Canada Energy Regulator | Régie de l'énergie du Canada

Canada Energy Regulator Reasons for Decision

NOVA Gas Transmission Ltd.
RH-001-2021

Canada

Canada Energy Regulator
Reasons for Decision

In the Matter of

NOVA Gas Transmission Ltd.

Application dated 31 May 2021 for Firm Transmission – Linked North Montney Service (FT-L (NM))

RH-001-2021
March 2022

Reason for Decision
NOVA Gas Transmission Ltd. – RH-001-2021

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CAPP	Canadian Association of Petroleum Producers
Centra	Centra Gas Manitoba Inc.
CER	Canada Energy Regulator
CER Act	*Canadian Energy Regulator Act,* S.C. 2019, c. 28, s. 10
CGL pipeline	Coastal GasLink pipeline
Commission	The Commission of the Canada Energy Regulator, established pursuant to the *Canadian Energy Regulator Act*
Concentric	Concentric Energy Advisors Inc.
EUB	Alberta Energy and Utilities Board
FID	Final Investment Decision
FEI	FortisBC Energy Inc.
FT	Firm Transportation
FT-D	Firm Transportation – Delivery
FT-L (NM) Base Service	The linked receipt and delivery of gas from receipt points on the North Montney Mainline to the Willow Valley Interconnect meter station. Does not include access to NIT.
FT-L (NM) Service or Service	Firm Transportation – Linked North Montney Service
FT-P	Firm Transportation – Point to Point
FT-R	Firm Transportation – Receipt
IGCAA	Industrial Gas Consumer Association of Alberta

Kogas	Kogas Canada LNG Ltd.
LNG	liquefied natural gas
LNG Canada	LNG Canada Development Inc.
LNG Canada Project	A liquified natural gas export terminal under construction near Kitimat, BC; includes natural gas liquefaction facilities, LNG storage, and a marine terminal. LNG from the terminal will be exported via tanker to international markets.
LTFP	Long Term Fixed Price
NEB	National Energy Board
NEB Act	*National Energy Board Act, R.S.C., 1985, c. N-7, Repealed, 2019, c.28, s.44*
NEBC	Northeast British Columbia
NGTL	NOVA Gas Transmission Ltd.
NGTL System	An extensive natural gas transmission system in Western Canada comprising approximately 24,622 km of pipeline and associated compression and other facilities owned by NGTL.
NMML	North Montney Mainline
NIT	NOVA Inventory Transfer; the commercial balancing mechanism for natural gas on the NGTL pipeline network in Alberta and parts of NEBC; also refers to the natural gas price within the NGTL System and is a virtual price point (i.e., not based on a physical location) within the Western Canadian Sedimentary Basin (WCSB).
OLNA	Optional Limited NIT Access
PetroChina	PetroChina Kitimat LNG Canada Partnership
PETRONAS	PETRONAS Energy Canada Ltd.
Station 2	Station 2 is a compressor station and pricing point for natural gas traded on the Westcoast Energy Inc. pipeline system (also known as BC Pipeline), which mainly transports natural gas produced in northeast BC to southern BC and export markets.
TCPL or TransCanada	TransCanada PipeLines Limited
TransGas	TransGas Limited
WCSB	Western Canada Sedimentary Basin

WEG	Western Export Group
Westcoast	Westcoast Energy Inc.
WVI	Willow Valley Interconnect

Symbols, Formulas and Units

$	dollars (CND)
%	per cent
Bcf/d	billion cubic feet per day
cents/Mcf/d	cents per thousand cubic feet per day
km	kilometre
km^2	square kilometre
m	metre
m^3/d	cubic metre per day
Mcf	thousand cubic feet
MMb/d	million barrels per day
MMcf/d	million cubic feet per day
TJ/d	terajoule per day

1 Application and disposition

1.1 NGTL's Application

On 31 May 2021, the Canada Energy Regulator (**CER**) received an Application from NOVA Gas Transmission Ltd. (**NGTL**) (C13325), pursuant to the tolls, tariff and public interest provisions under Parts 1 and 3 of the *Canadian Energy Regulator Act* (**CER Act**), requesting an order of the Commission of the CER (**Commission**):

1) Approving the proposed Firm Transmission – Linked North Montney Service (**FT-L (NM) Service**) and tolling methodology for the FT-L (NM) Service;
2) Approving the Rate Schedule FT-L (NM) Service that includes the proforma Service Agreement and proforma Schedule of Service under the NGTL Gas Transportation Tariff (**Tariff**), and consequential amendments to the Table of Contents and General Terms and Conditions under the Tariff;
3) Designating the Willow Valley Interconnect (**WVI**) as a Group 1 delivery point for the purpose of Firm Transportation – Delivery (**FT-D**) service and other delivery services in accordance with the rate design approved for the NGTL System, as may change from time to time;
4) Affirming that the tolling methodology approved in the RH-001-2019[1] Decision and Order TG-002-2020 for existing NGTL System services that utilize the North Montney Mainline (**NMML**); and
5) Granting such further and other relief as NGTL may request or the Commission may consider appropriate.

With respect to NGTL's request for the Commission to grant further and other relief, during oral final argument NGTL and PETRONAS Energy Canada Ltd. (**PETRONAS**) stated that the Commission had the ability to approve a modified FT-L (NM) Service tolling methodology by increasing the base toll. NGTL and PETRONAS did not provide a specific increased toll but offered that a modified toll should not be higher than the Westcoast Energy Inc. (**Westcoast**) T-North toll.

[1] CER, *Reasons for Decision - NGTL application for NGTL System Rate Design and Services*, RH-001-2019, Filing ID C05448 (March 2020) [RH-001-2019].

FT-L (NM) Service

NGTL requested approval of the proposed FT-L (NM) Service. The FT-L(NM) Service would provide linked receipt services from the NMML to the WVI delivery point, where the NGTL System will interconnect with the Coastal GasLink (**CGL**) pipeline. The FT-L (NM) Service was negotiated between NGTL and PETRONAS to connect PETRONAS' gas supply on a short-haul path between designated receipt points along the NMML and the WVI delivery point. PETRONAS has contracted with NGTL to transport 65 million cubic feet of gas per day (MMcf/day) for Phase 1 of the liquid natural gas (**LNG**) Canada Project and will require transportation service in the future for 510 MMcf/day for a potential Phase 2. The Phase 2 volumes are subject to a future positive Final Investment Decision (**FID**) for Phase 2 of the LNG Canada Project, which has not yet occurred.

The FT-L (NM) Base Service would not allow PETRONAS to access the NOVA Inventory Transfer (**NIT**) hub, the commercial balancing mechanism for natural gas on the NGTL pipeline network in Alberta and parts of northeastern British Columbia (**NEBC**). However, the FT-L (NM) Service allows PETRONAS to transact some of its volumes at NIT pursuant to the Optional Limited NIT Access (**OLNA**). OLNA requires a minimum of one year notice, assuming sufficient capacity exists, and has the same priority as firm service. Under OLNA, PETRONAS could transact either 20 or 50 per cent of FT-L (NM) Service volumes at NIT. A rate rider would apply if OLNA is elected and is designed to result in similar revenue should PETRONAS elect to use the OLNA option or an equivalent amount of Firm Transmission – Receipt (**FT-R**) service.

WVI delivery point

NGTL requested that the Commission designate the WVI as a Group 1 delivery point for the purpose of FT-D service and other delivery services in accordance with the rate design approved for the NGTL System. As a Group 1 delivery point, the WVI delivery point would be subject to the Group 1 delivery point floor rate, which is the lesser of the East Gate and West Gate FT-D service rates.

Affirmation of RH-001-2019 tolling methodology for NMML

In its Application, NGTL acknowledged that the requirement of Condition 2 of Order TG-002-2020 would be triggered upon gas delivery at the WVI under either FT-L (NM) Service or FT-D service. This condition requires NGTL to re-apply to the Commission for approval of a revised tolling methodology on the NMML if, over the operating life of the NMML, some or all of the gas transported on the NMML is delivered to new large markets, such as the LNG market on the Pacific coast. However, NGTL requested an affirmation from the Commission that the NMML Tolling Methodology approved in the RH-001-2019 Decision for existing NGTL System services that utilize the NMML will be maintained.

1.2 Summary of disposition and reasons[2]

Having considered all the evidence and submissions on the record, further to the Commission's letter decision issued on 19 January 2022 (C17285), the Commission:

- Denies the FT-L (NM) Service and tolling methodology.
- Denies the Rate Schedule FT-L (NM) Service.
- Approves designating the WVI as a Group 1 delivery point for the purpose of FT-D service and other delivery services in accordance with the rate design approved for the NGTL System, as may change from time to time.
- Denies affirming that the tolling methodology approved in the RH-001-2019 Decision and Order TG-002-2020 will be maintained for existing NGTL System services that utilize the NMML.

Order MO-011-2022 gives effect to these decisions.

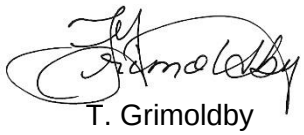
In deciding to deny the FT-L (NM) Service and tolling methodology, the Commission takes into account many factors, including the context of past NEBC decisions and the evidence and arguments presented in this proceeding. The Commission finds that the FT-L (NM) tolling methodology would result in tolls that are not just and reasonable. In this case, a toll designed mainly to cover incremental costs does not satisfy the cost causation principle, nor do the circumstances justify a departure from the cost causation principle. While the FT-L (NM) Service is not premature and was developed in response to a credible competitive alternative, the Commission finds that the tolls would not promote proper price signals. The FT-L (NM) Service would also inappropriately shift the risk of cost overruns to existing shippers on the NGTL System.

In approving the designation of the WVI as a Group 1 delivery point, the Commission finds it meets the definition of Group 1 delivery point as defined in the Tariff. The Commission finds that new delivery points in the North Montney will increase the integration of that region to other markets and result in overall benefits to Western Canadian Sedimentary Basin (**WCSB**) producers and others.

Lastly, the Commission finds that there is insufficient information at this time to determine whether the tolling methodology approved in the RH-001-2019 Decision for existing NGTL System services that utilize the NMML would continue to be appropriate upon commencement of gas deliveries at WVI, as contemplated by Condition 2 of Order TG-002-2020.

[2] This summary information should be read together with the full reasons that are provided below.

The Commission's reasons for these decisions follow. Chapter 2 reviews the procedural summary and summarizes key market and supply context. Chapter 3 outlines the legal framework. In Chapter 4, the Commission considers the FT-L (NM) Service and tolling methodology. In Chapter 5, the Commission addresses designating WVI as a Group 1 delivery point. In Chapter 6, the Commission addresses NGTL request to affirm the tolling methodology for the existing NGTL System services that utilize the NMML.



T. Grimoldby
Presiding Commissioner

S. Luciuk
Commissioner

M. Watton
Commissioner

Calgary, Alberta
March 2022

2 Background

2.1 Procedural summary

NGTL filed its Application on 31 May 2021. After considering comments about hearing process and the issues relevant to the Application, the Commission then issued the Notice of Public Hearing RH-001-2021 and Procedural Letter (C14102) establishing a public hearing process, on 15 July 2021.

On 5 August 2021, the Commission issued Ruling No. 1 – List of Parties, determining that all 22 parties who registered to participate may do so as intervenors (C14326). On 28 October 2021, the Commission issued Procedural Update No. 2 with an updated timetable of events (C15749).

In establishing the process to assess this Application, the Commission considered NGTL's request for a "timely approval of the Application no later than December 31, 2021."[3] The Commission also considered submissions from numerous parties requesting a thorough assessment of the Application. Accordingly, the Commission designed its hearing to be fair, thorough and expeditious.

The process included an opportunity for parties to file written evidence and to ask written information requests of NGTL and other parties. The Commission also asked written information requests of parties. There were opportunities to file notices of motion as appropriate. NGTL was permitted to file written reply evidence. Parties then had an opportunity to file written final argument and provide optional oral summary argument and oral reply. The Commission heard oral summary argument from 13 to 15 December 2021.

On 19 January 2022, the Commission issued its decision with reasons to follow (C17285). The decision was issued less than 8 months after the Application had been filed. The Commission:

- Denied the Application for FT-L (NM) Service; and
- Approved the designation of WVI as a Group 1 delivery point.

At that time, the Commission indicated that it would issue its reasons for those decisions, together with its decision and reasons on whether to affirm the tolling methodology approved in the RH-001-2019 Decision and Order TG-002-2020 for existing services that utilize the NMML.

[3] NGTL also provided information about the impacts of a decision after late January 2022.

2.2 Markets and supply context

This overview of details from the hearing record relates to markets and natural gas supply and is provided for context.

The liquefied natural gas market for Western Canada Sedimentary Basin gas

Interest in exporting WCSB natural gas in the form of liquified natural gas (**LNG**) has been growing for years. The National Energy Board (**NEB**) issued a licence to LNG Canada Development Inc. (**LNG Canada**) to export natural gas in 2012.[4] LNG Canada is a joint venture between Shell Canada Energy; PETRONAS, through its wholly owned entity, North Montney LNG Limited Partnership; Diamond LNG Canada Partnership; PetroChina Kitimat LNG Canada Partnership (**PetroChina**); and Kogas Canada LNG Ltd. (**Kogas**).

The LNG Canada terminal is under construction in Kitimat, BC, and its Phase 1 operations are expected to commence in the mid-2020s. As noted earlier in Section 1.1, LNG Canada's joint venture partners have not yet made a FID for Phase 2. The Phase 1 feedstock requirement for the LNG Canada terminal is 2.1 billion cubic feet per day (Bcf/d), and the joint venture partners have the right to supply the facility in proportion to their ownership portion. The total LNG Canada feedstock requirement if Phase 2 proceeds would be about 5 Bcf/d.[5]

Transporting natural gas to LNG Canada: Coastal GasLink Pipeline

The CGL pipeline, which is under construction by TC Energy and is regulated by the British Columbia Oil and Gas Commission, will transport natural gas from NEBC to the LNG Canada terminal. NGTL's system does not currently directly connect with the CGL pipeline. NGTL proposes to connect with the CGL pipeline through development of the WVI.

The North Montney resource area

NGTL forecasted that natural gas production from the North Montney basin in NEBC would grow from 2.4 Bcf/d in 2019/20 to a peak of 4.5 Bcf/d in 2032/33, then decline to 4.2 Bcf/d by 2044/45. Relevant North Montney natural gas infrastructure is depicted in Figure 1.

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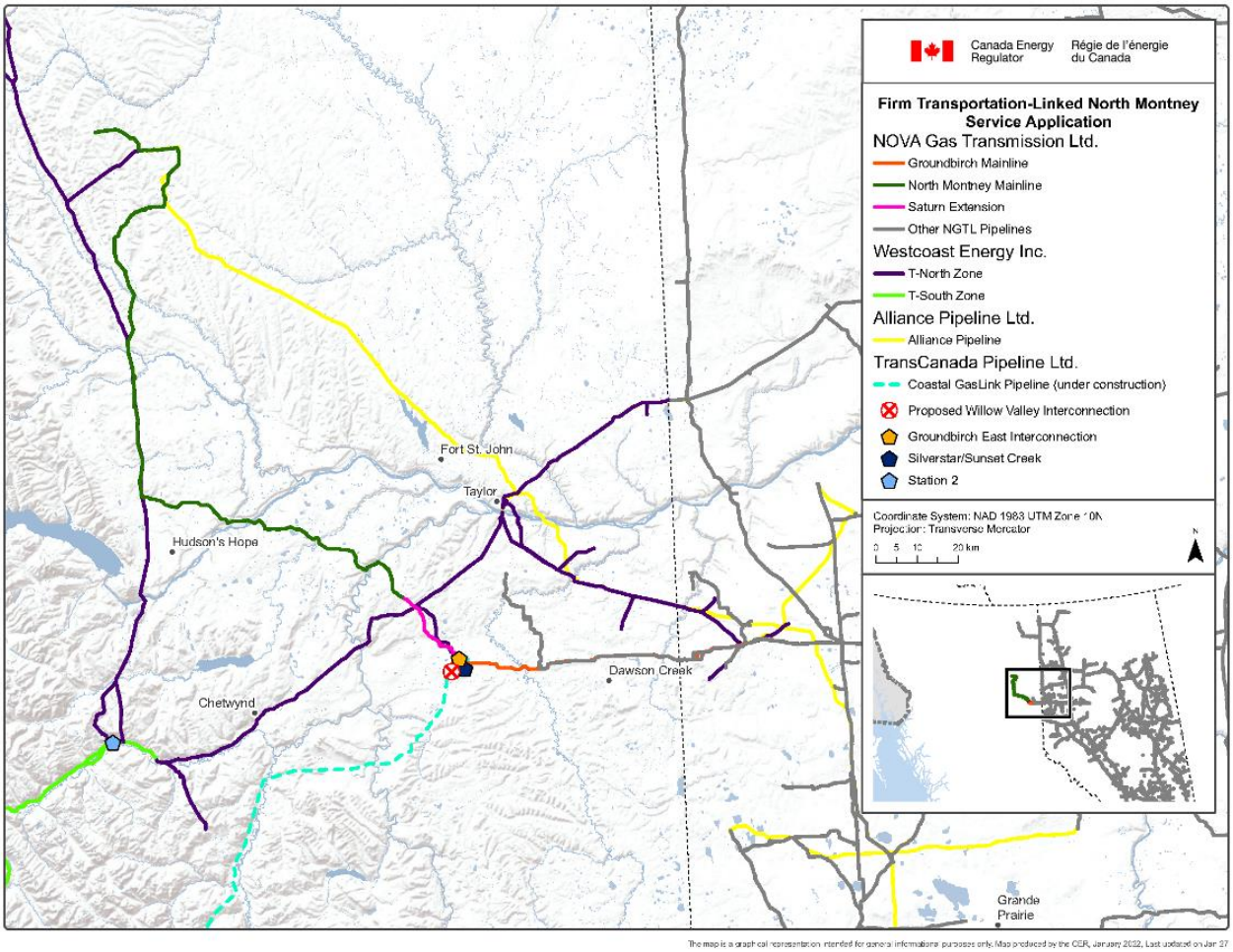
4 NEB, *GL-330 Letter Decision - LNG Canada Development Inc. application for a 40-year licence to export liquefied natural gas and revoke License GL-300*, Filing ID A79097 (August 2016). As a result of an amendment to the NEB Act extending the natural gas export licence term to a maximum of 40 years, the 25-year licence granted in 2013 (GL-300, Filing ID A50638) was revoked by consent of LNG Canada and a 40-year licence was issued.

