Request No. 2 to FortisBC Utilities;
- B1-9-7 Confidential Letter Dated August 3, 2012 – FortisBC Utilities Submitting Evidence Confidential Appendices;
- B1-20-1 Confidential Letter Dated September 24, 2012 – FortisBC Utilities Confidential Response to BCUC IR No.1;
- B1-21 Confidential Letter Dated September 24, 2012 – FortisBC Utilities Response to Confidential BCUC IR No.1; and
- The AMPC also requests access to the FortisBC Utilities' Response to the BCUC IR No. 2 when the BCUC receives FortisBC Utilities' Response.

AMPC does not have any direct knowledge of the contents of the Confidential Documents, not having seen either the questions or the responses. However, since the questions come from the Commission, AMPC must assume the questions are relevant and the responses could be material to the Commission's decision in this matter. It is important this material be available to customers' counsel and their independent witnesses. This is a very important hearing, the outcome of which is likely to affect rates paid by every utility customer in British Columbia for several years to come.

The customers' right to a fair and open hearing requires that customers, or at minimum their legal representatives and their independent expert witnesses, have access to the information. In the landmark decision in *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643, the Supreme Court of Canada, speaking unanimously through Le Dain J., held that "there is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual" (p. 653). The default rule at common law is that disclosure of all material documents is required to satisfy the duty of procedural fairness: see, for instance, *Canadian Pacific Railway Co. v. Vancouver (City)*, 2006 SCC 5, [2006] 1 S.C.R. 227, at para. 55. This general rule applies even where confidence is claimed. Brown and Evans summarize the case law on this point as follows, in their treatise, *Judicial Review of Administrative Action in Canada* (loose-leaf ed.), at p. 9-69 to 9-70:

Even where information is confidential in nature, courts generally have required either full disclosure or sufficient information to enable a party to participate effectively, unless, of course, there is a statutory basis for maintaining confidentiality that does not contravene the Charter or a countervailing interest in non-disclosure outweighs requiring disclosure. Thus, it has been held to be a procedural breach to deny access to [...] submissions containing commercial information [.]

And:

Given the fundamental need for disclosure in order for a person to be able to participate in the decision-making process, particularly where the process is adjudicative in nature, it is exceptional for the courts to hold that a desire to keep information confidential will outweigh disclosure. There are, however, some exceptions[.] [emphasis added]

AMPC and the BC Utility Customers recognize that there may be sensitive information contained within the Confidential Documents that is appropriately confidential and accordingly are willing to accept access pursuant to the Commission's Practice Directive on Confidential Filings (Directive). The Directive establishes a confidential information

procedure requiring parties seeking access to file and sign an undertaking governing their use of the confidential information.

The Commission's practice is reasonable and consistent with that of the National Energy Board (NEB) and other similar boards. The MH-2-2005 proceeding before the NEB dealt with sensitive commercial information relating to Chevron Canada's Burnaby refinery and whether competitors in the highly competitive refining environment should be allowed any access to the information at all. The NEB concluded that external counsel, internal counsel, and external consultants should be permitted to receive confidential information provided that they execute the form of undertaking that AMPC now proposes to the BCUC. The NEB's full ruling and the form of undertaking used in that situation is attached to this letter.

AMPC proposes that the attached undertaking of confidentiality satisfies the BCUC's Directive and the NEB's practice and is appropriate in these circumstances. AMPC requests the following individuals to have access to the Confidential Documents, upon execution of an undertaking:

- The writer, AMPC and BC Utility Customers' external legal counsel, whose undertaking shall extend to other Bull Housser lawyers and support staff as necessary to provide advice or assistance in this matter;
- AMPC's expert, Dr. Laurence Booth;
- Richard Stout, Executive Director of AMPC (AMPC members would not have access);
- Legal counsel for the Commercial Energy Consumers Association of British Columbia (CEC); and
- Legal counsel for the BC Pensioners and Seniors Organization (BCSPO).



BULL
HOUSSER

If this approach is acceptable to the Commission, upon receipt of a Commission Order, the individuals listed above will provide signed undertakings to the Commission and the FortisBC Utilities. At that point, we would expect one hard copy of the Confidential Documents would be provided to each of the individuals identified above.

