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Régie de l'énergie
du Canada

Canada Energy Regulator Reasons for Decision

NOVA Gas Transmission Ltd.
RH-003-2023



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Canada Energy Regulator Reasons for Decision

In the Matter of
NOVA Gas Transmission Ltd.

Application dated 23 May 2023 for Approval of
the North Montney Mainline Tolling Methodology

RH-003-2023
March 2024

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NOVA Gas Transmission Ltd. – RH-003-2023

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Glossary of Terms and Abbreviations

Application	NGTL's application for approval of the North Montney Mainline tolling methodology (C24574)
BC	British Columbia
CAPP	Canadian Association of Petroleum Producers
CER	Canada Energy Regulator
CER Act	<i>Canadian Energy Regulator Act</i> , S.C. 2019, c. 28, s. 10
Centra	Centra Gas Manitoba Inc.
Commission	The Commission of the Canada Energy Regulator, established pursuant to the Canadian Energy Regulator Act
Condition 2	Condition 2 of CER Toll Order TG-002-2020 (C05448-5)
ConocoPhillips	ConocoPhillips Canada
FortisBC	FortisBC Energy Inc.
FT-D	Firm Transportation – Delivery
FT-L(NM) Service	Firm Transportation – Linked North Montney Service
FT-LE	Firm Transportation – Linked Export
FT-R	Firm Transportation – Receipt
LNG	liquefied natural gas
LNG Canada	LNG Canada Development Inc.
NEB	National Energy Board, predecessor to the CER
NEB Act	<i>National Energy Board Act</i> (R.S.C., 1985, c. N-7, Repealed, 2019, c.28, s.44)
NGTL	NOVA Gas Transmission Ltd.

NGTL System	The extensive natural gas transmission system comprised of approximately 25,000 km of pipeline and associated compression and other facilities in western Canada owned and operated by NGTL.
NIT	NOVA Inventory Transfer; the commercial balancing mechanism for natural gas on the NGTL System and a virtual price point (i.e., not based on a physical location) within the Western Canadian Sedimentary Basin.
NMML	North Montney Mainline
Original Project	An approximately 301 km extension of the NGTL System to the North Montney area in British Columbia that NGTL proposed to build and operate, but later modified.
Petronas	PETRONAS Energy Canada Ltd.
PNW LNG Project	Pacific NorthWest Liquefied Natural Gas Project (proposed but not built)
Settlement	NGTL's application for approval of a rate design methodology and terms and conditions of service for the NGTL System, supported by a contested settlement in the RH-001-2019 proceeding.
System	NGTL System
TTFP	Tolls, Tariff, Facilities & Procedures Committee
Tourmaline	Tourmaline Oil Corp.
Variance Application	NGTL's application to vary certificate of public convenience and necessity GC-125 in the MH-031-2017 proceeding
WCSB	Western Canadian Sedimentary Basin
WEG	Western Export Group
Westcoast	Westcoast Energy Inc.
WVI	Willow Valley Interconnect

Symbols, Formulas and Units

\$	dollars (CND)
%	per cent
Bcf	billion cubic feet
Bcf/d	billion cubic feet per day
km	kilometre
m	metre
m ³	cubic metre
m ³ /d	cubic metre per day
Mcf	thousand cubic feet
MMcf/d	million cubic feet per day
cents/Mcf/d	cents per million cubic feet per day

1 Application and disposition

1.1 NGTL's application

On 23 May 2023, NOVA Gas Transmission Ltd. (**NGTL**) filed an application ([C24574](#)) with the Canada Energy Regulator (**CER**) pursuant to the tolls and tariffs provisions under Parts 1 and 3 of the *Canadian Energy Regulator Act* (**CER Act**) for approval of the North Montney Mainline (**NMML**) tolling methodology (**Application**). The tolling methodology proposed in the Application is unchanged from the tolling methodology approved in the RH-001-2019 Decision and Toll Orders TG-001-2020 and TG-002-2020.¹ The Application was filed in compliance with Condition 2 of CER Toll Order TG-002-2020 (**Condition 2**) in advance of flows commencing at the approved Willow Valley Interconnect (**WVI**) meter station.²