5 PETRONAS, *Written Evidence*, Filing ID C15753 (28 October 2021).

Additionally, several regulatory decisions and an examination of the competitive landscape of NEBC have set the context for this Application.[6]

Figure 1: Natural gas infrastructure in the North Montney region



This map is intended for general information only. The map was produced by the CER in February 2022.

[6] NEB, *Reasons for Decision*, *NGTL application for Groundbirch Pipeline Project*, GH-001-2009, Filing ID A24595 (March 2010) [GH-1-2009]; NEB, *Report - NGTL application for Komie North Extension*, GH-001-2012, Filing ID A50255 (January 2013) [GH-001-2012]; NEB, *Report - NGTL application for North Montney Mainline*, GH-001-2014, Filing ID A69520 (April 2015) [GH-001-2014]; NEB, *Report - NGTL application for the 2017 NGTL System Expansion Project*, GH-002-2015, Filing ID A77316 (June 2016); NEB, *Report - NGTL application for Towerbirch Facilities and Tolling Methodologies*, GH-003-2015, Filing ID A79841 (October 2016) [GH-003-2015]; NEB, *Letter Decision - Westcoast Energy Inc. application for review of the GH-003-2015 toll treatment on the Tower Lake section*, Filing ID A82112 (16 March 2017); NEB, *Letter Decision - Examination to Determine Whether to Undertake an Inquiry of the Tolling Methodologies, Tariff Provisions and Competition in Northeast British Columbia*, Filing ID A90483 (March 2018) [NEBC Inquiry]; NEB - *Reasons for Decision - NGTL application for North Montney Mainline Variance and Sunset Clause Extension*, MH-031-2017, Filing ID A92071 (May 2018) [MH-031-2017]; NEB, *Letter Decision - Jurisdiction over the Coastal GasLink Pipeline Project*, MH-053-2018, Filing ID C00715 (26 July 2019).

The NGTL System

NGTL owns and operates 24,622 km of pipeline and associated compression and other facilities throughout Alberta and NEBC. The NIT is the commercial balancing mechanism used by NGTL for receipt and delivery services on its system, which is connected to several export markets and storage facilities.

The NGTL System first expanded into British Columbia with the Groundbirch pipeline, approved by the NEB in 2010.[7] The NMML, approved by the NEB in 2015[8], was NGTL's first pipeline in the North Montney area and went into service in 2020. The North Montney resource area is also served by the Westcoast and Alliance Pipeline Limited Partnership (**Alliance**) pipelines. The NMML currently has 65 MMcf/d of receipt capacity available. NGTL's Saturn meter station connects the NMML to the Groundbirch pipeline. While the Saturn meter station has bidirectional capability, it flows natural gas eastward into the NGTL system in Alberta. The Saturn meter station's design flow and capacity matches the current contract requirements of the NMML, which limits the flow from the NMML to the rest of the NGTL system and, therefore, the ability to offer the remaining 65 MMcf/d of receipt capacity on the NMML. [9]

The Westcoast T-North System

The Westcoast T-North and T-South transmission system in British Columbia has almost 3,000 km of natural gas transmission facilities that transport gas from numerous third-party upstream gas gathering, processing and transmission facilities to downstream markets. A key point in this system is the Silverstar meter station, near Westcoast's Sunset Creek compressor station, which can deliver natural gas to PETRONAS' Stella pipeline, which in turn feeds the CGL pipeline.

Additionally, in response to growing production in NEBC, Westcoast has either recently completed or received approval for several projects in the T-North zone to enable more gas to be delivered further south along the Westcoast transmission system and transported to the NGTL System.[10] NGTL, Westcoast, and Alliance Pipeline compete in NEBC to ship gas production to various Canadian and export markets.

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7 GH-1-2009, *supra* note 6.

8 GH-001-2014, *supra* note 6.

9 NGTL, *Responses to CER Information Requests* Nos. *1.1 and 1.2*, Filing ID C14681-2 (27 August 2021).

10 NEB, *Reasons for Decision - Westcoast Energy Inc. application for the Wyndwood Pipeline Expansion Project*, GH-001-2017, Filing ID A86344 (September 2017); NEB, *Letter and Order XG-W102-018-2016 - Westcoast Energy Inc. application for the Jackfish Lake Expansion Project,* Filing ID A78556 (15 July 2016); NEB, *Letter and Order XG-W102-024-2016 - Westcoast Energy Inc. application for the High Pine Expansion Project,* Filing ID A79017 (17 August 2016); NEB, *Letter Decision - Westcoast Energy Inc. - application for the Spruce Ridge Program*, GH-001-2018, Filing ID A96562 (10 December 2018); CER, *Reasons for Decision - Westcoast Energy Inc. application for T-South Expansion and Reliability Project*, GHW-002-2018, Filing ID C01857 (September 2019).

3 Legal framework

3.1 Legislation

Sections 31 to 35 in Part 1 of the CER Act provide the Commission with full and exclusive jurisdiction to determine matters within its broad mandate. In addition, the traffic, tolls, and tariffs provisions in Part 3 of the CER Act, particularly section 226, grant the Commission broad authority to make orders with respect to all matters relating to traffic, tolls and tariffs.

In considering the traffic, tolls and tariffs provisions in Part 4 of the former NEB Act, the Federal Court of Appeal has commented that they provided the NEB with "authority in the broadest possible terms to make orders with respect to all matters relating to [tolls and tariffs]."[11] Part 3 of the CER Act repeats the former NEB Act Part 4 provisions, apart from minor changes to modernize language. There continue to be no statutory rules which restrict the Commission's authority to set just and reasonable tolls.

A tolling methodology must be just and reasonable and not unjustly discriminatory. Sections 230 and 235 of the CER Act provide:

> **230** All tolls must be just and reasonable, and must always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons at the same rate.
>
> **235** A company must not make any unjust discrimination in tolls, service or facilities against any person or locality.

Pursuant to section 231, the Commission may determine as a question of fact whether these provisions have been complied with. Section 231 provides:

> **231** The Commission may determine
>
> > **(a)** whether traffic is or has been carried under substantially similar circumstances and conditions for the purposes of section 230;
> >
> > **(b)** whether a company has complied with the provisions of section 230; and
> >
> > **(c)** whether there has been unjust discrimination for the purposes of section 235.
> >
> > …

Section 236 of the CER Act places the onus on the Applicant to prove that any discrimination in tolls, service or facilities is not unjust:

---

[11] *British Columbia Hydro and Power Authority v Westcoast Transmission Co.*, [1981] 2 FC 646 (Fed. Court of Canada – Appeal Division) at para 17.

236 If it is shown that a company makes any discrimination in tolls, service or facilities against any person or locality, the burden of proving that the discrimination is not unjust lies on the company.

Sections 227 to 229 require the company to file its tariffs and tariff amendments with the Regulator and prohibit companies from charging a toll unless specified in its tariff or approved by the Commission.

3.2 Fundamental tolling principles

The Commission has broad authority and discretion in determining whether a proposed toll is just and reasonable. The Commission's assessment will depend on the facts in any particular case and will normally involve an application of the tolling principles that the Commission and its predecessor the NEB applied over the past decades. These fundamental tolling principles include the cost causation, economic efficiency, and no acquired rights principles:

- The cost causation principle means that tolls should be, to the greatest extent possible, cost based and that users of a pipeline system should bear the financial responsibility for the costs caused by the transportation of their product through the pipeline without unjustified cross subsidization by other rate payers. This principle has also been referred to as the cost-based/user-pay principle. The NEB has stated that adherence to the principle of cost causation lays the foundation for fair competition among regulated pipelines.
- The NEB has also stated that in the context of regulated tolls, economic efficiency generally means that tolls should promote proper price signals, which will protect against over investment and promote the efficient development and use of pipeline systems.[12]
- The no acquired rights principle means that payment of tolls in the past confers no benefit on toll payers beyond the provision of service at that time.[13] In other words, previous toll payers have no acquired rights.

Regarding the statutory prohibition of unjust discrimination, the Commission can set different tolls for:

- traffic of different descriptions,
- traffic of similar description but which is carried over different routes, and
- traffic which flows under substantially different circumstances,

all without offending the prohibition against unjust discrimination. Whether these features exist in a given case is a question of fact for the Commission to decide based on the evidence before it.

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12 MH-031-2017, *supra* note 6 at 33 (pdf 51).

13 NEB, *Reasons for Decision – TCPL – Gros Cacouna Receipt Point application,* RH-1-2007, Filing ID A16008-1 (July 2007) at 22 (pdf 34).

3.3 Previous decisions

A number of precedents were cited by parties during this hearing, and three in particular were referred to several times: Herbert long term fixed pricing (**LTFP**) (RH-002-2017); Dawn LTFP (RH-003-2017); and North Bay Junction LTFP (RH-002-2018). A summary of these precedents follows below.

Herbert LTFP (RH-002-2017)

In RH-002-2017, the NEB considered the Herbert LTFP service that TransCanada Pipelines Limited[14] (**TCPL or TransCanada**) negotiated with TransGas Limited (**TransGas**) to serve a gas-fired power plant to be constructed near Swift Current, Saskatchewan. The service, negotiated between two non-affiliated companies, intended to attract incremental load associated with the power plant while ensuring that TransGas' existing load on the Mainline was retained. TransGas was considering transportation on a competing pipeline of Foothills Pipelines Ltd. due to lower tolls on that system. Absent a lower negotiated toll, TCPL stated that existing tolls on Mainline would have been too high and TransGas would have opted for the competitive option. There was no open season.

In its approval, the NEB stated:

> The [NEB] has recently encouraged TransCanada to develop innovative service and pricing proposals to manage the ongoing issues facing the Mainline. The [NEB] has also emphasized the importance for TransCanada to respond to market forces with market solutions. The context of responding to competition, for the benefit of the Mainline and its shippers, is an important consideration in the [NEB]'s approval of the Application, as outlined in these Reasons for Decision.
>
> Competitive realities facing the Mainline should be responded to, otherwise the Mainline and its shippers face the potential alternative of further declining Mainline throughput and escalating tolls.
>
> The [NEB] finds that FT shippers, including those that are captive to the Mainline, will ultimately benefit from services designed to attract or retain loads, under the appropriate circumstances and conditions.[15]

There was a finding that all FT shippers would ultimately benefit from this service. The NEB found there was no unjust discrimination because the Herbert service was not traffic of the same description or transported under substantially similar circumstances as existing FT service. Instead, the NEB found that the Herbert service was a unique competitive alternative serving the power plant.

---

[14] TransCanada Pipelines Limited changed the name of its company from TransCanada Pipelines Limited to TC Energy 3 May 2019.

[15] NEB, *Letter Decision - TCPL - application for approval of Herbert LTFP service*, RH-002-2017, Filing ID A84788-1 (5 July 2017) at 15 [RH-002-2017 or Herbert LTFP].

The NEB was not persuaded to hold a generic hearing to establish criteria regarding competitive service offerings, preferring to have such new services assessed on their own merits and circumstances.

Dawn LTFP (RH-003-2017)

The Dawn LTFP service was a negotiated service developed by TCPL and western Canadian natural gas producers that was subsequently offered to all prospective shippers through an open season. Twenty-seven new long-haul contracts were executed with twenty-three parties. The Dawn LTFP service was estimated to generate $422 million annual revenue for the TCPL Mainline using existing infrastructure.

The NEB found that:

> … a competitive Mainline service offering is required to attract long-term, long-haul contracts from WCSB producers seeking access to the Dawn hub. Current FT service tolls to Dawn are economically prohibitive for producers, and producers will not contract for services when it is not economic to do so. These shippers do not currently hold any firm service on Mainline.[16]

The NEB was of the view that Dawn LTFP service used underutilized capacity to attract long-term, long-haul contracts from Empress to Dawn.

North Bay Junction LTFP (RH-002-2018)

The North Bay Junction LTFP was a service designed to both retain and attract long-term, long-haul contracting on the TCPL Mainline by offering fixed tolling for transportation using existing facilities from the Empress receipt point in Alberta to the North Bay Junction delivery point in Ontario. The service was developed through negotiations and discussions before it was offered to all prospective shippers through an open season. Seventeen parties executed contracts for a minimum term of 10 years.

The NEB found:

> Without a competitive offering, LTFP shippers would not contract for Mainline long-haul services. This lost revenue would decrease Mainline revenues and increase the tolls. The service was a proactive and appropriate response to the market realities facing the Mainline.[17]

The NEB also found that the North Bay Junction LTFP would result in cost savings of $2.2 billion on incremental facilities that would otherwise be required to provide additional short-haul service from other Eastern Triangle receipt points.

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16 NEB, *Letter Decision - TCPL - application for approval of Dawn LTFP service*, RH-003-2017, Filing ID A88125-1 (23 November 2017) at 24 [RH-003-2017 or Dawn LTFP].

17 NEB, *Letter Decision - TCPL - application for approval of North Bay Junction LTFP service*, RH-002-2018, Filing ID A-99955-1 (13 June 2019) at 9 - 10 [RH-002-2018 or North Bay Junction LTFP].

4 FT-L (NM) Service and tolling methodology

4.1 Competition

Competition is often a relevant consideration when an application involving a service offering is put before the Commission. Specifically, in this proceeding, the Commission was asked to consider if competition was present in NEBC and, if present, what role the existence of competition should play in determining if the FT-L (NM) Service would result in tolls that were just, reasonable, and not unjustly discriminatory. The Commission also considered if the FT-L (NM) Service adhered to tolling principles including cost causation and economic efficiency. The competitive environment in NEBC being considered in the context of this decision has been a focus of many past applications before the Commission and NEB.

Views of parties

NGTL

NGTL requested that the Commission assess the FT-L (NM) Service in the context of the market environment and opportunity for which it was developed.

- The competitive circumstances that precipitated the development of the FT-L (NM) Service are similar to the circumstances in multiple prior proceedings in which the Commission has previously concluded the tolls to be just and reasonable and consistent with fair and reasonable competition. NGTL's expert, Concentric Energy Advisors Inc. (**Concentric**) said that the Herbert LTFP service in RH-002-2017[18], Dawn LTFP service in RH-003-2017[19] and North Bay Junction LTFP[20] service in RH-002-2018 are comparable to the FT-L (NM) Service. The services were unique, limited offerings to attract incremental load where credible competitive alternatives existed; the tolls for the service were negotiated between unaffiliated parties and reflected applicable market conditions; and there were benefits associated with providing the service to both existing shippers and the pipeline, including toll benefits.
- While the NEB did not specifically state that competitiveness was a tolling principle, it was a factor that the NEB previously found must be considered in establishing just and reasonable tolls for the TCPL Mainline.
- PETRONAS faces the unique circumstances of seeking to link a large quantity of incremental gas supply from the North Montney area to supply its share of the LNG Canada Project and has a credible and viable alternative to service on the NGTL System to do so. The FT-L (NM) Service was designed to compete and attract load that, absent the FT-L (NM) Service, would bypass the NGTL System.
- The Commission has encouraged pipelines to be proactive in the face of competition to mitigate long-term risks on their systems, including fundamental risk.
- Restricting regulated pipelines from offering innovative services like FT-L (NM) Service in competitive circumstances would disadvantage the pipeline, the customer that the

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18 RH-002-2017, *supra* note 15.
19 RH-003-2017, *supra* note 16 at 28.
20 RH-002-2018, *supra* note 17 at 11.

pipeline is seeking to attract, and the pipeline's other customers who will be worse off if the pipeline is unable to attract net benefits to the system. This would interfere with the proper functioning of the market and deter regulated pipelines from responding to competition with proactive and innovative solutions. These outcomes would not be in the public interest.

- Rate regulation of pipelines exists primarily to ensure that customers are protected from the exercise of monopoly powers by the pipeline, while providing the pipeline a reasonable opportunity to recover its costs of providing service, including earning a fair return on and of its invested capital. The required level of regulatory oversight varies based on the business environment in which a pipeline operates. In a monopolistic environment, where a pipeline has market power, cost-of-service methodologies have typically been relied on to produce just and reasonable tolls. However, in a competitive environment, the availability of competitive alternatives often eliminates the potential for abuse of market power by a pipeline.
- As the Commission recently reaffirmed in RH-001-2020:[21] "Innovative offerings that respond to the needs of market participants may warrant a departure from a cost-of-service regime."
- Concentric submitted that the Commission has approved several negotiated competitive service offerings designed by pipelines to attract additional load, finding such services consistent with the no unjust discrimination principle. The FT-L (NM) Service is distinct from existing NGTL firm services. It has different attributes, including the competitive circumstances under which the service was offered, longer minimum contract terms, limitations on where the service was offered, and restrictions on the use of the service.
- The Herbert LTFP, Dawn LTFP and North Bay Junction LTFP services are comparable to the FT-L (NM) Service. The services were unique and limited offerings to attract incremental load where credible competitive alternatives existed; the tolls were negotiated between unaffiliated parties and reflected applicable market conditions; and there were benefits associated with providing the service to both existing shippers and the pipeline, including toll benefits.
- The FT-L (NM) Service is not premature. The requested approval of the FT-L (NM) Service and its associated tolling methodology is consistent with previous NEB approvals of tolling methodologies for future facility expansions by Trans Mountain Pipeline ULC and Enbridge Pipelines Inc.[22] An approval of the FT-L (NM) Service would provide the pipeline and its customers certainty regarding the tolling methodology prior to making significant investment decisions.