Yours truly,

Bull, Houser & Tupper LLP

A handwritten signature in black ink that reads 'R. Brian Wallace'.

R. Brian Wallace, Q.C.

RBW/skg/3825326

Undertaking

I, _____, am a participant _____ in the matter of the BC Utilities Commission's Generic Cost of Capital Proceeding, Project No. 3698660.

In this capacity, I request access to the confidential information in the record of this proceeding. I understand that the execution of this undertaking is a condition of an Order of the Commission, and the Commission may enforce this Undertaking pursuant to the provisions of the *ATA*.

I hereby undertake

- (a) to use the information disclosed under the conditions of the Undertaking exclusively for duties performed in respect of this proceeding;
- (b) not to divulge information disclosed under the conditions of this Undertaking except to a person granted access to such information or to staff of the Commission;
- (c) not to reproduce, in any manner, information disclosed under the conditions of this Undertaking except for purposes of the proceeding;
- (d) to keep confidential and to protect the information disclosed under the conditions of this Undertaking;
- (e) to return to _____, under the direction of the Commission, all documents and materials containing information disclosed under the conditions of this Undertaking, including notes and memoranda based on such information, or to destroy such documents and materials and to file with the Commission a certification of destruction at the end of the proceeding or within a reasonable time after the end of my participation in the proceeding; and
- (f) to report promptly to the Commission any violation of this Undertaking.

Dated at _____ this _____ day of _____ 201__.

Signature: _____

Name: _____

Address: _____

Telephone: _____

Fax: _____

E-mail: _____



File ATT-ATC-TTM 03 (4775-T099-1-3)
20 December 2005

To: All Parties to the MH-2-2005 Hearing

**Hearing Order MH-2-2005 regarding an Application for Priority Destination
from Chevron Canada Limited, Chevron Standard Limited and
Neste Canada Inc. (the PDD Application)**

**Section 16.1 Application and Procedure for dealing with Confidential Information
Ruling Number 5**

The Board has determined that the attachments to the responses of Chevron Canada Limited, Chevron Standard Limited and Neste Canada Inc. (collectively Chevron) to information requests 1.9(e), 1.10(a), 1.10(f) and 1.25(b) (the Confidential Information) of Tesoro Canada Supply & Distribution Ltd. should be treated confidentially pursuant to section 16.1 of the *National Energy Board Act*. This determination is found in Ruling Numbers 3 and 4, dated 23 and 29 November 2005 respectively.

Board Staff held a procedural conference on 12 December 2005 to elicit the views of the parties with respect to procedures for dealing with the Confidential Information filed by Chevron. The Board has considered the comments of parties, as recorded in the Procedural Conference report, dated 12 December 2005, in coming to its decision with respect to the procedure to be followed in this hearing. Order PO-1-MH-2-2005 gives effect to this Ruling and is attached as Attachment 1 hereto.

The Board notes that the procedures for the handling of confidential information in a hearing will always be specific to the facts and circumstances of each application and proceeding. The Board does not intend this Ruling to establish a precedent regarding how confidential information will be handled in future proceedings.

.../2

Who should have access to the Confidential Information?

The Board is of the view that both external and in-house legal counsel should be allowed access to the Confidential Information, conditional upon each counsel signing a confidentiality undertaking, in the form attached as Appendix A to Order PO-1-MH-2-2005 (the Undertaking), and delivering an original thereof to both counsel for Chevron and the Board. Legal counsel are subject to strict professional obligations with respect to confidentiality and the Board is of the view that these professional obligations are not lessened for in-house legal counsel. In addition, external counsel may require that in-house counsel access the Confidential Information in order for the external counsel to receive adequate instruction from the client. However, the Board would remind in-house legal counsel that, if they choose to view the Confidential Information, there may be situations in which in-house counsel may be required to excuse themselves from internal discussions of the company for which they are employed, if they are of the view that they are unable to clearly segregate the Confidential Information in their mind from the topic of discussions of the company.