1.2 Summary of disposition

For the reasons that follow:

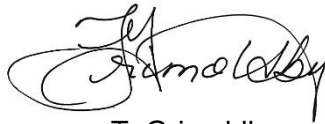
- The Commission approves the NMML tolling methodology, which is a continuation of the existing toll methodology (Section 4).
- The Commission finds that NGTL has complied with Condition 2 and that Condition 2 has no enduring effect going forward (Section 5).
- The Commission finds it unnecessary to impose NGTL's proposed condition (Section 5).
- NGTL must undertake additional consultation regarding information reporting requirements and report back to the Commission (Section 5).
- NGTL must include WVI as a key point for reporting traffic data (Section 5).
- NGTL must provide detailed information in its next toll design filing about its Firm Transportation – Receipt (**FT-R**) floor and ceiling mechanism (Section 5).

¹ *Canada Energy Regulator, NOVA Gas Transmission Ltd. – NGTL System Rate Design and Services Reasons for Decision RH-001-2019 and Orders TG-001-2020 and TG-002-2020*, Filing ID [C05448](#) (25 March 2020).

² *Canada Energy Regulator NOVA Gas Transmission Ltd. – Application for Firm Transportation – Linked North Montney Service – RH-001-2021 Decisions with reasons to follow*, Filing ID [C17285-1](#) (19 January 2022).



S. Luciuk
Presiding Commissioner



T. Grimoldby
Commissioner



S. Sajnovics
Commissioner

Calgary, Alberta
March 2024

2 Background

2.1 Procedural summary

NGTL filed its Application on 23 May 2023. After considering comments about the hearing process and the issues relevant to the Application, the Commission issued Process Letter No. 2 on 31 August 2023, which included a decision on participation, list of issues and timetable of events ([C26021](#)).

The process established to assess the Application included an opportunity for:

- parties to file written evidence;
- parties to ask written information requests of NGTL and other parties;
- the Commission to ask written information requests of parties;
- NGTL to file written reply evidence; and
- parties to file written argument and provide oral final argument and oral reply.

No parties other than NGTL filed their own written evidence, and no reply evidence was filed by NGTL. Both NGTL and other parties, however, responded to information requests. The Commission heard oral final argument on 9 January 2024.

2.2 Overview of the NGTL System

The NGTL System is comprised of approximately 25,000 kilometres (**km**) of pipelines and associated facilities in Alberta and northeast British Columbia (**BC**), connecting the major natural gas production areas in the Western Canadian Sedimentary Basin (**WCSB**) with natural gas consumers in the two provinces, as well as interconnections with downstream pipelines.

On most pipelines, a shipper pays to move a product from one point on the pipeline system to another. On the NGTL System, however, receipt service and delivery service are not directly linked. FT-R service delivers gas onto the System at receipt points, and into the NOVA Inventory Transfer (**NIT**) virtual hub. Firm Transportation – Delivery (**FT-D**) service delivers gas from NIT to System delivery points. The NIT structure allows gas to be received on the System at any receipt point in order to be sold through NIT and delivered at any delivery point. This structure, NGTL has submitted, underpins the liquidity of NIT which increases commodity price transparency and decreases transaction costs.

Since FT-R and FT-D services are equally required to facilitate transportation of gas, the NGTL System toll methodology equally allocates the transmission revenue requirement between receipt and delivery services.³ Two cost drivers are used to set FT-R tolls:

1. The distance of haul which is measured from a receipt point to major delivery markets.
2. The pipe diameter which reflects the impact of pipe size on the unit cost of transportation.

The weighted average distance of haul and the unit cost index are combined to yield the distance-diameter allocation factor and set tolls for each receipt station.