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21 CER, *Reasons for Decision – Enbridge Pipelines Inc. Canadian Mainline Contracting,* RH-001-2020, Filing ID C16317-1 (November 2021) at 80 (pdf 93) [RH-001-2020].

22 NEB, *Reasons for Decision – Trans Mountain Part IV Application*, RH-001-2012, Filing ID A51913 (May 2013) [RH-001-2012]; RH-001-2020, *supra* note 21 at 80 (pdf 93).

- At a high level, there is no difference between the basis for a load attraction or load retention service: the goal is to ensure there is a benefit to the system which would not occur if the load were to leave the system or not be brought onto the system relative to what would otherwise occur. NGTL considers that any new service proposal, whether it is aimed at attracting load, retaining load, or both attracting and retaining load, should be assessed on its own merit, within the context of the applicable facts and circumstances.
- Reasonable regulatory policy should be that pipelines are incented to take advantage of all opportunities to attract and retain load on their systems if doing so is expected to produce net benefits to existing shippers.
- There is currently a low probability of a reduction in contract levels or of declining throughput on the NMML in the near term. However, simply because the NGTL System currently has a relatively high degree of contracting does not mean that the existing level of contracting will continue and that the NGTL System is not facing the potential for underutilization.

PETRONAS

PETRONAS viewed the FT-L (NM) Service as a competitive response for a shipper with credible competitive alternatives.

- PETRONAS' commercial theory for the FT-L (NM) Service toll was a basic point-to-point natural gas transportation service between NMML receipt points and the WVI, with few options or market driven services.
- PETRONAS' primary objective for securing the LNG Canada-related natural gas transmission service is to get its natural gas from multiple receipt points along the NMML to a single delivery point at CGL pipeline for the lowest cost possible, every day for up to 40 years commencing in 2024. A secondary objective is occasional Station 2[23] or NIT access over that same time period to help mitigate fluctuations in natural gas feedstock demand at the LNG Canada terminal, whether more or less than forecast.
- PETRONAS needed a way to move a significant volume of gas between fixed points with a high degree of consistency over a 20–40-year horizon. The LNG Canada Project demands a significant volume of natural gas feedstock, at a high (95per cent +) rate of reliability, over a 20-40-year horizon.
- PETRONAS determined it had two options to transport its natural gas to the inlet of the CGL pipeline: (1) the Westcoast T-North System, in conjunction with the PETRONAS Stella pipeline; and (2) the NGTL System.
- If NGTL did not compete for PETRONAS' business through the FT-L (NM) Service offering, PETRONAS would have preferred the Westcoast T-North System alternative.

[23] Station 2 is a compressor station and pricing point for natural gas traded on the Westcoast Energy Inc. pipeline system (also known as BC Pipeline), which mainly transports natural gas produced in northeast BC to southern BC and export markets.

- Prior to the development of the FT-L (NM) Service, there was no existing transportation service on the NGTL System that suited PETRONAS' unique needs. The only service available was the usual combination of FT-R service (from receipt points on the NMML, with the NMML surcharge) and FT-D service approximately 250 km down the line. The combined cost of paying the tolls for those services was prohibitively high compared to the toll that Westcoast was able to offer PETRONAS on the T-North System at that time and would require PETRONAS to pay for service attributes and system facilities that it does not need and would not use.
- The FT-L (NM) Service offering is a welcome transition toward the competitive and innovative behaviour long encouraged by the Commission and its predecessor in its NEBC decisions. The Commission's approval of FT-L (NM) Service would finally usher in a degree of true "pipe-on-pipe" competition for LNG deliveries in NEBC, unshackling this market from the de facto monopoly enjoyed by Westcoast to date.
- PETRONAS is a unique shipper among the NGTL and Westcoast customer base where its LNG business is concerned. As the supplier and customer of its own gas, PETRONAS needs considerably fewer services from either Westcoast or NGTL compared to other producers in the North Montney area, whose business models rely much more on the commercial and operational optionality unique to each transmission system and the different markets they serve.
- For PETRONAS, securing the natural gas supply and transportation path is also a critical component of the LNG Canada Phase 2 FID. It would not be commercially prudent to make a Phase 2 FID without confirming the availability and cost of natural gas transmission, a critical piece of the integrated project.
- PETRONAS has not contracted with NGTL for FT-D service at WVI.

Other parties

Some parties viewed the FT-L (NM) Service application as premature.

- Westcoast’s expert, Roland Priddle, said that the FT-L (NM) Service application is premature, given the uncertainty around Phase 2 of the LNG Canada Project and the Phase 2 contracts of the FT-L (NM) Service.
- The Western Export Group (**WEG**) submitted PETRONAS has fully contracted all its Phase 1 volumes and thus there is no urgency to approve the FT-L (NM) Service for 65 MMcf/d of capacity on the NMML. The LNG Canada Project will not have any feedstock shortage in Phase 1 if the FT-L (NM) Service is not approved. There is sufficient time for NGTL to collaborate with all NGTL shippers on an appropriate service for any transportation requirements by PETRONAS should Phase 2 proceed.

Other parties argued that the FT-L (NM) Service was not developed in response to a credible competitive alternative.

- The Industrial Gas Consumer Association of Alberta (**IGCAA**) submitted that credible competing pipeline alternatives located in the North Montney basin are not an either/or decision for PETRONAS or other LNG Canada proponents who have publicly expressed a view of the need to secure a diversified portfolio of supply options on both regulated and non-regulated pipeline systems.

Some parties disputed the relevance of the Herbert LTFP, Dawn LTFP and North Bay Junction LTFP to the Commission's assessment of the FT-L (NM) Service.

- IGCAA submitted that the competitive business environment in NEBC is materially different than the business environment in RH-003-2011[24] and as such innovative service responses to competition must to a greater degree adhere to the principles of cost-based/user-pay than may otherwise be the case.
- IGCAA also submitted that the context of the competitive business environment faced by the TransCanada Mainline in RH-003-2011 is not at all the same as the context of the competitive business environment currently faced by the NMML, and as such the reasons for relief provided in RH-003-2011 cannot be relied upon by NGTL as evidence in support of the FT-L (NM) Service. Unlike RH-003-2011, NGTL shippers are not at risk of toll increases, nor will throughput or contract demand quantities decrease on the NMML system in the foreseeable future absent the FT-L (NM) Service or deliveries to the LNG market.
- Westcoast's expert, Roland Priddle, submitted that the North Bay Junction LTFP does not support the FT-L (NM) Service as that service was provided utilizing existing infrastructure. NMML faces no issue of substitution of long-haul contracts with short-haul ones. The NMML revenues and tolls are not at risk from market realities.

Parties commented on the appropriateness of the FT-L (NM) Service as a load attraction service.

- The Canadian Association of Petroleum Producers (**CAPP**) submitted that it was interested in generic criteria the CER may use to consider approving a load attraction service. CAPP also listed the Alberta Energy and Utilities Board (**EUB**)'s four criteria[25] for assessing whether a load retention rate is appropriate, just, reasonable and in the public interest:
    1. The load retention rate is required to respond to a credible bypass threat.
    2. The load retention rate must exceed the long run incremental cost of service.
    3. The load retention rate is no more attractive than is reasonably required to retain the load.
    4. The cost of offering the load retention rate is appropriately shared between the other customers and the utility shareholders.

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[24] NEB, *Reasons for Decision - TCPL, NGTL and Foothills Pipe Lines Ltd. - Application for business and services restructuring proposal and mainline final tolls for 2012 and 2013*, RH-003-2011, Filing ID A51040-1 (March 2013) [RH-003-2011].

[25] EUB, *NGTL - New load retention service, associated rates, tolls and charges and consequential amendments to gas transportation tariffs*, Decision 2002-043 (29 April 2002); EUB, *NGTL. – Application for approval of a new service offering, the Load Retention Service*, Decision U97096 (14 November 1997); EUB, *NGTL- Load Retention Service 2*, Decision U99042 (29 April 1999); EUB, *ATCO Pipelines - Non-Standard Transportation Service Agreement*, Decision 2005-100 (30 August 2005); EUB, *ATCO Pipelines - Non-Standard Transportation Service Agreement*, ATCO Pipelines - NGTL Grande Cache, Decision 2006-089 (31 August 2006) and EUB, *Pennine Petroleum Corporation - Application for a Pipeline Licence Pincher Creek Field*, Decision 2009-027 (10 March 2009). Only CAPP relied on the EUB criteria.

- Westcoast argued that the purpose of a load attraction service is to allow a pipeline to regain volumes it has lost and thereby increase utilization of its existing infrastructure. The purpose is not, as NGTL proposes, to attract volumes onto a brand-new pipeline like the NMML that is already fully contracted on a long-term basis to provide the FT-R service for which it was approved and constructed or to attract incremental volumes for which expansion facilities are required.
- Westcoast submitted that load attraction or retention services are not appropriate to entice incremental volumes onto a brand-new pipeline like the NMML that is already fully contracted on a long-term basis, or to attract incremental volumes for which expansion facilities are required. Providing a load retention or load attraction service at tolls that are not cost-based may be appropriate in circumstances where an existing pipeline faces or has experienced bypass which would result in underutilization of its existing facilities and where the existing pipeline is endeavoring to retain or attract volumes to use its existing facilities. But those circumstances do not exist here.

Parties also offered submissions more generally on the role that competition plays among regulated pipelines and the role of economic regulation.

- CAPP, who took no position on the level of the FT-L (NM) Service toll, submitted that in the Canadian natural gas industry it is well understood that economic regulation of pipelines is intended to be a proxy for competition in circumstances where competition does not exist. Whether that competition takes place in the context of fully allocated cost of service tolls, or through competitive tolling proposals, is something that needs to be determined on the merits of each case.
- IGCAA submitted that enabling competing regulated pipeline systems to engage in a toll price war at the expense of existing shippers will not promote economic efficiency and will be at the detriment of shippers on both the Westcoast and NGTL systems.
- Westcoast submitted that there is competition amongst CER-regulated pipelines in NEBC and that NGTL, Westcoast, and Alliance all have market power. That is why their services and tolls are subject to regulatory approval. There is not a competitive pipeline market in NEBC that can just be allowed to work without regulatory oversight. One pipeline cannot be allowed to just price its service lower than its competitor's service in order to win the competition to attract supply.
- Further, Westcoast submitted that it is not free market rates that dictate the outcomes of competition amongst the regulated pipelines in NEBC. It is the tolls that are approved by the Commission that dictate the competitive outcomes. This is why, in the Alliance Pipeline decision[26] and in the various decisions concerning the NMML, the regulator has been mindful of the need to prevent competitors from gaining a regulatory advantage as a result of its tolling decisions. And that is why the regulator has found that tolling that adheres to the principle of cost causation lays the foundation for fair competition.

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[26] NEB, *Reasons for Decision - Alliance Pipeline Ltd. - application for approval of new services and related tolls and tariffs*, RH-002-2014, Filing ID A71142-1 (July 2015).

- Westcoast agreed that the regulated pipelines in NEBC should be permitted to offer new services to attract load to their systems, but subject to the requirement that they charge tolls for the services that recover the costs of providing them, consistent with the cost-based/user-pay tolling principle. The position of Westcoast is that regulated pipelines should be precluded from offering new services to shippers at tolls that do not recover the cost of providing service but rather are set to beat the competition. A tolling "free for all" would not result in fair competition and efficient outcomes.
- WEG argued that the circumstances surrounding competition in NEBC have not changed and that fair competition (not just undercutting a competitor's rates), the cost-based/user-pay principle, not providing a regulatory advantage to one pipeline, and pricing signals consistent with economically efficient principles remain relevant.

4.1.1 Commission analysis and findings

The Commission was asked to consider if and how the presence of a competitive alternative should change how the Commission evaluates if tolls are just and reasonable and not unjustly discriminatory.

As an initial matter, the Commission determined whether the application for FT-L (NM) Service was prematurely filed. Having determined the application was not premature, the Commission evaluated the competitive environment in NEBC amongst CER-regulated pipelines and how tolling principles should be applied in this environment. Further, the Commission determined if the FT-L (NM) Service was established in response to a credible competitive threat. The Commission then considered a request from CAPP to develop generic criteria for load attraction services. Finally, the Commission reviewed the Herbert LTFP, Dawn LTFP and North Bay LTFP decisions, along with other precedents cited, as well as the context that led to the development of these services, to determine the extent to which they were applicable in the circumstances of this Application.

Prematurity

The Commission finds that the Application for FT-L (NM) Service is not premature. Phase 1 volumes are intended to begin shipping by 2024. The FT-L (NM) Service tolling methodology is intended to apply to both Phase 1 and Phase 2 volumes. PETRONAS' evidence is that certainty regarding the tolling methodology will assist in its FID for Phase 2. The Commission gives significant weight to PETRONAS' evidence in this regard.

It is generally the case that it is up to an applicant to determine the order of facilities and tolling applications it seeks to bring before the Commission. An applicant may file facility and tolling applications together or separately. There is precedent, as cited by NGTL, for previous NEB approvals of tolling methodology prior to facility applications.[27] The Commission takes no view on the sequence with which an application is filed but is cognizant that additional certainty may be provided by advance tolling decisions. If the tolling methodology is intended to be applied many years into the future, as the FT-L (NM) Service tolling methodology is, then the Application and supporting evidence must be sufficiently robust to account for the temporal lag.

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[27] RH-001-2012, *supra* note 22.

Further, any risk-sharing mechanisms between the shipper, pipeline and other parties should be clearly understood, appropriate and fair.

Competition

Competition exists in NEBC amongst pipelines for the transmission of natural gas, including specifically for delivery of LNG volumes. PETRONAS' statement that the LNG delivery market has been shackled by Westcoast's de facto monopoly is not borne out by the facts. As described in Section 1.3, other LNG Canada partners have chosen different ways to supply the LNG Canada terminal. Some are building their own pipelines; others will use NGTL or Westcoast. Further, the CGL pipeline, which will deliver gas to the LNG terminal, is not owned by Westcoast or an Enbridge subsidiary.

NGTL argued that in a competitive environment, the availability of competitive alternatives often eliminates the potential for abuse of market power by a pipeline. In this case, the Commission disagrees with this argument. While there is competition in NEBC, it is far from a perfectly competitive market. NGTL holds significant market power in NEBC. Competition is not a rigid dichotomy where a market is either perfectly competitive or a monopoly, but rather a spectrum that ranges between the two. The existence of some competition does not eliminate the market power held by pipeline companies or potential for abuse. Given the market power of NGTL and others in these circumstances, NEBC is not a context where competitive forces are sufficient to justify allowing the market to work with limited regulatory oversight.

The Commission also considered previous NEB decisions specifically related to tolling principles in the competitive context of natural gas pipelines in NEBC. In GH-001-2014, the NEB found:

> [I]n the case of competition amongst regulated pipelines, the [NEB] finds that adherence to the principle of cost causation lays the foundation for fair competition. Given the competitive environment in NEBC, the vast potential of the resource and potential to benefit Canadians, the [NEB] is mindful of the need to prevent competitors from gaining a regulatory advantage as a result of its tolling decisions.

In the *Examination to Determine Whether to Undertake an Inquiry of the Tolling Methodologies, Tariff Provisions and Competition in Northeast BC* (NEBC Inquiry), the NEB expressed a similar view, stating:

> The Montney is a highly competitive formation, and special care needs to be paid to ensure sound tolling principles are applied to the area, fostering competitive outcomes and managing the pace of pipeline infrastructure development in Northeast BC in the public interest. […]
>
> In the Part IV context, the [NEB] is of the view that its role, in ensuring that competition is fair and that development in Northeast BC proceeds efficiently, requires it to review the tolling methodologies of NGTL and Westcoast to ensure adherence with the [NEB]'s established principles.[28]

[28] NEBC Inquiry, *supra* note 6 at 3 and 5.

These findings remain true and provide important contextual foundation for the Commission's consideration of this Application. As explained below, NGTL did not meet its onus to justify a departure from long-established toll principles.

Credible competitive threat

The Commission accepts that the FT-L (NM) Service was created in response to a credible competitive alternative, as PETRONAS could credibly ship volumes on either NGTL or Westcoast. IGCAA challenged NGTL's submissions that Westcoast posed a credible competitive alternative for PETRONAS' Phase 1 and Phase 2 volumes, as LNG parties require a diversified portfolio of supply options, rather than shipping solely on the Westcoast System. The Commission, however, gives greater weight to PETRONAS' evidence. PETRONAS' evidence clearly states that without the FT-L (NM) Service, it would have preferred the Westcoast alternative and would not have contracted on NGTL, on the basis of the lower cost on Westcoast. The Commission gives significant weight to PETRONAS' evidence on this point, as PETRONAS is the party who would ultimately choose between shipping gas on NGTL or Westcoast systems. No party credibly challenged the evidence from PETRONAS regarding its shipping strategy. Therefore, the Commission finds the FT-L (NM) Service was created in response to a credible competitive alternative, as PETRONAS could credibly ship volumes on either NGTL or Westcoast.