The Board is also of the view that external legal counsel may provide access to the partners, associate lawyers and support staff of that legal counsel to the extent that viewing the Confidential Information, or portions thereof, is, in the opinion of legal counsel, necessary in order for those persons to provide assistance to legal counsel with respect to the Confidential Information, and which assistance is normally consistent with the duties of those persons. Access to the Confidential Information is contingent upon those persons executing and delivering an original Undertaking to each of Chevron and the Board.

In addition, the Board finds that external consultants, unaffiliated with a corporate party or its affiliates and retained by legal counsel, may have access to the Confidential Information if legal counsel is of the opinion that expert advice from that consultant is required for the purpose of interpreting the Confidential Information, preparing evidence with respect to the Confidential Information, or assisting legal counsel with respect to the testing of the Confidential Information in this proceeding. Access to the Confidential Information is contingent upon the consultant executing an Undertaking, and delivering an original thereof to both counsel for Chevron and the Board.

In order for the Board and Chevron to determine which consultants are entitled access to the Confidential Information, and which are to execute the Undertaking, legal counsel for the intervenors shall send a letter to the Board and Chevron indicating that they have determined that they need an expert consultant and providing the name of the expert consultant.

Unless otherwise ordered by the Board, no other persons are entitled to receive the Confidential Information. This restriction includes the internal business people of the corporate intervenors, as the risk of inadvertent disclosure is too high. The Board is of the view that this restriction should not impede any intervenor's participation in this proceeding to any significant extent, given that the nature of the Confidential Information has been made public and the Confidential Information itself forms only a small portion of the total evidence produced thus far in the proceeding.

Process for Handling the Confidential Information

On receipt of an executed Undertaking, Chevron shall provide one copy of the Confidential Information to the person who executed the Undertaking. The Confidential Information shall not be copied by any person having access to it other than Chevron. If additional copies are required, that person will contact Chevron for same. All copies of the Confidential Information will be marked "Confidential" and delivered under a red-coloured cover. The Board suggests that Chevron number the copies to enable easier tracking of the Confidential Information.

The Confidential Information shall be held in confidence, and used only for the purpose of this proceeding on Chevron's PDD Application and any appeal, review or rehearing from the Board's decision in this proceeding.

All reasonable, necessary and appropriate efforts to protect the Confidential Information from disclosure shall be used. Confidential Information, and any material that contains reference to, or portions of the Confidential Information, shall be segregated and clearly labeled as "Confidential" and, where possible, transmitted in hard copy only.

During and after the oral portion of the Hearing

The Board is of the view that everyone who has executed and delivered an Undertaking is entitled to be present at those portions of the MH-2-2005 proceeding where the Confidential Information is referenced. All other persons will be asked to leave the hearing until that *in camera* portion has concluded. During the oral portion of the hearing, a separate transcript will be taken, and the hearing will not be broadcast over the Board's livelink system during the *in camera* portions of the hearing in which the Confidential Information is discussed.

At this point in the proceeding, it is premature to issue directions for dealing with the Confidential Information in final argument; however, the Board will issue further procedural directions on this aspect at a later time. The Board acknowledges parties' comments during the procedural conference that some flexibility and accommodation in the presentation of their cases and in the Board's normal procedures will be required in order to maintain the confidentiality of the Confidential Information.

With the exception of one copy to be maintained by the Board in confidence for its records, all written copies of the Confidential Information, and any portions of the evidence, transcripts, notes, working papers, calculations, analysis or other materials based on or using the Confidential Information (Related Materials), shall either be returned to Chevron or destroyed 40 days after the later of the Board's decision on the PDD Application or the conclusion of any appeal, rehearing or review proceedings thereon (the Return or Destroy Date). All electronic versions of the Confidential Information and the Related Materials are to be expunged from all electronic apparatus and data storage media at the same time.

Within seven days from the Return or Destroy Date above, all persons who have executed an Undertaking shall provide Chevron and the Board with a statutory declaration, in the form attached as Appendix B to Order PO-1-MH-2-2005, confirming compliance with the terms of the Order, and, in particular, that the Confidential Information and any Related Materials have been returned or destroyed in accordance with the Order.