Load attraction services

In RH-001-2019 the Commission stated:

> … fundamental risk is not materializing on the NGTL System at this time but remains a long-term risk. It is the pipeline company, in this case NGTL, which faces fundamental risk and is ultimately responsible for managing this risk. NGTL has the flexibility and the ability to be innovative in order to adapt to changing market circumstances. It also has a variety of tools to manage its long-term risks including depreciation rates and contract terms.[29]

This statement remains true in this proceeding. The NMML specifically, and the NGTL System more broadly, currently have high levels of utilization. Nevertheless, the Commission is of the view that it is incumbent on NGTL to pursue opportunities to mitigate long-term risks, like seeking to attract PETRONAS' Phase 2 volumes. Developing services to attract additional load onto its system is an accepted method for a pipeline to prudently manage long-term risk. The Commission agrees with NGTL that it, along with other CER-regulated pipelines, should respond to market forces and work with market participants to develop innovative services. Any innovative services must have just and reasonable tolls and not be unjustly discriminatory.

Westcoast argued that the purpose of a load attraction service is to allow a pipeline to regain volumes that it has lost and thereby increase utilization of its existing infrastructure. The Commission disagrees and notes that forcing a pipeline to wait until volumes have been lost before load attraction strategies are permitted would be inefficient and likely compromise efficient utilization of individual pipelines or pipeline systems.

At this time, the Commission will not establish general criteria for assessing a load retention rate nor will it apply the EUB's criteria in this proceeding. While past precedents will always be

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[29] RH-001-2019, *supra* note 1 at 45 (pdf 56).

considered, setting general criteria may be restrictive for a variety of factual situations that may arise. Further, the establishment of general load attraction criteria was not on the list of issues for this proceeding. As any general load attraction criteria would apply to CER-regulated pipelines would impact more parties than those that participated in this proceeding, the Commission is of the view that broader consultation would be required before establishing general load attraction criteria, if at all. The Commission will continue to evaluate all tolling applications before it, including those for load retention or attraction services, on a case-by-case basis to determine if the tolls are just, reasonable and not unjustly discriminatory. This is consistent with past practice[30] of assessing new services, including competitive service offerings, on their own merits and circumstances. This will include consideration of the tolling principles applied against the facts of any new offering. As relevant, past precedents will also be considered.

Consideration of previous decisions

Before evaluating the role that competition played in the three LTFP cases summarized in Section 3.3, the Commission considered that these decisions were borne of the NEB's direction following RH-003-2011. This was an application by TCPL to restructure tolls based on changes in the business environment of natural gas supply, markets, and contracting practices that were affecting, and have continued to affect, the TCPL Mainline.

In RH-003-2011, the NEB stated:

> The Mainline is in an unprecedented position. No major NEB regulated natural gas transmission pipeline has ever been affected by market forces to the extent that the Mainline is now affected. Throughput on the Mainline has decreased significantly, and as a result, Mainline tolls have increased substantially over a short period of time."[31]

The NEB developed a streamlined process that applied to new Mainline service and pricing proposals, and found it was "necessary for TransCanada and its shippers to have the tools to respond quickly to changes in the Mainline's business environment such that new products and services can be developed to better enable the Mainline to compete and to better serve the needs of shippers."[32] The three LTFP cases cited were applied for under the streamlined process.

In all three LTFP cases, TransCanada was responding to a credible competitive threat. It was clear that, absent the LTFP service, the volumes in those cases would not have been attracted to the Mainline. This aligns with the finding above, that the FT-L (NM) Service was developed in response to a credible competitive threat. In all three LTFP cases, the NEB applied tolling principles and examined the services to determine if the tolls were just, reasonable and not unjustly discriminatory. The competitive circumstances did not exempt the LTFP services from the NEB Act. In the case of this application, unlike in the three LTFP cases, NGTL did not adequately justify that the departure from the tolling principles was warranted.

In this Application, the Commission finds that it was appropriate for NGTL to develop a specialized service for LNG volumes when it was clear that its current service offerings were uncompetitive. The Commission encourages all market participants to continue to work together

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30 RH-002-2017, *supra* note 15 at 14.
31 RH-003-2011, *supra* note 24 at 1 (pdf 20).
32 *Ibid* at 247 (pdf 266).

to find innovative service offerings. However, these service offerings must still result in tolls that are just, reasonable and not unjustly discriminatory. As explained below, unlike in the LTFP cases, NGTL failed to meet its onus to establish that the FT-L (NM) Service was consistent with tolling principles, particularly the cost causation and economic efficiency principles.

4.2 Just and reasonable tolls

4.2.1 Cost causation

As described in Chapter 3 under the heading *Fundamental Tolling Principles*, the cost causation principle means that tolls should be, to the greatest extent possible, cost based and that users of a pipeline system should bear the financial responsibility for the costs caused by the transportation of their product through the pipeline without unjustified cross subsidization by other rate payers.

Views of parties

NGTL

NGTL submitted that the FT-L (NM) Service adhered to the principles of cost causation.

- The FT-L (NM) Service was developed to enable NGTL to compete to attract and meet the unique needs and circumstances of PETRONAS, which has an interest in the LNG Canada Project and will supply gas to that project through the CGL pipeline. The WVI delivery point will connect the NGTL System to the CGL pipeline. NGTL negotiated the FT-L (NM) Service with PETRONAS as a competitive alternative for PETRONAS to transport gas from the North Montney area to the inlet of the CGL pipeline which, in doing so, will attract volumes and revenues over the long term to the NGTL System that would not otherwise occur.
- NGTL used past decisions of the regulator to guide the crafting of the new service. It determined that this was a unique situation that required a unique service offering. Based on guidance from past decisions, the primary criteria that NGTL considered in offering a unique service offering were (1) that the service should be responding to a credible alternative, and (2) implementation of the service creates a net benefit to the NGTL System and its customers relative to what would otherwise occur, absent the service.
- While the proposed FT-L (NM) Service rate is not cost-based, it is consistent with the Commission's principle of cost causation and does not result in excessive cross-subsidization. FT-L (NM) Service is a custom service with a negotiated rate in response to a specific credible competitive alternative that will allow NGTL to attract incremental contracting to its system to produce incremental revenues that will exceed the incremental costs of the FT-L (NM) Service for the benefit of its customers relative to what would otherwise occur. Accordingly, the provision of the FT-L (NM) Service will not result in existing customers cross-subsidizing the FT-L (NM) Service customer to attract the load, and thus would not otherwise distort pricing signals or create unfair competition, which is consistent with the principle of cost causation and fair competition among pipelines. While the Commission did not explicitly address cost causation in approving the Herbert LTFP, it did conclude that the incremental revenue from the service would exceed the incremental costs, and thus the pipeline and its customers would be better off relative to

the load going to a competitive alternative, which is the same circumstance that exists with FT-L (NM) Service.

- NGTL did not ascribe a specific monetary value to OLNA when negotiating the toll. OLNA was negotiated as part of the package of attributes forming the FT-L (NM) Service. NGTL did, however, ensure that if elected, the feature would result in a revenue contribution similar to that which would result from a commensurate level of FT-R service on the NMML.

Table 1-1: NGTL estimated tolls for various services on the NGTL System

Service	**Rate ($/Mcf/day)**	**Assumption**
FT-L (NM) Base Service	0.229	Assuming approval in 2021
FT-R service on NMML (includes the NMML Surcharge)	0.443 – 0.475	Includes 2021 NMML Surcharge
FT-D rate at WVI, if designated Group 1	0.187	FT-D1 Floor Rate
FT-L (NM) Service if 20% OLNA option exercised	0.266	Assuming approval in 2021
FT-L (NM) Service if 50% OLNA option exercised	0.321	Assuming approval in 2021
FT-Point to Point (**FT-P**) service (Illustrative of the rate that would apply at a Group 2 delivery point located at the same location as WVI)	0.454 - 0.503	Provided for FT-P service bands which are the equivalent distance bands for NMML Receipts to WVI. Tolls include the NMML Surcharge. NGTL notes that FT-P service is not available at Group 1 delivery points.

- NGTL stated that it designed the FT-L (NM) Service tolling methodology to ensure the FT-L (NM) Service revenues exceed the incremental costs expected to provide the FT-L (NM) Service, which is cost-reflective, and results in a net benefit to the NGTL System and its customers, in accordance with the previous precedents for competitive service offerings set out by the Commission's predecessor. The tolling methodology also provides that the toll for the FT-L (NM) Service will be indexed to the average FT-R and FT-D service rates on the NGTL System, such that it will also be cost-reflective of the NGTL System change in costs over time.

- As part of the development of the Service, NGTL considered the competitive alternative of the Westcoast T-North Long-Haul service, as any toll for the FT-L (NM) Service that was anticipated to be higher than the T-North toll would have resulted in PETRONAS not contracting for service on the NGTL System and NGTL losing any benefits associated with this opportunity. The resulting toll for the FT-L (NM) Service was designed to reflect the attributes of the FT-L (NM) Service and the competitive alternative at the time of the negotiations, while ensuring the greatest benefit possible for the NGTL System. For these reasons, the toll is cost-reflective and consistent with the cost-based/user-pay principle.
- The FT-L (NM) Service, if approved, would provide incremental volumes, revenue, and would require additional facilities.
- There are two phases of the agreement between NGTL and PETRONAS that correspond with Phase 1 and Phase 2 of the LNG Canada Project. The table below compares the Phase 1 and Phase 2 attributes and includes the anticipated costs of the additional facilities required.

Table 1-2: Comparison of Phase 1 and Phase 2 attributes

Attributes	Phase 1	Phase 2
Contracted amount	65 MMcf/day	510 MMcf/day subject to FID
FID made?	Yes	No
Anticipated additional facilities required	1 receipt meter station on NMML 1 delivery meter station at WVI[33]	2 compressor units 2 additional receipt points on NMML Expansion of meter station at the WVI delivery point
Cost of anticipated additional facilities required	$4.2 million	$237.7 million
Average anticipated incremental net revenue	$3 million annually	$14 million annually
Total anticipated net revenue	$67 million (25 years) $109 million (40 years)	For Phase 1 and Phase 2 $406 million (25 years) $791 million (40 years)
Total net present value of net benefit	$20 million	For Phase 1 and Phase 2 $93 million

[33] "For Phase 1, the required capital additions for the Base Service include the proportional share of the WVI delivery meter station at an estimated cost of $0.6 million (i.e., approximately 18 per cent of the WVI delivery meter station estimated cost of $3.2 million) and one additional receipt meter station (estimated cost $3.6 million)".

- NGTL confirmed that while some facility expansions on the NGTL System have had cost overruns between 134–225 per cent, the referenced projects had unique challenges and circumstances that extended construction timelines, resulting in higher than typical cost variances. In addition, the referenced projects were larger in scope than those that will be required for implementation of the FT-L (NM) Service. Historically, the capital cost estimate for NGTL projects have come in both over and under the estimates.
- While the toll for the FT-L (NM) Service is not directly linked to the cost of the anticipated facilities additions, it has been designed to ensure that the incremental service revenues will exceed the incremental costs in all reasonably foreseeable scenarios and make a positive contribution towards NGTL System costs, that reduces tolls for other NGTL System shippers.
- The lower tolls for other customers are a net benefit to the system. Other shippers will benefit from the long-term nature of the contracts which will directionally improve rate stability.

PETRONAS

PETRONAS and its expert, the Brattle Group, submitted that the FT-L (NM) Service met the principle of cost causation.

- The proposed FT-L (NM) Service toll is the result of a process of negotiation. The level of the proposed tolls is cost-reflective and consistent with the user-pay principle in that it exceeds the incremental unit cost of providing the FT-L (NM) Service and will make a net contribution to lower other tolls (all else equal) on the NGTL System. Specifically, the projected residual revenues from the FT-L (NM) Service toll (in excess of incremental cost) over the life of the proposed contracts is approximately 1.5 times the level of existing system cost allocated by NGTL's distance-sensitive toll design for transportation movements between NMML receipt points and the WVI.
- A "cost-informed" or "cost-reflective" toll can be distinguished from one that is strictly developed based on a formal cost-of-service methodology, while still complying with the Commission's tolling principle that tolls should be, to the greatest extent possible, cost-based. In this context, cost-based tolls are tolls that provide the pipeline with the opportunity to recover its prudent costs, including earning a fair rate of return on its invested capital over the long run. Such tolls are consistent with pricing outcomes resulting from the operation of market forces in workably competitive markets, whereby competition drives the price of a good or service to the long-run marginal cost of supplying it.
- Compliance with the cost-based/user-pay principle is not restricted to tolls that are developed based on a cost-of-service methodology, but rather may apply to tolls that are developed according to any methodology but nevertheless provide the pipeline with an opportunity to recover its prudent cost of providing service.

- Where a pipeline provides more than one service using the same assets, each service will provide a contribution to the overall revenue, which in turn provides the pipeline with the opportunity to earn a return on those assets. In these circumstances, cost-based tolls imply that common costs have been appropriately shared across the different services such that there is, for example, no double-recovery. In addition, cost-based tolls will individually recover at least the avoidable costs incurred in providing each individual service. PETRONAS submitted that RH-1-2019 provided authority that sunk past costs need not be recovered. [34]

Other parties

Other parties disagreed that the FT-L (NM) Service adhered to the cost causation principle.

- FortisBC Energy Inc. (**FEI**) submitted that tolls that only cover the avoidable or incremental costs of providing the service fall short of substantial compliance with the cost causation principle. Fully allocated costs, including return of and on invested capital should be considered in assessing the true costs of providing the service.
- Centra Gas Manitoba Inc. (**Centra**) rejected NGTL's examples of negotiated service offerings in the three LTFP cases provided in support of this Application and as examples of regulatory precedent. Centra stated that the circumstances in the three LTFP cases differ significantly from the current circumstances of NGTL, namely that the TCPL Mainline was facing an unprecedented level of underutilization and was not able to secure contracts at the full Firm Transportation (cost-based) tolls.
- Westcoast stated that incremental costs only include the cost of the new facilities required to provide the incremental service, not the cost of the existing facilities used to provide the service. Establishing tolls on the basis that they recover only part of the costs of providing the service does not satisfy the cost causation principle. Westcoast also submitted that under the applied-for tolling, PETRONAS would receive FT-L (NM) Service from NGTL for up to 40 years at a toll pre-determined by negotiation. No other shipper on the NMML receives such favourable toll treatment and toll certainty. Service provided under FT-L (NM) Service will not reflect the actual annual costs of providing service to PETRONAS. The FT-L (NM) Base Service toll is negotiated to be less than the toll on Westcoast's competing T-North system. In addition, the annual indexing mechanism is based on changes to NGTL's average overall system tolls. The shortfall between the toll revenue collected by NGTL and what it actually costs to transport PETRONAS' gas will be borne by NGTL's other shippers, not by NGTL or PETRONAS.

Other parties commented on the uncertainty of the benefits from the FT-L (NM) Service.

- Centra argued that the purported certainty of the benefit being advanced is a false premise as NGTL acknowledges that there is no certainty in the costs, scope, and timing of Phase 2 facility additions. Any changes/updates to scope or cost will not result in a re-calculation to determine if a net benefit still exists prior to filing a facilities application with the Commission.

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[34] CER, *NGTL - Application for Firm Transportation – Linked North Montney Service (RH-001-2021) - Transcript, Volume 2,* Filing ID C16780-1 (14 December 2021) at para 737.

- Centra noted that Concentric provided the Dawn LTFP decision as support for the proposition that the NEB recognized and accepted the inherent estimation risk to forecasted costs. Centra submitted that such a comparison is disingenuous and the difference in circumstances is significant enough to make it irrelevant. The estimation risk of the Dawn LTFP was notably less as the cost/benefit was estimated over a much shorter term (10 years vs. 25 – 40 years), with the contract in service dates occurring within approximately one year of the regulatory process. In addition, the largest cost of the service was known and had a risk mitigation lever built into it by way of a step-down provision for the contracted amount.
- Centra submitted that under the FT-L (NM) Service, a decision by PETRONAS to take the Phase 2 FT-L (NM) Service may occur as late as 2031. With the requirement for facility additions to be built as far as a decade into the future, any benefit of the FT-L (NM) Service to existing shippers simply cannot be known with any certainty at the time of this Application. It is crucial to recognize this as the expert evidence of both Brattle Group and Concentric point to the estimated net benefit as evidence that the proposed toll promotes economic efficiency and is cost-reflective. Asking the Commission to conclude on adherence to regulatory principles and resolve the issue of harm vs. benefit now, with no ability to test it prior to a facilities application, is illogical and would not hold the pipeline accountable for the realized outcomes of the FT-L (NM) Service. This highlights the very real potential for inappropriate cross-subsidization of PETRONAS by existing shippers. Centra requested that the Commission specifically reject this illusion of certainty such that existing shippers are not inappropriately held accountable for this potential risk.
- FEI noted NGTL's emphasis that there is going to be a net incremental benefit for its shippers because the FT-L (NM) Service toll revenue will exceed incremental costs. However, FEI is concerned that the toll revenue may not exceed NGTL's costs. If there is a positive FID for LNG Canada Phase 2, the cost of the NGTL facilities necessary to accommodate PETRONAS' Phase 2 may well be higher than currently anticipated, and thus erode to a lesser or greater extent NGTL's forecast net benefit. WEG expressed similar concerns.
- Westcoast submitted that the expansion facilities may be different than proposed in the Application. As the NMML is already fully contracted on a long-term basis, NGTL will need to expand its facilities upstream of WVI, including the NMML, to provide the Phase 2 FT-L (NM) Service to PETRONAS of 510 MMcf/d. As the FID for Phase 2 could be later than NGTL expects in its Application, very different expansion facilities than those assumed by NGTL would likely be required to provide the Phase 2 FT-L (NM) Service, particularly if additional FT-R service on the NMML is contracted before PETRONAS requires the Phase 2 FT-L (NM) Service. However, the special tolling that NGTL has negotiated with PETRONAS applies to both the Phase 1 and Phase 2 FT-L (NM) Service and is not linked in any way to the base cost of the NMML and other facilities at or upstream of the WVI or to the nature, cost or timing of the new facilities that NGTL will be required to install to provide the FT-L (NM) Service.
- WEG stated that the FT-L (NM) Service would provide PETRONAS with an exclusive service that provides a high level of rate design certainty and rate certainty in this customized service. WEG noted PETRONAS' stated need for certainty and countered that all shippers want certainty. The proposed FT-L (NM) Service would provide PETRONAS with benefits that no other shipper would receive. Many shippers do not use all the attributes that may be associated with a service, but they are required to pay the full rate. Shippers cannot carve those service attributes they do not use and not pay for them. The current rate design provides a "peanut butter smear approach" to benefits. All

shippers receive benefits through economies of scale as it keeps the cost of service cheaper, all things equal.

4.2.1.1 Commission analysis and findings

The Commission finds that the tolls from the FT-L (NM) Service, which were designed mainly to cover incremental costs, do not satisfy the cost causation principle. Further, the Commission finds that the NGTL has not established that circumstances justify a departure from the cost causation principle.

The Commission is also of the view that the FT-L (NM) Service inappropriately shifts the burden of the risk of cost overruns onto shippers who are not using the FT-L (NM) Service. The Commission was not persuaded that the forecasts of a modest net benefit to shippers other than PETRONAS were sufficiently robust, considering the uncertainty regarding potential cost overruns and long-time horizon prior to the prospective construction of Phase 2.

Cost causation

Parties offered contrasting interpretations of how the cost causation principle may be satisfied:

- NGTL and PETRONAS argued that if the incremental revenues from tolls exceeded the incremental costs of providing the FT-L (NM) Service, then the cost causation principle was satisfied. NGTL's evidence is that the base toll for the FT-L (NM) Service was designed to provide incremental revenues that exceed the incremental costs of providing the FT-L (NM) Service, not to cover the full costs. Concentric added that there is no requirement that the rate to attract additional demand to a pipeline system that will benefit existing system shippers reflect the fully allocated cost of that entire system. PETRONAS' expert, the Brattle Group, argued that the level of the proposed tolls is cost-reflective and consistent with the user-pay principle, in that it exceeds the incremental unit cost of providing the service and will make a net contribution to lower other tolls (all else equal) on NGTL's system.
- In contrast, Westcost's expert, Roland Priddle, stated that establishing tolls for a service on the basis that they will recover the incremental costs of providing the service does not satisfy the cost causation principle, citing the NEB's statement in RH-4-86 that the resultant tolls should be, to the greatest extent possible, cost based. In other words, generally speaking the concept of "user-pay" should be applied. The possibilities and dangers of this "cost-related" approach to toll methodology were anticipated by the NEB in its RH-4-86 Decision.[35]

The interpretations put forward by the parties are incompatible.

The Commission gave low weight to the evidence of Concentric and Brattle that the FT-L (NM) Service toll, which was forecast to modestly exceed the unit cost of providing the FT-L (NM) Service, was sufficient to meet the cost causation principle, as:

- The tolling methodology does not address existing system costs;

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[35] NEB, *Reasons for Decision - Interprovincial Pipe Line Limited – application for new tolls*, RH-4-86 (June 1987) at 48.

- The FT-L (NM) Service inappropriately shifts the burden of the risk of cost overruns onto shippers who are not using the FT-L (NM) Service. Compared to the Dawn LTFP, NGTL and PETRONAS have assigned much greater risk here to other shippers over a lengthy forecast period; and
- The proposed net benefit is smaller compared to the Dawn LTFP and there is a high degree of uncertainty associated with the forecast benefit

These reasons are discussed in further detail below.

Existing system costs

The Commission finds that a toll specifically designed to recover incremental costs, but not address existing system costs, is a significant, and in this case unjustified, departure from the cost causation principle, particularly where the company has significant fixed costs. The proposed design creates the potential for inappropriate cross-subsidization of PETRONAS by existing shippers by not addressing existing system costs. A user of a pipeline system should bear financial responsibility for the costs caused by the transportation of their product through the pipeline. Pipelines, in general, have significant fixed costs that are recovered through tolls. If every service offered on a pipeline recovered only the incremental costs, then a pipeline would be unable to recover its large, fixed costs and therefore would not be financially viable.

The Commission rejects PETRONAS' submission that the costs of NMML are 'sunk costs' already being fully recovered in the NMML FT-R tolls, and therefore need not be recovered in the FT-L (NM) Service. Given the FT-L (NM) Service relies on the NMML, the cost causation principle requires shippers that benefit from the service to bear commensurate financial responsibility for the costs caused by the transportation of their product through the NMML, similar to other shippers using the same facilities. The cost of the existing pipeline facilities used to provide all services on the NGTL System will be recovered through future tolls. The RH-001-2019 Decision approved a toll structure for how those costs would be allocated among shippers. The RH-001-2019 Decision did not remove cost accountability from any shipper group.

NGTL argued that tolls do not need to be based on cost-of-service methodology to be just and reasonable. The Commission acknowledges that departing from the cost causation principle may be warranted in certain circumstances. In such instances, the Commission expects the applicant to justify why the departure is appropriate and take into consideration the Commission's other tolling principles. For example, in RH-003-2017, the NEB recognized that the Dawn LTFP toll represented a departure from the cost-based/user-pay principle but approved the toll as economic efficiency would be promoted through increased utilization and net lowering of existing tolls.

The Commission finds that NGTL did not provide a sufficient justification for such a departure in this Application and notes this Application can be distinguished from RH-003-2017. In particular, the system in RH-003-2017 was underutilized, which is not the case in this Application. In addition, as discussed below, the estimated net benefit to other shippers is much lower and uncertain in this case. Finally, the Commission finds that the FT-L (NM) Service does not promote efficient use of pipeline systems sufficiently to justify a departure from the cost causation principle (see Section 4.1.3 on Economic Efficiency).

With respect to PETRONAS' argument that that "cost-informed" or "cost-reflective" tolls, regardless of the methodology by which they are established, satisfy the cost-based/user-pay principle, the Commission disagrees. In this case, the FT-L (NM) Service was designed mainly to cover incremental costs, not to cover existing system costs. The FT-L (NM) Service tolling methodology may result in tolls that are "cost-reflective" of the incremental costs to provide the FT-L (NM) Service but, as discussed above, a toll structure that does not address existing system costs does not adhere to the cost causation principle.

As noted earlier in this decision, considering the limited competitive environment in NEBC, it remains critical that the Commission examine applications for tolls and new services to ensure tolls adhere to long-established toll principles.

Risk

As noted, the Commission is of the view that the FT-L (NM) Service inappropriately shifts the burden of the risk of cost overruns onto shippers who are not using the FT-L (NM) Service. Of particular concern, the toll for FT-L (NM) Service is not tied to the costs to provide the Service and neither NGTL nor PETRONAS would be impacted if the costs of future facilities required to provide the service differed from the estimated costs provided in the Application. As NGTL and PETRONAS are not at risk for cost overruns or changes in facilities for the FT-L (NM) Service, the risk of cost overruns will be borne by the rest of the shippers whose rates are determined by the NGTL revenue requirement.

The Commission finds that the risk of future cost overruns is significant and found the submissions of Centra and other parties regarding the uncertainty of potential cost overruns and long-time horizon prior to the prospective construction of Phase 2 to be persuasive. First, the timing and facilities required for the Phase 2 volumes are highly uncertain. The Commission acknowledges Phase 1 volumes are relatively certain as NGTL anticipates a start date in 2024. However, the facilities for Phase 2 will not be applied for until after the FID for Phase 2 is made. The FID for Phase 2 FT-L (NM) Service may occur as late as 2031 and the facilities that are required at that time may be different than currently planned. Second, NGTL's own preliminary capital cost estimate related to Phase 2 FT-L (NM) Service is uncertain, with an accuracy range of -30/+50 per cent at this time. That estimate is further called into question by NGTL acknowledgement that in the past there had been significant cost overruns for some projects.

Net benefits

Finally, as noted earlier, the Commission finds that the proposed net benefit is smaller and less certain than suggested by NGTL. NGTL argued that the FT-L (NM) Service would result in net benefits to shippers, as the incremental revenue from the FT-L (NM) Service would exceed costs. Further, NGTL argued that shippers benefit from the long-term nature of the contracts which will directionally improve rate stability. Centra disagreed and argued that the certainty of the benefit being advanced is a false premise as there is no certainty in the costs, scope, and timing of Phase 2 facility additions.

The timing uncertainty and the fact (as Centra pointed out) that there have been a number of past cost overruns by NGTL compared to its forecasts lowered the weight the Commission assigned to NGTL's forecasts filed in support of the Application. NGTL's net benefit calculations are based on the facilities and costs estimated in the Application. The forecast benefit in this

case was nowhere near the level of $2 billion in net benefits generated in the Dawn LTFP.[36] The cost of the anticipated additional facilities is $241.9 million, and the projected total net present value of the net benefit is $93 million. Further, there is a high degree of uncertainty associated with the forecast benefit. As the timing and facilities (including costs of the facilities) are uncertain, the benefits to shippers are correspondingly uncertain. As a result, the evidence filed by the Brattle Group that there would be a net benefit in all reasonably foreseeable scenarios was given low weight and was not found to be persuasive. For all these reasons, the Commission is not persuaded that potential net benefits to shippers are certain or valuable enough to mitigate the risk of potential cross subsidization of existing system costs and resulting from transfer of risk of cost overruns to other shippers inherent in the proposed tolling methodology.

The Commission acknowledges that the FT-L (NM) Service contains an indexing mechanism that adjusts the rate for the FT-L (NM) Service based on average FT-D and FT-R service rate changes over the term of the contract. This mechanism does not address the lack of linkage between the toll for the FT-L (NM) Service and the costs of the facilities built to provide the FT-L (NM) Service. Of particular concern to the Commission is the fact that the indexing mechanism is based on the future average costs of the NGTL System and not on the specific future costs of using the FT-L (NM) Service, including potential future cost overruns. As the proposed indexing mechanism does not address the risk imbalance of potential future cost overruns, it further exacerbates the FT-L (NM) Service's departure from the cost causation principle, discussed in this section.

4.2.2 Economic efficiency

In addition to the tolling principle about cost causation analyzed above, another important tolling principle is economic efficiency. In the context of regulated tolls, economic efficiency generally means that tolls should promote proper price signals which will protect against over-investment and promote the efficient development and use of pipeline systems.

The Commission heard arguments about whether the FT-L (NM) Service promoted proper price signals and would encourage efficient development, as well as if the FT-L (NM) Service tolls represented fair market value and would provide benefits to other NGTL System shippers.

Views of parties

NGTL

NGTL argued that the FT-L (NM) Service adheres to the principles of economic efficiency.

- The FT-L (NM) Service, including the applicable tolling methodology, was negotiated between two arm's length parties, and thus it reflects the fair market value at the time it was negotiated. The comparison to the Westcoast alternative was a key consideration using multiple factors and not just price.
- The Commission has held that tolls negotiated between two arm's length parties represent fair market value.

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[36] RH-003-2017, *supra* note 16 at 27.

- Concentric submitted that the toll for the FT-L (NM) Service would promote proper price signals because the toll considers the cost of the specific competitive alternative available to the shipper in the market and the risk of losing the incremental demand entirely. The negotiated toll is consistent with cost causation in a number or respects, including that the incremental revenues would exceed the incremental costs, and the rate would not be static over the lengthy contract term but rather would be subject to vary over time relative to cost changes on the overall NGTL System.
- Concentric submitted that in Dawn LTFP, the NEB acknowledged that the proposed tolls represented a departure from the cost-based/user-pay principle. However, the competitive circumstances that were present justified a negotiated tolling approach, there were substantial net revenue benefits, and the Commission placed more emphasis on the economic efficiency benefits of higher utilization and lower existing system tolls that would result from application of the negotiated tolls.
- Concentric submitted that in the Herbert LTFP, Dawn LTFP and North Bay Junction LTFP decisions, the Commission reiterated these views, finding that the services and resulting tolls were negotiated at arm's length between unaffiliated entities and thus represented the fair market value for the service.
- For Phase 1 and 2, NGTL estimated the incremental net revenue to be $17 million annually. NGTL would apply the revenue from the FT-L (NM) Service to reducing the NMML Surcharge. For Phase 1, the impact from the FT-L (NM) Service on the NMML Surcharge is estimated to be a reduction of 0.1 cents/Mcf/day and for both Phase 1 and Phase 2, 0.6 cents/Mcf/day.

PETRONAS

PETRONAS' expert report from the Brattle Group discussed economic efficiency.

- Negotiating the FT-L (NM) Service toll at a level above the unit cost of NGTL's incremental investment – but below a level at which PETRONAS would prefer the Westcoast alternative – sets an appropriate price signal in the market, indicating that it is economically efficient for NGTL to make the investments necessary to provide the FT-L (NM) Service. By incentivizing low-cost development of capacity to meet the market need, NGTL's competitively influenced negotiated FT-L (NM) Service toll promotes economic efficiency.
- Since the toll and terms of service were a product of arm's length negotiations between PETRONAS and NGTL, it is reasonable to conclude that PETRONAS values the service at no less than the level of the proposed toll and from NGTL's perspective, the negotiated FT-L (NM) Service toll exceeds NGTL's cost to provide the service and will therefore make a net contribution to reduce unit costs on NGTL's system overall. Consequently, both parties (and NGTL's existing shippers) benefit from the investments contemplated in the Application.

Other parties

Other parties disagreed that the FT-L (NM) Service adhered to the principle of economic efficiency.

- Westcoast submitted that the proposed FT-L (NM) Service is not economically efficient because the tolls charged to PETRONAS have been pre-determined by negotiation and will not reflect the actual costs incurred by NGTL to provide the FT-L (NM) Service to PETRONAS in each year over the contract term. The tolls will accordingly not send the proper price signals and will not promote efficient pipeline and resource development.
- Westcoast distinguished Dawn LTFP and argued it does not apply to the FT-L (NM) Service because that was a case where the pipeline needed to charge tolls that did not recover the entire cost of providing the new service so as to attract volumes to make use of existing capacity that had been offloaded and was unutilized. It was not a case where the pipeline needed to construct additional capacity in order to provide the new service.
- Westcoast also submitted that it is generally economically efficient to utilize existing pipeline capacity and thereby minimize the amount of new pipeline facilities that are required to be built. Westcoast was able to meet PETRONAS' Phase 1 volume needs using existing T-North capacity, and it may have existing T-North capacity to meet PETRONAS' Phase 2 volume needs as well, if and when those needs actually arise. It would not be economically efficient for NGTL to provide the proposed FT-L (NM) Service to PETRONAS on the NMML – a new pipeline that is fully contracted on a long-term basis to provide the FT-R service for which it was approved and constructed – in circumstances where an expansion of the pipeline is required to provide the new service and the proposed tolling of the new service will not cover the full costs of providing it.
- IGCAA submitted that enabling competing regulated pipeline systems to engage in a toll price war at the expense of existing shippers will not promote economic efficiency and will be to the detriment of existing captive shippers on both the Westcoast and NGTL systems.

Other parties commented on whether the FT-L (NM) Service represented fair market value.

- IGCAA submitted the negotiated FT-L (NM) Service toll does not maximize value and is primarily designed to underprice Westcoast's then in effect T-North Long-Haul postage stamp toll. The mere presence of a "credible competitive alternative" does not provide NGTL with the regulatory license to depart from the principle of cost-based/user-pay when setting tolls for a new service. Nor is a negotiated toll with a bona fide arms-length party sufficient evidence the agreed to toll represents fair market value of the service and therefore meets the just and reasonable test as asserted by NGTL. NGTL has not provided uncontroverted evidence the FT-L (NM) Service toll has been maximized and represents fair market value of the service. The proposed FT-L (NM) Service toll does not meet the just and reasonable test.
- IGCAA submitted that the FT-L (NM) Service is exclusive to PETRONAS and was not tested through an open season. Unlike in Dawn LTFP, where the Commission found that the open season demonstrated that the toll had been maximized for the service, without an open season, NGTL has not demonstrated that the value of the service represents fair market value.
- CAPP cited RH-003-2017 where it submitted that the NEB made some relevant observations regarding the appropriateness of competitive tolling options and the context

> of competing pipelines in approving LTFP service on the TransCanada Mainline. The NEB specifically determined that, where competitive tolls are negotiated between arm's length parties, that is an indication of fair market value in the circumstances, and that in turn is an appropriate way to price the service at a market price to shippers.

Parties also commented on the benefits of the FT-L (NM) Service to other NGTL System shippers.

- In CAPP's view, existing shippers are entitled to a reasonable degree of certainty that such benefits would result in if the proposed FT-L (NM) Service is approved and utilized. In the absence of such certainty, it remains appropriate to consider the nature and level of risk sharing that the pipeline ought to bear.
- Centra and FEI argued that there is no certainty that other NGTL System shippers would receive benefits from the FT-L (NM) Service because the scope and cost of the facilities for Phase 2 are uncertain.

4.2.2.1 Commission analysis and findings

Economic efficiency is linked to cost causation and is a key tolling principle that has been considered in many prior decisions. In RH-001-2019, the Commission stated that "the determination that the proposed tolls satisfy the cost causation principle is one of the fundamental attributes for determining that tolls comply with the economic efficiency principle." Of particular relevance to this Application, economic efficiency also requires that tolls send proper price signals which promotes the efficient development and use of pipeline systems.