Expiry of Order

Given that the Order restricts the otherwise public access to the Board's proceedings and information that the Board considers in its decision, the Board is of the view that the Order should not remain in force indefinitely, unless there is sufficient reason for it to do so. At this point in time, the Board is not satisfied that sufficient reason has been shown. However, given the commercial sensitivity of the Confidential Information, the Board is of the view that it is entitled to a fairly lengthy protection period. Accordingly, the Board has determined that the Order shall remain in force for 10 years. If, prior to or nearing the end of the 10 years, any party is of the view that the term of the Order should be extended, they are free to apply to the Board to do so at that time, providing a justification why the Confidential Information continues to require protection.

Other Procedural Matters

Any further terms and conditions for the distribution, process in the hearing and return and disposal of the Confidential Information not mentioned in this Ruling are set out in the attached Order PO-1-MH-2-2005.

Given the commercial sensitivity of the Confidential Information, the Board is of the view that Chevron should be provided the opportunity to indicate whether it wishes to continue with its PDD Application given the terms and conditions of this Ruling and Order PO-1-MH-2-2005, and the protections provided therein. Chevron is directed to provide this indication in writing to the Board and the MH-2-2005 Parties by noon, **Wednesday, 28 December 2005**.

If Chevron indicates that it wishes to continue with its PDD Application by that date, the revised Timetable of Events, attached as Attachment 2 to this Ruling will come into force. The Board has considered the comments of Chevron and Terasen Pipelines (Trans Mountain) Inc. (TPTM)

with respect to the deadlines for the provision of TPTM's evidence, information requests and responses thereon. As TPTM is of the view that it need not be extended separate dates for the provision of its evidence or any related steps thereto from that of the other intervenors, the Board is of the view that the deadlines applicable to the intervenors, such as the dates for providing evidence, information requests, and responses to information requests, shall also apply to TPTM. Given TPTM's unique position as the owner of the subject pipeline in this proceeding, TPTM will also be afforded the opportunity to submit reply evidence by the same deadline as provided for Chevron's reply evidence.

Yours truly,

A handwritten signature in black ink, appearing to read "Mantha", with a long horizontal flourish extending to the right.

Michel L. Mantha
Secretary

Attachments

- **Attachment 1** – Order PO-1-MH-2-2005 including Appendix A, Undertaking of Confidentiality; and Appendix B, Statutory Declaration;
- **Attachment 2** -Revised Timetable of Events



ORDER PO-1-MH-2-2005

IN THE MATTER OF the *National Energy Board Act* and the regulations made thereunder; and

IN THE MATTER OF an application for priority destination designation, by Chevron Canada Limited, Chevron Standard Limited and Neste Canada Inc. (collectively "Chevron") under file ATT-ATC-TTM 03 (4775-T099-1-3) (the PDD Application); and

IN THE MATTER OF Hearing Order MH-2-2005; and

IN THE MATTER OF an application, pursuant to Rule 35 of *National Energy Board Rules of Practices and Procedures, 1995*, by Chevron for an order pursuant to section 16.1 of the Act for the filing in confidence of certain information requested by the Tesoro Canada Supply & Distribution Ltd. (Tesoro) in Information Requests (IR) 1.9(e), 1.10(a), 1.10(f), and 1.25(b).

BEFORE the Board on 19 December 2005.

WHEREAS Chevron applied for an order pursuant to section 16.1 of the Act for the filing in confidence of certain information requested by the Tesoro in IRs 1.9(e), 1.10(a), 1.10(f), and 1.25(b);

AND WHEREAS no parties opposed the application;

AND WHEREAS the Board determined that the information requested in IRs 1.9(e), 1.10(a), 1.10(f), and 1.25(b) (collectively "the Confidential Information") may be required by the Board in its determination on Chevron's PDD Application;

AND WHEREAS the Board determined that the disclosure of the Confidential Information could reasonably be expected to result in a material loss to Chevron or gain to others, or could reasonably be expected to prejudice Chevron's competitive position;

AND WHEREAS the Board determined that the Confidential Information is financial, commercial or technical information that was confidentially supplied to the Board and has been consistently treated as confidential by Chevron;

.../2

AND WHEREAS the Board considered that Chevron's interest in confidentiality outweighs the public interest in disclosure of the Confidential Information in the MH-2-2005 proceeding;