As discussed above in Section 4.2.1, the Commission found that the tolls for the FT-L (NM) Service do not satisfy the cost causation principle, and that NGTL did not provide sufficient evidence or argument to justify the departure in this case. In the following section, the Commission evaluated whether the FT-L (NM) Service tolls would promote proper price signals and maximize economic efficiency sufficiently to justify a departure from the cost causation principle. In its evaluation, the Commission considered whether the tolls were set to reflect the value of service, whether the FT-L (NM) Service could be expected to meaningfully lower tolls for existing system users, and whether the FT-L (NM) Service would maximize the utilization of the pipeline systems, thereby preventing over-investment on otherwise avoidable alternative pipeline construction.

The Commission recognizes that the cost causation principle and the economic efficiency tolling principle may, at times, be in conflict. In RH-2-91, the NEB stated:

> [Economic efficiency] could require that tolls be set to reflect the value of service, rather than reflecting the actual costs of providing the service. Thus, at times there may be a conflict between adherence to the principle of cost-based/user-pay tolls and promotion of economic efficiency. In such instances, the [NEB] is of the view that there would have to be strong reasons for departing from the principle of cost-based/user-pay tolls in order to set tolls which would encourage economic efficiency.

One example where the NEB departed from the cost causation principle in favour of economic efficiency is RH-003-2017. The NEB approved the Dawn LTFP toll and noted that "while the Dawn LTFP toll represents a departure from the cost-based/user-pay principle, economic

efficiency will be promoted by Dawn LTFP service through increased system utilization and the net lowering of existing Mainline tolls."

In this case, at best, there would be a marginal reduction of tolls for existing pipeline users and even that was subject to significant risk. The facts of this Application demonstrate that the facilities that would be used for FT-L (NM) Service are not underutilized, and the FT-L (NM) Service would require additional facilities for Phase 2 volumes.

Taking all these findings into consideration, including NGTL's failure to adequately justify a departure from the cost causation principle, the Commission finds that the FT-L (NM) Service does not promote proper price signals and, overall, is not economically efficient.

Promote efficient use of pipeline infrastructure

The Commission finds that the FT-L (NM) Service does not sufficiently promote efficient use of pipeline systems to justify a departure from the cost causation principle.

The Commission agrees with Westcoast's statement that it is generally economically efficient to use existing pipeline capacity and thereby minimize the amount of new pipeline facilities that are required to be built. While this may be true conceptually, it is of limited application in this case as the evidence demonstrates that neither Westcoast nor NGTL currently has existing pipeline capacity to meet Phase 2 volumes.

NGTL argued that Phase 1 contracts would allow NGTL to use 65 MMcf/d of local area capacity available on the NMML without downstream facilities additions. Phase 1 contracts will require one receipt meter station on NMML and the construction of the WVI. NGTL expected that the Phase 2 contracts of 510 MMcf/d will require two compressor units, two additional receipt points on NMML and the expansion of the WVI.

Phase 1 contracts would use capacity on the NMML that is unable to be used for firm capacity and so the Commission agrees that the FT-L (NM) Service would use this underutilized capacity. Some construction to access underutilized capacity, like the addition of two-meter stations, is appropriate. However, Phase 2 volumes would not use existing underutilized capacity and would require significant additional facilities on the NMML.

The FT-L (NM) Service is for Phase 1 and Phase 2 volumes. Throughout this proceeding, NGTL asserted the FT-L (NM) Service was negotiated as a package through an extensive negotiation process, is designed to compete to attract PETRONAS' vast gas supply in the North Montney area to an interconnection with the CGL pipeline to supply the LNG Canada Project, and that any modifications should be assessed in consideration of this context. When viewed as a package of Phase 1 and Phase 2 volumes, the FT-L (NM) Service does not primarily use underutilized capacity and so will not maximize utilization on the NGTL System sufficiently to justify the departure from the cost causation principle.

Proper price signals

Ideally, a tolling methodology should send proper price signals in the face of changing circumstances. Price signals allow market participants to determine how much to invest, among other things. As NGTL pointed out, shippers make long-term commitments and commit to pipeline systems regardless of what happens to tolls on other pipeline systems over time.

Proper price signals also facilitate efficient investment from the pipeline companies themselves, particularly amongst competing pipelines.

The Commission finds that the FT-L (NM) Service does not send promote proper price signals. NGTL and PETRONAS argued that the FT-L (NM) Service toll reflected fair market value at the time of negotiation because it was negotiated between two arm's length parties. As discussed in Section 4.2.1, the FT-L (NM) Service offloads the risk of cost overruns on to other NGTL System shippers. While NGTL and PETRONAS are two arm's length parties, the market value of the FT-L (NM) Service was derived based on the risk of cost overruns being borne by other NGTL System shippers and therefore other NGTL System shippers may end up cross subsidizing the FT-L (NM) Service.

NGTL did not demonstrate to the Commission's satisfaction that the toll represented fair market value. The lack of an open season in this Application was not determinative. While an open season can provide useful evidence about the fair market value of a toll, an open season may not be necessary in the case of a specialized service for a single shipper, as in the Herbert LTFP. However, the evidence required to demonstrate that the toll has been maximized and the toll is of fair market value is more than simply that the toll is the product of negotiations between two arm's length shippers. For example, in Dawn LTFP, the contrast between the two open seasons, the first at a higher toll with no shipper interest and the second at a slightly lower toll with shipper interest, provided evidence for the maximization of the toll. No compelling evidence was provided in this proceeding.

In fact, NGTL and PETRONAS' suggestion during oral final argument that the Commission consider an increase to the base toll for the FT-L (NM) Service from 21.9 cents/mcf/day to up to 29.2 cents/mcf/day, just below the relevant Westcoast T-North toll,[37] indicated that the toll for FT-L (NM) Service was too low and therefore sent an improper price signal regarding efficient investment. This also demonstrated the inability of the FT-L (NM) Service tolling methodology to send proper price signals if circumstances changed. This is discussed further in Section 4.1.5 below.

Benefits to other shippers

The Commission finds that it is uncertain if the FT-L (NM) Service will meaningfully lower tolls for existing system users because the risk of cost overruns is shifted to other NGTL System shippers. This is discussed in detail in Section 4.2.1.1.

Even without the dimension of uncertainty, the Commission finds that the benefits from the FT-L (NM) Service are too small to justify the departure from the cost causation principle on the basis of benefits to existing system shippers. In the Dawn LTFP, which was a departure from the cost-causation principle, the NEB found that "Dawn LTFP will provide substantial benefits to the Mainline and its shippers. The estimated $2 billion of total net revenue associated with Dawn LTFP service will significantly reduce the share of the revenue requirement to be recovered from other shippers during its term. For example, TransCanada estimated the reduction to forecasted revenue requirements for 2018, 2019, and 2020 to be 7.3 per cent, 16.5 per cent and 18.6 per cent, respectively, and that tolls would be directionally reduced."[38]

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[37] The exact amount of the increase proposed as a potential modification by NGTL and PETRONAS was never clear. There was reference to a modest increase and to a FT-L Service toll that is less than Westcoast's toll.

[38] RH-003-2017, *supra* note 16 at 25.

A FT-R service shipper on the NMML currently pays a toll of between 44.3 cents/mcf/day and 47.5 cents/mcf/day including the NMML Surcharge and the maximum benefit of the FT-L (NM) Service would be a reduction of 0.6 cents/mcf/day to those shippers. This benefit is not of the magnitude of the Dawn LTFP and so cannot justify a departure from cost causation.

4.2.3 No acquired rights

In the GH-2-87 and GH-5-89 Decisions, the NEB expressed the view that the payment of tolls in the past conferred no benefit on toll payers beyond the provision of services at that time. This is understood as the principle of no acquired rights.

Views of parties

NGTL

- The FT-L (NM) Service would be consistent with the no acquired rights principle that shippers who have used the pipeline in the past are not entitled to continue using the existing facilities without being affected by new circumstances. PETRONAS' past service on the NGTL System has no bearing whatsoever on the initial level of FT-L (NM) Service toll or the manner in which that toll will change each year over the ultimate duration of the contract term of the service.
- The rate for the FT-L (NM) Service will not be fixed for the contract term. The annual indexing mechanism, which will change the FT-L (NM) Service toll based on annual average changes in the FT-R and FT-D service rates, will cause the Base FT-L (NM) Service toll to vary each year throughout the contract term.

PETRONAS

- FT-L (NM) Service is consistent with the no acquired rights principle. PETRONAS' past use of NMML or other NGTL facilities (e.g., in its capacity as an NMML FT-R service contract holder) does not shield it from the influence of new circumstances concerning the configuration and utilization of the NGTL System.
- The terms and toll for the FT-L (NM) Service will change over the life of the contracts according to the terms of the contracts as specified in NGTL's Application, due to the annual indexing they are subject to.

Other parties

- Westcoast argued that, while the annual index will adjust the initial base toll, it does not expose PETRONAS to changes in the actual cost of providing service to PETRONAS between the NMML receipt points and the WVI delivery point, because the index is based on changes in average costs on the overall NGTL System. This would insulate PETRONAS from new circumstances, contrary to the no acquired rights principle.
- WEG and FEI argued that under FT-L (NM) Service, PETRONAS would effectively have rate increase protection and, despite the toll indexing, would be insulated from rate design and other NGTL System changes.

4.2.3.1 Commission analysis and findings

Generally, if the tolls are otherwise just and reasonable, long-term transportation contracts do not violate the no acquired rights principle simply by virtue of being long-term contracts, particularly if there is some indexing mechanism in place to ensure that the contracted shipper is subject to changing costs on the pipeline system.

Although there is no evidence that PETRONAS has been granted any benefit by virtue of being a past shipper on the NGTL System, the Commission has found that PETRONAS may not bear financial responsibility for the costs caused by the transportation of its gas under FT-L (NM) Service. This raises concerns regarding the no acquired rights principle. Specifically, if PETRONAS is not paying for its present costs incurred, it is not paying for future costs incurred associated with the FT-L (NM) Service by virtue of its contracted use of the FT-L (NM) Service. This could be considered an acquired right. However, this principle was subject to minimal focus by the parties in this hearing and was in no way determinative of the Commission's findings regarding whether the tolls are just and reasonable.

4.2.4 Modifications suggested in oral final argument

Views of parties

NGTL and PETRONAS

- In response to CER IR No. 2.6 to NGTL, NGTL stated that if the Commission does not approve the FT-L (NM) Service as filed, it would be appropriate for the Commission to approve the Service with modifications it believes necessary, subject to NGTL and other parties having an opportunity to comment on them.[39]
- In response to CER IR No. 1.1 to all parties, in which the Commission put forward specific potential modifications for comment,[40] NGTL stated in part that the FT-L (NM) Service negotiated with PETRONAS was negotiated as a package with PETRONAS in the face of a credible alternative. NGTL said that any modification that would substantially change the features and attributes of the FT-L (NM) Service would risk upsetting the balance achieved through negotiations. NGTL also opposed specific increases in tolls put forward by the Commission in the IR as a potential modification.[41]
- During oral final argument NGTL said that the Commission had the ability to modify the FT-L (NM) Service and toll if it needs to. NGTL stated that other parties have said the negotiated outcome does not represent fair value, so that is why the Commission needs to look at whether modifications are required.[42]
- The only specifics NGTL provided about the details of potential modification was that the Westcoast T-North Toll would be the upper limit, although the Commission should not just make the modified toll a fraction or cent lower.[43]

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39 NGTL – *Response to CER Information Request No. 2.6,* Filing ID C15278-2 (5 October 2021) at 19, para b.
40 CER, *Information Request No. 1.1 to all parties*, Filing ID C16105-2, (12 November 2021).
41 NGTL - *Response to CER IR No. 1.1 to all Parties*, Filing C16247-1 (23 November 2021) at 2-3 (pdf 3-4).
42 CER, *NGTL - Application for Firm Transportation – Linked North Montney Service (RH-001-2021) - Transcript, Volume 1,* Filing ID C16745-1 (13 December 2021) at para 287.
43 *Ibid* at paras 290-291.

- With respect to indexing and modifications, NGTL said it did not think there was evidence on the record based on something different than what NGTL presented. NGTL also said that a modification should not upset the overall balance.

Other parties

- FEI indicated a toll closer to the Westcoast T-North Rate may not satisfy the cost causation principle but it may mitigate its concerns to some degree.[44]
- Westcoast agreed that the Commission could make modifications to the Application so that tolls would align with cost-based/user-pay principles. However, Westcoast stated that the Commission does not know what NGTL cost-based tolls would be and as a result the Commission would be modifying the toll completely in the dark. Westcoast argued that the Commission should instead deny the Application.[45]
- WEG agreed with Westcoast's submission above and added a natural justice concern. WEG said that it was impossible for parties to know what case to respond to when there was no knowledge of what an alternative would look like.[46]

4.2.4.1 Commission analysis and findings

With respect to natural justice concerns, the Commission accepts the views of intervenors that the modifications, which were proposed by NGTL in final oral argument for the first time, were non-specific in nature and did not adequately allow parties to know the case to be met or provide a fair opportunity for response. While the Commission has authority to modify applied-for tolls,[47] it would be unfair to do so in this instance given the lack of specifics provided by NGTL and the late stage in the process at which they were proposed. NGTL was given an opportunity to respond in detail on this point in the evidentiary phase of the hearing and if NGTL wished to pursue modifications, it had an obligation to respond in detail on this point in the evidentiary phase of the hearing. For example, alternative relief could have been specified in the Application or at an early stage of the information request process in response to questions. It is incumbent on NGTL and other impacted persons to make strong efforts on their own to develop solutions. It is not up to the Commission to arrive at a solution that has not been adequately detailed in the evidentiary record.[48] Overall, the Commission finds that the modifications proposed by NGTL were not specific enough in nature and came too late to allow for evidence and argument in response.

While modifications proposed for the first time in oral final argument tend generally to be rejected for natural justice reasons, even absent this flaw there was a lack of evidence as to whether modifications would satisfy the cost causation or economic efficiency principles, among other considerations. In its final argument, NGTL proposed toll modifications that would increase the toll for FT-L (NM) Service. While more revenue would increase the likelihood of net benefits

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44 *Ibid* at para 517.
45 *Supra* note 34 at paras 947-948.
46 *Ibid* at para 1207.
47 CER, *Letter Decision – Campus Energy Partners Suffield LP,* RH-002-2020, Filing ID C12297 (7 April 2021). In *Campus* neither party provided cost of service information that was conclusive. The Commission was still able to modify the toll range from what had been applied for, and had authority to do so.
48 NEB, *Reasons for* Decision - *TransCanada Keystone Pipeline GP Ltd.- Keystone XL Pipeline Project*, OH-1-2009, Filing ID A24669-1 (March 2010) at 33 (pdf 45).

to shippers, the risk and benefits to shippers remain uncertain. There would be no correlation between the toll and potential future cost overruns. NGTL conceded in its submissions that there was no evidence upon which the Commission could modify the Service beyond what NGTL had presented, including with respect to indexing. The Commission is of that view that, even absent its finding that it would be procedurally unfair to consider the modification proposed in oral argument, the modifications would not adequately address concerns about the cost causation and economic efficiency principles in any event. As a result, the Commission dismisses the alternative relief suggested in oral final argument in the form of modification to the FT-L (NM) Service.

4.2.5 Conclusions regarding just and reasonable tolls

In considering all aspects of the Application, the Commission is not persuaded by the evidence and argument of NGTL and PETRONAS that the FT-L (NM) Service results in tolls that are just and reasonable. The Commission finds that the requirements for just and reasonable tolls set out in section 230 of the CER Act are not met. The FT-L (NM) Service, which was designed primarily to cover incremental costs, does not comply with the principle of cost causation. NGTL did not adequately justify this departure from cost causation. The Commission finds the FT-L (NM) Service tolling methodology was not sufficiently robust to address costs far into the future.

The Application was not premature, and it was appropriate for NGTL to develop a specialized service for LNG volumes in the face of competition. While the agreement between NGTL and PETRONAS involved two arm's length parties, the FT-L (NM) Service imposed the risk of cost overruns for future facilities on to shippers that would not use the FT-L (NM) Service. The Commission gave weight to the fact that several existing shippers opposed the Application largely for this reason. The CER's decision in RH-001-2020[49] was cited in this hearing for the proposition that the NEB and CER have accepted many tolling methodologies that were not based on the traditional cost of service model. This is undoubtedly correct, however, NGTL did not highlight that the Enbridge decision on this point spoke about tolls that were not cost based being established "generally through agreement with stakeholders." For the FT-L (NM) Service, the only shipper active in the hearing and supporting the FT-L (NM) Service was PETRONAS. While CAPP represented producers and supported the ability of PETRONAS and NGTL to negotiate an agreement, CAPP took no position on the level of the FT-L (NM) Service toll. Several other shippers on the NGTL System participated actively in the hearing and were opposed to the FT-L (NM) Service. Though shipper support, or opposition, of a proposed service is not determinative, it can inform the Commission of the perceived benefits to the parties involved. In this instance, the Commission gave weight to the scale of shipper opposition.

The principle of economic efficiency was also not satisfied as NGTL did not demonstrate that the FT-L (NM) Service tolling methodology would either maximize utilization of the NGTL System or promote proper price signals for investment.

The Commission rejects the modifications to the tolling methodology suggested by NGTL in oral argument, given they were non-specific in nature and did not adequately allow parties to know the case to be met or provide a fair opportunity for response. The Commission finds that even absent the issue with procedural fairness, there was a lack of evidence as to whether the

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[49] RH-001-2020, *supra* note 21 at 79 (pdf 92).

proposed modifications would satisfy the cost-causation or economic efficiency principles, amongst other considerations.

The principles of cost causation and economic efficiency were given significant weight by the Commission in this case, as was the allocation of the risk of future cost overruns. Ultimately, the tolls for the FT-L (NM) Service Application would not result in just and reasonable tolls. As a result, the Commission denies the toll methodology, Rate Schedule, Service Agreement, Schedule of Service and consequential amendments to the Tariff put forward by NGTL for the FT-L (NM) Service.

4.3 Unjust discrimination

As described in Chapter 3, section 230 of the CER Act requires that tolls must be charged equally to all "traffic": (i) of the same description, (ii) carried over the same route, and (iii) under substantially similar circumstances and conditions. If all of these criteria are present, then no one group or party should be subject to different tolls or different tariff treatment. Otherwise, the toll or tariff would be unjustly discriminatory. Unjust discrimination is prohibited by section 235 of the CER Act. In the case of NGTL, all traffic is natural gas and therefore traffic of the same description.

Differences in tolls between customers for the same class of service are discriminatory. Where there is discrimination, whether there is unjust discrimination or not is a question of fact for the Commission to decide.[50] The burden of proving that the discrimination is not unjust lies with the company, pursuant to section 236 of the CER Act.

Views of parties

NGTL

NGTL submitted that the FT-L (NM) Service was not unjustly discriminatory.

- The alternative option to FT-L (NM) Service to transport gas between NMML and WVI would be to contract for both FT-R and FT-D services, which would cost between 0.401 $/Mcf/d and 0.433 $/Mcf/d more than FT-L (NM) Service. Relative to FT-D and FT-R services, the FT-L (NM) Service is:
    - Traffic of a different description having regard to all the differences in attributes including the more restrictive nature and the longer contract term.
    - Transported under substantially different circumstances, with the primary difference in circumstances being the presence of a competitive alternative. With respect to FT-L (NM) Service, a credible competitive alternative exists for PETRONAS to utilize its resources in the North Montney area to supply its requirements associated with the LNG Canada Project.
    - Carried over different routes. Although FT-D and FT-R services can be nominated to receive gas from the NMML and deliver gas to the WVI Delivery Point, there is no commercial linkage between these two services. The average distance of the

[50] NEB – *Reasons for Decisions – PanCanadian Petroleum Limited application for an order requiring Interprovincial Pipe Line Inc. to transport natural gas liquids for PanCanadian Petroleum Limited from Kerrobert, Saskatchewan*, MH-4-96 (February 1997) at 12 (pdf 22).

FT-L (NM) Service is approximately 26 per cent of the average distance of haul for full-path service originating at NMML.

- No prospective customer other than PETRONAS that has a comparable magnitude of resources available in the North Montney area, developed the means to transport gas from the Westcoast pipeline to the CGL pipeline via a credible alternative, comparable access to transportation arrangements on the CGL pipeline, or indicated preparedness to make comparable long-term contractual commitments to NGTL.
- The OLNA feature of the FT-L (NM) Service allows up to 20 or 50 per cent of the contract demand quantities to access NIT as well as being able to be delivered at the WVI delivery point, which is intended to provide flexibility for PETRONAS. The service attributes and rates for the OLNA feature of the FT-L (NM) Service have been designed to largely mimic those of FT-R service. OLNA provides similar rights and results in a revenue contribution that are similar, but not identical, to that of a commensurate level of FT-R service on the NMML.
- However, FT-L (NM) Service with an OLNA election and FT-R service would not be considered "traffic of the same description" due to differences between the two services.

  Comparing the characteristics of the OLNA feature of the FT-L (NM) Service to FT-R service:

  - The NMML representative rate used to calculate the OLNA rate rider is between 0.029 $/Mcf/day and 0.061 $/Mcf/day lower than the toll for FT-R service on NMML.[51]
  - Under OLNA, a portion of the FT-L (NM) Service has the same priority as FT-R service and can be viewed as being carried over the same route as FT-R service.
  - Expansion capacity that may be required if OLNA is elected will be assessed in the same manner as FT-R service in the area in accordance with NGTL's facilities design methodology.
  - The initial term for OLNA is five years if new facilities are not required[52], renewable in five-year increments for a maximum for 40 years. For FT-R service on NMML, the initial term is 20 years, renewable in one-year increments.
  - FT-L (NM) Service, and thus OLNA, cannot receive gas from storage receipt points and direct or indirect interconnections that allow receipts sourced via third-party transmission pipelines, whereas FT-R service may receive gas from all receipt meter stations.
- Since OLNA can only be accessed as a feature of FT-L (NM) Service, comparisons between OLNA and FT-R service cannot be made without also considering the underlying FT-L (NM) Service.
- If OLNA were eliminated, it would substantially change the FT-L (NM) Service and would result in the FT-L (NM) Service no longer being capable of meeting a specified need for which it was designed. Accordingly, if OLNA is eliminated, NGTL expects the FT-L (NM) Service would be terminated.

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[51] Using the estimated rates for various services on the NGTL System provided in Table 1.4-1, NGTL - R*esponse to CER IR No. 1.4*, Filing ID C14681-2 (27 August 2021) at 16, and Table 3.7-1, NGTL - *Response to CER IR No. 3.7*, Filing ID C16246-1 (23 November 2021) at 22.

[52] Or eight years if new facilities are required, where NGTL has discretion to require a longer contract term.

PETRONAS

PETRONAS submitted that the FT-L (NM) Service was not unjustly discriminatory.

- PETRONAS is a unique shipper amongst the NGTL and Westcoast customer base where its LNG business is concerned. As the supplier and customer of its own gas, PETRONAS needs considerably fewer services from either Westcoast or NGTL compared to other producers in the North Montney area.
- FT-L (NM) Service is a highly specialized service designed to serve a unique market need, namely PETRONAS' desire to utilize its North Montney gas supplies to fulfill its LNG Canada feedstock requirements. The FT-L (NM) Service's purpose, terms, and conditions are fundamentally different from those of NGTL's existing firm service offerings (e.g., FT-R and FT-D services) and so its structure is appropriately distinct from the tolling methodology that applies to those other services. FT-L (NM) Service is less flexible, has a longer contract term, and provides transportation over a fundamentally different route and under substantially different circumstances compared to its existing services.
- Given the lengthy term of the FT-L (NM) Service contracts, PETRONAS needed operational flexibility to occasionally access markets such as NIT or Station 2 to mitigate fluctuations in natural gas feedstock demand.
- The differences between FT-R service and OLNA make the OLNA less flexible compared to FT-R service.
- PETRONAS holds FT-R service on NMML with a 700 MMcf/d transportation commitment.
- PETRONAS considers OLNA to be important attribute of FT-L (NM) Service because it provides risk mitigation, for an additional cost, if required and exercised. Removing the optionality that OLNA provides would be a significant change to the FT-L (NM) Service toll value proposition.

Other parties

Some parties submitted that the FT-L(NM) Service was unjustly discriminatory.

- IGCAA submitted that the FT-L (NM) Service is a discounted toll for volumes that flow under substantially similar circumstances carried over the same route. An NMML producer that chooses to enter a long-term firm sales arrangement with an LNG buyer located at the WVI must secure FT-R and FT-D services, while PETRONAS, nominating under their FT-L (NM) Service, will realize a $0.46 per Mcf toll advantage for comingled volumes over the same path that flow under substantially similar circumstances.
- Westcoast noted that the rate riders for the OLNA would result in tolls for the FT-L (NM) Service that are unduly discriminatory. The OLNA would give PETRONAS the option to make deliveries of NMML receipts to NIT or to the WVI delivery point. In contrast, the NMML FT-R service only permits deliveries to be made to NIT; shippers with NMML FT-R service that wished to make deliveries to NIT or the WVI delivery point would also need to contract for FT-D service at the WVI delivery point.
- Both Westcoast and WEG argued that PETRONAS should not be paying a lower toll for a more valuable service. There is no reason for PETRONAS to pay less than other shippers when it transports its volumes to NIT.

4.3.1 Commission analysis and findings

The Commission denies the FT-L (NM) Service on the basis that NGTL failed to establish that the proposed tolls would be just and reasonable. As a result, there is no need for the Commission to make a finding on FT-L (NM) Service with regards to unjust discrimination. Nevertheless, the Commission has concerns with the OLNA feature of FT-L (NM) Service, which are explained below.

Although NGTL has characterized the toll for OLNA as "similar" to the FT-R toll, it is not. The OLNA toll is in fact lower,[53] and thus discriminatory. OLNA and FT-R service both apply to traffic of the same description (gas), and both carry gas over the same route, from receipt points on the NMML to the NIT hub. Therefore, at issue is whether the OLNA traffic is transported under "substantially similar circumstances and conditions."

NGTL and PETRONAS raised some differences between attributes of OLNA and FT-R service in argument, including differences in term lengths, eligible receipt points, and optionality (including that PETRONAS, shipping under OLNA, has the benefit of being able to ship to WVI instead of NIT). Despite some slightly different attributes, the Commission is not persuaded by NGTL or PETRONAS that the OLNA and FT-R service are not substantially similar services. In this case, the record clearly shows that the fundamental intention of OLNA was to "mimic" FT-R service and to make a revenue contribution comparable to FT-R service, which is evidenced by it being priced based on a representative FT-R service rate.

PETRONAS' circumstance as the only LNG Canada partner with a viable alternative to access the CGL pipeline and a preparedness to sign a long-term supply contract for its LNG Canada feedstocks may be compelling to justify a lower toll for specific point-to-point service to the WVI delivery point. However, this does not imply that PETRONAS ought to access NIT at a discount relative to other FT-R service shippers. PETRONAS is not dissimilar from other FT-R service producers shipping from NMML to NIT, and in fact, PETRONAS holds a large amount of FT-R service on NMML.

Finally, the Commission considered whether the fact that the OLNA exists only as a feature of FT-L (NM) Service constitutes a sufficient difference in circumstance to justify discrimination. Over the course of the proposed 40-year FT-L(NM) Service contract, PETRONAS would have allowance to ship up to 50 per cent of the total contract demand quantities of 510 MMcf/day to NIT, while paying a different rate to FT-R service shippers, at its own discretion. Gas flowing under OLNA is not bound to be shipped under any specific circumstance and, since OLNA essentially transforms a portion of FT-L (NM) Service into FT-R service, the gas that flows under OLNA ships under circumstances more similar to FT-R service than FT-L (NM) Service. Ultimately, although PETRONAS may use the OLNA infrequently, not at all, or to its fullest allowance, an approval of the Service would authorize PETRONAS to utilize OLNA to its fullest extent.

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[53] The NMML representative rate used to calculate the OLNA rate rider is between 0.029$/Mcf/day and 0.061$/Mcf/day lower than the toll for FT-R service on NMML.

PETRONAS and NGTL presented OLNA as an essential feature of FT-L (NM) Service. Taking this into consideration, although the Commission did not identify any unjust discrimination concerns with the FT-L (NM) Base Service, if OLNA offended the principle of no unjust discrimination, the whole service would offend the requirement that there be no unjust discrimination. As stated above, given that tolls were not found to be just and reasonable, the Commission does not need to make a further finding with respect to unjust discrimination.

5 Willow Valley Interconnect Delivery Point

The Commission was asked to designate the WVI as a Group 1 delivery point for the purpose of FT-D service and other delivery services in accordance with the rate design approved for the NGTL System.

Views of parties

NGTL

NGTL submitted that it was appropriate to designate the WVI delivery point as a Group 1 delivery point.

- The WVI delivery point meets the criteria for a Group 1 delivery point as set out in the current NGTL rate design. Interconnection to a major downstream pipeline (i.e., a large-diameter pipeline transporting gas outside of the WCSB) is the only criterion that applies to the designation of Group 1 delivery points. This criterion is met for the WVI delivery point, as a result of its connection with the CGL pipeline, a pipeline that will have a capacity in excess of 2 Bcf/d. The designation of the WVI delivery point as a Group 2 or 3 delivery point would be inconsistent with the approved rate design. Group 2 and Group 3 Delivery Points are commonly referred to as intra-basin delivery points, which WVI is not. A Group 3 designation would also be inappropriate since the parties contracting for FT-D at WVI did not request the premium service characteristic that is applicable at Group 3 delivery points. The parties who have requested FT-D service at WVI have a termination right if WVI is not designated as a Group 1 location. As a result, it is uncertain how much, if any, volume would be contracted for FT-D service at WVI if it were designated as something other than a Group 1 location. In the event WVI is designated as a Group 1 delivery point, the same services available at other Group 1 delivery points on the System would be offered at WVI. These services include FT-D, Short Term FT-D, FT-D Winter, and Interruptible Transportation - Delivery.
- From 25 January 2021 to 5 February 2021, NGTL conducted an open season for FT-D service at the proposed WVI Group 1 delivery point and awarded 323,474 GJ/day (306 MMcf/d) of FT-D service as a result. The billing would begin between 1 April 2024 and 1 April 2025 and is subject to WVI being designated as a Group 1 delivery point with the same tolling as other Group 1 delivery points.
- NGTL stated there would be a toll benefit for all FT-D services if the WVI is designated as a Group 1 delivery point. The average FT-D rate impact of the WVI meter station, reflecting the cost of the meter station, NGTL rate design cost allocation, and the 323 TJ/d of currently known FT-D1 service, is approximately a 0.3 cents/GJ/d reduction. The toll benefit will impact all FT-D services, though slightly differently, as the FT-D Group rates are relative to each other.
- NGTL does not expect the commencement of deliveries to the WVI delivery point to impact applicable FT-R service rates at nearby receipt points because NGTL is not proposing the WVI be designated as a Major Market for the purpose of FT-R service pathing. NGTL’s FT-R service pricing methodology reflects paths from receipt points on the NGTL System to designated Major Markets on the NGTL System.

Other parties

The following parties indicated support for designating the WVI as a Group 1 Delivery Point:

- PetroChina
- Kogas
- Shell Canada Energy
- Diamond LNG Canada Partnership
- Ovintiv Canada ULC
- CAPP
- IGCAA
- ARC Resources Ltd. (ARC)
- Shell Energy North America (Canada) Inc.

Some parties submitted additional evidence in support of designating the WVI as a Group 1 delivery point.

- Kogas and Shell submitted that they are currently under contract for FT-D service at WVI, following participation in the open season. Kogas stated that it could not construct its own direct pipeline to transport its own feedstock from production facilities to the CGL pipeline inlet due to limited production capability and the remote location from the CGL pipeline inlet. In addition, FT-D service allows access to the NIT market and a higher level of flexibility.
- Diamond LNG Canada Partnership and PetroChina stated that the creation of the WVI and designation as a Group 1 Delivery Point will provide much needed commercial certainty for the owners of the LNG Canada Project and would enhance market options for NGTL shippers.

5.1.1 Commission analysis and findings

The Commission approves the designation of WVI as a Group 1 delivery point for the purpose of FT-D service and other delivery services in accordance with the approved rate design. WVI will meet the definition of a Group 1 delivery point, as defined in the Tariff, by virtue of being connected to the CGL pipeline, which is a large-diameter pipeline transporting gas outside of the WCSB.

Multiple parties submitted evidence in the hearing supporting the designation of WVI as a Group 1 delivery point. No party has raised concerns regarding the proposed designation. Further, in considering the designation of WVI as a Group 1 delivery point, the Commission considered the potential benefits and adverse impacts on Canada's natural gas markets. The Commission finds that new delivery points in the North Montney will increase the integration of that region to other markets and result in overall benefits to WCSB producers and others.

6 Implications of prior orders

6.1 Towerbirch Expansion Project – Condition 1 of Order TG-008-2016

The NEB approved the Towerbirch Expansion Project (Towerbirch Project) in the GH-003-2015 Decision. The Towerbirch Project included approximately 87 km of new gas pipeline and associated facilities in northwest Alberta and NEBC, consisting of the Tower Lake section (32 km) and the Groundbirch Mainline (55 km).[54] In its decision the NEB addressed concerns regarding the potential for facilities on the Tower Lake section of the Towerbirch Project to eventually serve different markets such as the LNG Market, whereby the path of gas would be substantially altered and could potentially change the NEB's findings around the degree of integration of the Towerbirch Project facilities with rest of the existing NGTL System. In light of these concerns, the NEB imposed Condition 1 in Order TG-008-2016 (**Condition 1**):

> If, over the operating life of the Project, some or all of the gas transported on the Tower Lake section does not continue to travel eastward on the Groundbirch Mainline to delivery points on the NGTL System in Alberta, and instead is delivered to markets not currently attached to the NGTL System, NGTL must re-apply to the [NEB] for approval of a tolling methodology on the Tower Lake section.

In this Application, NGTL confirmed that the requirement of Condition 1 of Order TG-008-2016 will not be triggered as a result of the FT-L (NM) Service or FT-D1 service at the WVI delivery point because gas transported on the Tower Lake section will continue to flow eastward once it reaches the Groundbirch Mainline. WEG and FEI submitted that they were concerned about the continued appropriateness of the Towerbirch tolling methodology approved in the GH-003-2015 Decision, and requested the Commission consider this issue as part of the Application.

In approving the List of Issues for this proceeding, the Commission stated that it was not persuaded by comments from WEG and FEI that Condition 1 requirement has been triggered.[55] The Commission noted that NGTL confirmed that the implementation of the FT-L (NM) Service and availability of FT-D service at the WVI delivery point will not impact the direction of gas flow on the Groundbirch Mainline, and that gas transported on the Tower Lake section will continue to flow eastward once it reaches the Groundbirch Mainline. On that basis, this matter was not included in the List of Issues to be considered in this Application.