AND WHEREAS the Board ruled on 23 November 2005 (Ruling Number 3) and 29 November 2005 (Ruling Number 4) that the Confidential Information was entitled to confidential treatment pursuant to section 16.1 of the Act;

AND WHEREAS the Board considered the comments of the parties with respect to the scope of this Order, as elicited through a procedural conference held on 12 December 2005, and submitted to the Board in the form of a procedural conference report;

IT IS HEREBY ORDERED that:

1. The Confidential Information filed by Chevron is entitled to the protection set out herein. Unless the Board otherwise directs, or as otherwise required by law, all persons who have access to the Confidential Information pursuant to this Order shall comply with the process for dealing with the Confidential Information, as set out in Clauses 2 to 15 below.
2. Except as authorized in this Order, access to the Confidential Information shall not be given to any person, including corporate or individual intervenors or experts.
3. Any person permitted access to the Confidential Information pursuant to clauses 4 to 6, inclusive, or other persons authorized by order of the Board, shall execute an undertaking to comply with the terms of this Order, in the form attached as Appendix A to this Order (the Undertaking), and provide an original thereof to each of the Board and Chevron.
4. Legal counsel of record for each intervenor in the MH-2-2005 proceeding, both external and in-house, shall have access to the Confidential Information.
5. Legal counsel who have been provided access to Confidential Information pursuant to this Order shall be entitled to permit partners, associate lawyers and support staff of external legal counsel to review the Confidential Information to the extent that viewing the Confidential Information, or portions thereof, is, in the opinion of legal counsel, necessary in order for those persons to provide assistance to legal counsel with respect to the Confidential Information, and which assistance is normally consistent with the duties of those persons.
6. Independent expert consultants, not employed by, or under permanent contract to, either an intervenor or an affiliate of an intervenor to this proceeding, may have access to the Confidential Information, if, in the opinion of legal counsel, access to the Confidential Information is necessary in order for that expert consultant to provide assistance to legal counsel, or to provide expert testimony in connection with the Confidential Information.

7. Chevron shall provide one copy of the Confidential Information, contained in a red-coloured cover and stamped "Confidential", to legal counsel and any other person permitted to view the Confidential Information pursuant to clauses 4 to 6 inclusive, or by order of the Board, forthwith following filing with the Board and delivery to legal counsel for Chevron, of an originally executed Undertaking by that legal counsel or person.

8. No additional copies shall be made of the Confidential Information, by any means, by any persons other than Chevron or Chevron's legal counsel, unless leave is granted by the Board. If additional copies of the Confidential Information are required, persons requiring those copies shall contact Chevron for same. Additional copies shall be provided in a red-coloured cover and stamped "Confidential".

9. Confidential Information incorporated into written or oral argument, or used for the purpose of evidence or notes for cross-examination for this proceeding or any appeal, review or rehearing therefrom shall not constitute additional copies for the purposes of clause 8.

10. The Confidential Information shall be held in confidence, and used only for the purpose of this proceeding on Chevron's PDD Application and any appeal, review or rehearing from the Board's decision in this proceeding. No disclosure is to be made of the Confidential Information to any persons who have not executed and delivered an Undertaking, unless required by law, in which case, the person being required to disclose shall forthwith notify Chevron and the Board in writing of such requirement.

11. All reasonable, necessary and appropriate efforts to protect the Confidential Information from disclosure will be used. Confidential Information, and any material that contains reference to, or portions of the Confidential Information, shall be segregated and clearly labeled as "Confidential" and, where possible, transmitted in hard copy only.

12. All persons who have executed and delivered an Undertaking are entitled to be present at those portions of the MH-2-2005 proceeding where the Confidential Information is referenced.

13. With the exception of one copy to be maintained by the Board in confidence for its records, all written copies of the Confidential Information, and any portions of the evidence, transcripts, notes, working papers, calculations, analysis or other materials based on or using the Confidential Information (Related Materials), shall either be returned to Chevron or destroyed on or prior to the later of

- a) 40 days from the Board's decision on Chevron's PDD Application; or
- b) 40 days from the conclusion of either
 - i) any appeal proceedings undertaken pursuant to section 22 of the Act with respect to Chevron's PDD Application, and any subsequent appeal proceedings therefrom; or

- ii) any review or rehearing proceedings undertaken pursuant to section 21 of the Act with respect to Chevron's PDD Application, and any subsequent appeal proceedings therefrom;

(the Return or Destroy Date).

14. All electronic versions of the Confidential Information and the Related Materials shall be expunged from all electronic apparatus and data storage media on or prior to the Return or Destroy Date set out in clause 13 above.

15. Within seven days from the Return or Destroy Date set out in clause 13, all persons who have executed an Undertaking shall provide Chevron and the Board with an originally executed statutory declaration, in the form attached as Appendix B to this Order, confirming compliance with the terms of this Order, and, in particular, that the Confidential Information and any Related Materials have been returned or destroyed in accordance with clauses 13 and 14.

16. Unless an application is made to the Board prior to 31 December 2015 for an extension of this Order, this Order shall expire on 31 December 2015.

NATIONAL ENERGY BOARD



Michel L. Mantha
Secretary

Attachment

UNDERTAKING OF CONFIDENTIALITY

TO: The National Energy Board

AND TO: Chevron Canada Limited, Chevron Standard Limited and NESTE Canada Inc. (collectively "Chevron")

WHEREAS the Board set down for hearing, in proceeding MH-2-2005, an application by Chevron for priority destination designation (the PDD Application);

AND WHEREAS Chevron applied for an order pursuant to section 16.1 of the *National Energy Board Act* for the filing in confidence of certain information requested by the Tesoro Canada Supply & Distribution Ltd. in Information Requests 1.9(e), 1.10(a), 1.10(f), and 1.25(b) (the Confidential Information);

AND WHEREAS the Board ruled on 23 November 2005 (Ruling Number 3) and 29 November 2005 (Ruling Number 4) that the Confidential Information was entitled to confidential treatment pursuant to section 16.1 of the Act;

AND WHEREAS the Board issued Order PO-1-MH-2-2005, dated 19 December 2005, setting out the terms and conditions of access to the Confidential Information;

AND WHEREAS _____ (the Recipient) is one of the persons referenced in Order PO-1-MH-2-2005 who has been granted access to the Confidential Information, or is a person who has otherwise been granted access to the Confidential Information by order of the Board, conditional upon the Recipient executing this Undertaking and providing an original hereof to each of the Board and Chevron;

NOW THEREFORE, in consideration of receiving access to the Confidential Information, the Recipient hereby agrees and undertakes as follows:

1. I agree that the capitalized terms used herein that are not otherwise defined shall have the meaning ascribed thereto in Order PO-1-MH-2-2005.
2. I agree to observe the terms and conditions for access to the Confidential Information set out in Order PO-1-MH-2-2005 and herein.
3. I will not make any additional copies of the Confidential Information, by any means, unless leave is granted by the Board to do so.

4. I will hold the Confidential Information in confidence, and use it only for the purpose of this proceeding on the PDD Application and any appeal, review or rehearing from the Board's decision in this proceeding. I will disclose the Confidential Information only to those persons who are authorized by the Board to receive access to the Confidential Information and who have executed an Undertaking, unless otherwise required by law, in which case, I will promptly give written notice to the Board and Chevron that such disclosure has been required.

5. I will use all reasonable, necessary and appropriate efforts to protect the Confidential Information from disclosure. Confidential Information shall be segregated and clearly labeled as confidential and, where possible, transmitted in hard copy only.

6. Unless otherwise directed by the Board, I will either return to Chevron or destroy all written copies of the Confidential Information, and any evidence, transcripts, notes, working papers, calculations, analysis or other materials based on or using the Confidential Information (Related Materials), on or prior to the later of

- a) 40 days from the Board's decision in this proceeding; or
- b) 40 days from the conclusion of either
 - i) any appeal proceedings undertaken pursuant to section 22 of the Act with respect to Chevron's PDD Application, and any subsequent appeal proceedings therefrom; or
 - ii) any review or rehearing proceedings undertaken pursuant to section 21 of the Act with respect to Chevron's PDD Application, and any subsequent appeal proceedings therefrom;

(the Return or Destroy Date).