6.2 NMML tolling methodology – Condition 2 of Order TG-002-2020

The Commission approved the NMML Tolling Methodology in the NGTL System Rate Design and Services Decision (RH-001-2019). The Commission found that the NMML tolls adhered to the principles of cost causation and economic efficiency, as NMML shippers bore the financial responsibility for costs caused to the existing system and the addition of the NMML Surcharge resulted in appropriate price signals. The Commission found that compliance with these principles, in combination with the extensive integration and similarity of services between the NMML and the Existing NGTL System, justified combining the costs of the NMML and the Existing NGTL System into a single cost pool for rolled-in treatment of the system FT-R toll on the NMML. The Commission also determined that the NMML provided qualitative benefits to the

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54 See GH-003-2015, *supra* note 6 at 4 (pdf 20).
55 CER - *Notice of Public Hearing RH-001-2021 and Procedural Letter*, Filing ID C14102-1 (15 July 2021) at 4.

NGTL System and significant contributions by introducing a new source of supply in light of declining WCSB production, which improved security of supply, enhanced liquidity, and supported the utilization of the existing NGTL System.

However, the Commission stated that future diversions of gas carried over the NMML to new large volume markets such as the LNG market on the Pacific Coast "could result in a material change in utilization of segments of the NMML and NGTL's planned downstream capacity expansions". The Commission further noted that "such a scenario would call into question the reasoning underpinning the Commission's findings regarding integration". As a result of these concerns, the Commission imposed Condition 2 in Order TG-002-2020 (**Condition 2**):

> NGTL must re-apply to the Commission for approval of a revised tolling methodology on the NMML if, over the operating life of the NMML, some or all of the gas transported on the NMML is delivered to new large markets, such as the LNG market on the Pacific coast.

In this Application, NGTL acknowledged that the Condition 2 requirement would be triggered upon gas delivery at the WVI under either FT-L (NM) Service or FT-D1 service. However, it requested an affirmation from the Commission that the NMML Tolling Methodology approved in the RH-001-2019 Decision for existing NGTL System services that utilize the NMML be maintained.

Views of parties

NGTL

- Condition 2 will be triggered by gas delivery at WVI under either FT-L (NM) Service or FT-D1 service as some NMML gas will be flowing to the LNG Market. However, the existing NMML Tolling Methodology should be maintained because the factors that supported its establishment in RH-001-2019 remain applicable and will not change following gas commencement.
- Gas transported under the FT-L (NM) Service is subject to a unique tolling methodology and will be incremental to existing NMML FT-R service quantities. In addition, existing NMML FT-R services are not allowed to be converted to FT-L (NM) Service. Therefore, there will be no reduction in the existing utilization of the NMML or the integration of existing volumes with the rest of NGTL System due to the FT-L (NM) Service.
- From an operational perspective, deliveries to WVI are expected to be comprised of the comingled gas stream from all receipts upstream of the WVI delivery point including receipts along: the NMML, the Saturn Extension, and the Groundbirch Mainline between Saturn and the WVI delivery point, including Groundbirch East.[56] Thus, while some gas received through FT-R service and Interruptible Transportation – Receipt (**IT-R**) service along the NMML could be delivered to WVI through the normal functioning of NIT, there is no way to colour code the source of gas molecules.
- The facts and circumstances of the NMML Tolling Methodology approval in RH-00-2019 will continue to be applicable upon the commencement of deliveries at WVI such that tolls will remain just, reasonable, and not unjustly discriminatory because:

[56] Groundbirch East is a point of interconnection between the Westcoast T-North System and the NGTL System.

- Given declining WCSB production, NMML FT-R service contracts remain a key contributor to the aggregate long-term supply needs of NGTL System if FT-L (NM) Service is also provided.
- NMML FT-R service contract levels have increased by approximately 0.13 Bcf/d since RH-001-2019[57] and as a result, NMML FT-R service revenue will continue to contribute to a reduction of rates for existing NGTL customers, with NMML FT-R service revenues expected to cover roughly 175 per cent of the NMML annual costs in the first full year after all NMML contracts are in effect. This is higher than the expected rate of 140 to 170 per cent at the time of RH-001-2019.
- NMML producers will continue to maintain and improve gas supply security and liquidity of the NGTL System, and the addition of WVI further enhances this by connecting the WCSB to the long-term LNG market.
- NMML receipts under FT-R service far exceed expected levels of FT-D1 delivery at WVI, and only a fraction of gas received under FT-R service upstream of WVI, including NMML FT-R service volumes, will be physically delivered at WVI as part of comingled gas. There are currently 2,790 MMcf/d of FT-R service contract volumes upstream of WVI, with FT-L (NM) Service volumes being incremental, over and above that. Meanwhile, FT-D1 volumes contracted at WVI are 285 MMcf/d, which is roughly 10 per cent of the FT-R service contract volumes upstream of WVI. Therefore, the vast majority of FT-R service volumes received upstream of WVI will continue to flow past WVI to markets across the NGTL System.
- The increased distance sensitivity reflected in FT-R service rates will not change such that there will be a continuation of the substantial increase to the cost responsibility of NMML shippers.

- Condition 2 causes a competitive disadvantage for the NGTL System and its customers by making it more difficult to connect to new markets, given that no similar condition has been imposed on a competing pipeline system or in competing basins.
- A delay in the affirmation of the continued use of the NMML Methodology will result in ongoing uncertainty related to transportation rates for NMML FT-R services, and the suggestion by FEI to wait for the physical commencement of deliveries at WVI to affirm the methodology would create risk for existing and prospective NMML FT-R service shippers.
- Condition 2 does not preclude it from requesting the affirmation of current NMML tolling methodology as appropriate. NGTL's request does not sidestep the essence of Condition 2 as suggested by FEI.
- It expects to file a facilities application for construction of the WVI meter station subsequent to the Commission decision on the current Application, and sufficiently in advance of anticipated gas delivery at WVI in 2024. A future WVI meter station application will include any additional contracts that may have been secured at the WVI delivery point.

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[57] This includes an increase from 1.717 Bcf/d at the close of the RH-001-2019 proceeding to the current and pending amount of 1.847 Bcf/d, with all these FT-R service contracts having a 20-year initial term and restricted NMML receipt points during their secondary term. See NGTL, *Response to CER IR No. 2.5*, Filing ID C15278-2 (5 October 2021) at 15-16.

Other parties

The Commission received submissions from other parties in support of and opposed to the affirmation of the continued appropriateness of the existing NMML Tolling Methodology.

- PETRONAS supported NGTL's request for the affirmation. In evidence submitted by the Brattle Group, it argued that the FT-L (NM) Service will not materially change the key outcomes of the NMML Tolling Methodology, namely that NMML FT-R tolls will attract North Montney volumes onto the rest of the NGTL System and make a meaningful contribution to system costs. They further argued that the directional impact of FT-L (NM) Service is to increase the combined contributions of users of the NMML segment to the overall system costs.
- CAPP supported NGTL's request and rationale for the affirmation and agreed that conditions such as Condition 2 can cause commercial uncertainty and create a competitive disadvantage for pipelines and producers in seeking new markets.
- Centra, FEI, WEG, and Westcoast opposed NGTL's request for the affirmation on the basis that the FT-L (NM) Service will provide access to a new large market on the Pacific Coast, as expressly contemplated by Condition 2, which requires NGTL to apply for a revised tolling methodology rather than an affirmation of an existing methodology.
- Westcoast submitted that if the FT-L (NM) Service is approved and NGTL provides the Phase 2 FT-L (NM) Service to PETRONAS, about 35 per cent of gas transported on the NMML would then be diverted to a new large LNG Market and call into question the reasoning underpinning the Commission's findings in RH-001-2019 on integration of the NMML with the rest of the NGTL System.
- FEI raised the issue of timing and argued the NMML Tolling Methodology should not be reaffirmed at this time, but rather should be revisited when and if North Montney volumes flow to WVI, as per the wording of Condition 2. FEI further argued that NGTL's current request for a re-affirmation of the existing methodology rather than a revised NMML Tolling Methodology is sidestepping the essence of Condition 2.

6.2.1 Commission analysis and findings

In assessing NGTL's request for the continued appropriateness of the existing NMML Tolling Methodology as approved in the RH-001-2019 Decision, the Commission considered the requirements of section 230 of the CER Act which requires all tolls to be just and reasonable, and section 235 which requires tolls to not be unjustly discriminatory.

The Commission also considered Condition 2 of Order TG-002-2020, issued pursuant to the RH-001-2019 Decision. Specifically, the Commission considered whether diversions of gas carried over the NMML to a new large volumes market would call into question findings around integration of the NMML, a key factor in the original approval of the rolled-in tolling methodology for determining NMML FT-R tolls.

For this Application, the Commission considered the impacts of the commencement of gas deliveries at the WVI delivery point to RH-001-2019 findings to determine if tolls would remain just and reasonable, and not unjustly discriminatory. This included impacts to the findings on the extent of integration and utilization between the NMML and the rest of the NGTL System,

qualitative benefits of the NMML to NGTL System shippers, and continued compliance with the cost causation and economic efficiency principles.

At this time, the Commission finds it does not have sufficient information to determine whether, upon commencement of gas deliveries at the WVI delivery point, the existing NMML Tolling Methodology will continue to result in tolls that are just and reasonable, and not unjustly discriminatory. The Commission is cognizant of the commercial uncertainty associated with delay. However, the Commission considers it prudent and reasonable to delay this determination, pending receipt of better information that will be available in future and required to fully consider appropriateness of the NMML Tolling Methodology. Therefore, the Commission denies NGTL's request, without prejudice, for the reasons that follow.

Timing of request

The Commission finds that the Condition 2 requirement would be triggered upon gas delivery at the WVI under either FT-L (NM) Service or FT-D1 service, as the WVI will connect the NGTL System to the LNG Canada Project via the CGL pipeline. The LNG market is a new large market pursuant to Condition 2. The Commission notes that this point was uncontested.

The Commission is not persuaded by FEI's suggestion that this issue is more appropriate to consider when and if North Montney volumes physically begin flowing to the WVI. While the Commission agrees that the Condition 2 requirement is triggered if gas ultimately flows to a new market through the FT-L(NM) Service or FT-D1 deliveries at WVI, NGTL need not wait until gas physically flows to make its request to the Commission relating to this Condition. This is consistent with the Commission's general practice on condition compliance matters. Interpreting the condition to require gas to flow before seeking this relief would be illogical, as subsection 229(1) of the CER Act prohibits a company from charging a toll unless it has received Commission approval. If NGTL were to delay its request, it would offend this prohibition. Therefore, while the physical flow of gas to the LNG market is likely to occur in 2024, the Commission can make a decision based on the facts before it in advance of the physical trigger, if it has sufficient information to do so.

The Commission also heard concerns from CAPP and NGTL related to a delay in the affirmation of the NMML Tolling Methodology resulting in uncertainty around NMML FT-R tolls. While the Commission recognizes the need for commercial certainty, it also requires sufficient information to make its determination. The Commission heard evidence in this proceeding that the NMML is currently fully contracted, and NMML FT-R service shippers have 20-year contracts. No compelling evidence was presented that the NMML would face de-contracting or other potential adverse impacts as a result of a delay.

The Commission is of the view that NGTL should make the request again when it can provide sufficient information to allow the Commission to make its determination. The Commission discusses what information would assist in making this determination below.

Utilization and integration of the NGTL System

The Commission agrees with NGTL's submissions that the proposed FT-L (NM) Service would not reduce utilization or integration of existing NMML volumes with the rest of the NGTL System because FT-L (NM) Service volumes would be incremental to NMML volumes and are subject to a separate tolling methodology, and because NMML FT-R service contracts could not be converted to the FT-L (NM) Service. The Commission is of the view that existing NMML FT-R

service volumes would continue to flow onto the rest of the NGTL System, and the degree of integration and utilization of downstream capacity on the NGTL System would not be reduced due to the proposed FT-L (NM) Service. However, the Commission denies approval of the FT-L (NM) Service for reasons described in Chapter 4. Therefore, if NGTL re-applies for approval of a revised FT-L (NM) Service with a modified tolling methodology, potential impacts of that service and tolling methodology on the utilization and integration of existing NMML FT-R service volumes with the rest of the NGTL System would need to be reconsidered.

The Commission finds that the availability of FT-D1 and other delivery services at WVI could result in some FT-R and IT-R services volumes along the NMML being diverted to the LNG market, rather than flowing downstream onto the rest of the NGTL System. NGTL has stated that only a fraction of the gas received upstream of WVI will be physically delivered as FT-D1 at WVI and that the vast majority of gas received under FT-R service upstream of WVI, including NMML FT-R service volumes, will continue to flow to diverse delivery points downstream on the NGTL System. NGTL argued that this means there will be no impact to the degree of integration or utilization between the NMML and the rest of the NGTL System.

However, NGTL's submissions do not account for additional contracts that may be secured at the WVI delivery point through future open seasons. Though NGTL submitted that current FT-D1 volumes contracted at WVI are 285 MMcf/d, it also noted that it will continue to compete for additional volumes associated with the LNG Canada Project, and that a future WVI meter station application will include any additional contracts that may be secured at the WVI delivery point. This means that there may be more FT-D1 contracts at WVI, some of which will be sourced through NMML volumes, potentially diverting more gas received along the NMML to the LNG market. This may impact the degree of integration and utilization between the NMML and the rest of the NGTL System, and possibly call into question RH-001-2019 findings related to the integration and utilization of the NGTL System.

The Commission is of the view that it is unable to properly assess the potential impact of the WVI delivery point on the degree of integration and utilization between the NMML and NGTL System without more information on FT-D1 contracts at WVI, including additional contracts that may result from future open seasons.

Benefits of NMML to NGTL System shippers

The Commission agrees with NGTL's submission that the connection of the WCSB to the LNG Market through the WVI delivery point is likely to result in incremental gas demand. This could trigger an incremental supply response and maintain and improve gas supply on the NGTL System, for reasons described in Chapter 2 of this decision. However, the Commission notes that NGTL has also submitted that FT-D1 volumes at WVI may be sourced through NMML FT-R service volumes, which means that some NMML gas that originally would have flowed downstream onto the rest of the NGTL System will be diverted to the LNG market instead. This could result in less NMML gas flowing downstream onto rest of the NGTL System which is likely to have an impact on the enhanced liquidity that NMML shippers provide to the NGTL System, a key consideration in the approval of the NMML Tolling Methodology in RH-001-2019. As previously explained, while the Commission recognizes NGTL's submission that only a fraction of NMML gas received upstream of WVI will be physically delivered at WVI, the estimation provided by NGTL in this Application does not account for the possibility of increased FT-D1 contracts at WVI which may result due to future open seasons, or potential volumes received from IT-D. NGTL has submitted that it will continue to compete for additional volumes associated with the LNG Canada Project, which means that there may be increased contracts

secured at WVI through future open seasons by NGTL shippers wishing to access the LNG market. Therefore, the Commission finds that at this time, there is uncertainty regarding the impacts of WVI on the NMML contribution to the liquidity of the NGTL System.

NMML shipper's compliance with the cost causation principle

NGTL submitted that the distance sensitivity incorporated in the NMML Tolling Methodology, including the Surcharge Coefficient and Formula, as contemplated in the RH-001-2019 Decision will remain unchanged by the commencement of gas deliveries at WVI because the FT-L (NM) Service is subject to a separate tolling methodology, while FT-D1 delivery services at WVI will be tolled at the FT-D floor rate. NGTL also provided evidence that NMML FT-R service revenues are now expected to cover roughly 175 per cent of the NMML annual costs, which is higher than the percentage expected during the RH-001-2019 proceeding.

The Commission accepts that with the commencement of gas delivery at WVI and FT-D1 services being tolled at the FT-D floor rate, the substantial increase in cost responsibility of NMML shippers inherent in the NMML Tolling Methodology approved in the RH-001-2019 Decision would remain, while NMML FT-R service revenues continue to contribute to rate reductions for other NGTL System shippers. Given that the Commission denies approval of the FT-L(NM) Service, the effects of any future amended service application on the cost causation principle would need to be reconsidered.

Next steps

For the reasons above, the Commission denies NGTL's request for the affirmation of the continued use of the existing NMML Tolling Methodology for existing services that utilize the NMML, upon commencement of gas deliveries at the WVI delivery point. The Commission requires more detailed and reliable information regarding contracted FT-D1 volumes at WVI likely to be available in the future, and associated impacts on the extent of integration of the NMML segment with the rest of the NGTL System, in order to assess the continued appropriateness of the NMML tolling methodology.

For clarity, this decision does not impact the current use of the NMML Methodology for existing services that utilize the NMML segment of the NGTL System. These tolls remain just, reasonable, and are not unjustly discriminatory. Rather this decision relates to the appropriateness of the continuation of the NMML methodology for existing services upon commencement of gas deliveries at the WVI delivery point, as contemplated by Condition 2 of Order TG-002-2020.

The Commission leaves the timing of NGTL's application for this relief in NGTL's hands, noting that timing closer to the filing of an application to construct the WVI meter station would be appropriate, given more information would be available relating to more current contracts secured at the WVI delivery point. The Commission requires information about the quantity of FT-D1 contracts at WVI, including additional contract volume resulting from future open seasons, to determine the level of NMML volumes that are likely to be diverted away from the NGTL System to the LNG Market, and the impact on the utilization and integration of the NMML segment with the rest of the NGTL System.

Appendix I – List of Issues

Without limiting its consideration of matters arising from the Application, the Commission will be aided by submissions on the following issues:

1. Appropriateness of the proposed FT-L (NM) Service, including the tolling methodology, Rate Schedule FT-L (NM) Service, and the consequential amendments to the NGTL Tariff.
2. Appropriateness of the designation of the proposed Willow Valley Interconnect delivery point as a Group 1 delivery point.
3. Appropriateness of the tolling methodology approved in RH-001-2019 Decision and Order TG-002-2020 for existing NGTL System services that utilize the NMML.