7. I will expunge all electronic versions of the Confidential Information and the Related Materials from all electronic apparatus and data storage media on or prior to the Return or Destroy Date set out in clause 6 above.

8. Within seven days from the Return or Destroy Date set out in clause 6, I will provide Chevron and the Board with a with a statutory declaration, in the form attached as Appendix B to Board Order PO-1-MH-2-2005, confirming compliance with the terms and conditions of Order PO-1-MH-2-2005, and this Undertaking and, in particular, that the Confidential Information and any Related Materials have been returned or destroyed in accordance with clauses 13 and 14 of the Order and clauses 6 and 7 of this Undertaking.

9. If Order PO-1-MH-2-2005 is subsequently varied or amended, I agree that the terms of the varied or amended Order shall prevail over the terms in this Undertaking.

10. I acknowledge and agree that any breach of the terms of this Undertaking or Order PO-1-MH-2-2005 will cause material and irreparable harm and damage to Chevron. I agree that Chevron shall be entitled to injunctive relief to prevent breaches of this Undertaking or Order

PO-1-MH-2-2005, and to specifically enforce the terms and provisions thereof, in addition to any other remedy to which Chevron may be entitled at law.

11. I agree that no failure or delay by the Board or by Chevron in exercising any right or privilege in respect to a breach of this Undertaking or Order PO-1-MH-2-2005 shall operate as a waiver thereof.

12. I acknowledge that any breach of Order PO-1-MH-2-2005 may be the subject of contempt proceedings in the Federal Court of Canada.

MADE AT _____, in the province of _____, this ____ day of _____, 200__.

Recipient's Signature

Witness's Signature

Recipient's Printed Name

Witness's Printed Name

STATUTORY DECLARATION

CANADA

PROVINCE OF

IN THE MATTER OF the *National Energy Board Act* and the regulations made thereunder; and

IN THE MATTER OF an application for priority destination designation, by Chevron Canada Limited, Chevron Standard Limited and Neste Canada Inc. (collectively “Chevron”), under File ATT- ATC-TTM 03 (4775-T099-1-3) and Hearing Order MH-2-2005 (the PDD Application); and

IN THE MATTER OF the information filed by Chevron, pursuant to Rule 35 of National Energy Board Rules of Practices and Procedures, 1995, and section 16.1 of the *National Energy Board Act* and determined by the Board in Rulings 3, 4 and 5 to be Confidential Information.

I, _____, of the City of _____, in the province of _____, do solemnly declare as follows:

1. That the capitalized terms used herein that are not otherwise defined shall have the meaning ascribed thereto in National Energy Board Order PO-1-MH-2-2005, dated 19 December 2005, and my Undertaking to the Board and Chevron, dated _____.
2. That I have fully complied with my Undertaking and Order PO-1-MH-2-2005.
3. That I have made no use of the Confidential Information or of the Related Materials except as permitted by my Undertaking or Order PO-1-MH-2-2005.
4. That I have not disclosed the Confidential Information in any manner except as permitted by my Undertaking or Order PO-1-MH-2-2005.

5. That I have either returned to Chevron or destroyed all written copies of the Confidential Information and any Related Materials in my possession or under my control.

6. That I have expunged all electronic versions of the Confidential Information and the Related Materials from all electronic apparatus and data storage media.

I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the City of _____,)
in the Province of _____, this _____)
day of _____, 2006.)
)
)
)
)
)
)
_____)

A Notary Public
for the Province of _____

Board Letter dated 20 December 2005
Attachment 2 to Ruling Number 5

REVISED TIMETABLE OF EVENTS
as of 19 December 2005

Actions	Hearing Order Reference	Person Responsible	Deadline (noon Calgary time unless otherwise indicated)
Letters of Comment	paragraph 4	Commenters	18 January 2006
Written Evidence	paragraph 13	Intervenors including TPTM	18 January 2006
Information Requests to the Intervenors	paragraph 14	Board and other parties	1 February 2006
Responses to Information Requests	paragraph 15	Intervenors including TPTM	15 February 2006
Reply Evidence	paragraph 19	The Applicants and TPTM	23 February 2006
Begin the hearing		Board and all parties	6 March 2006