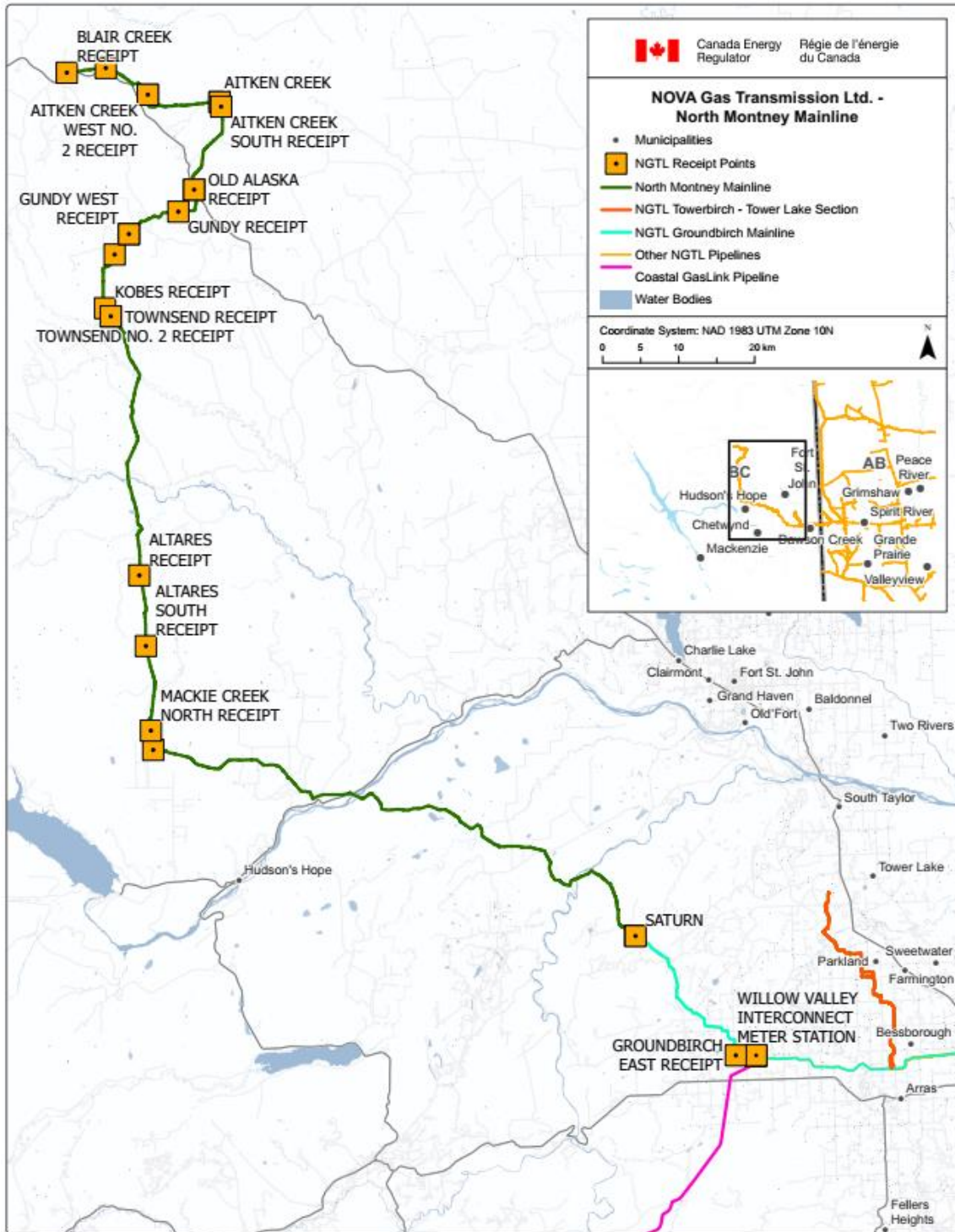
The NGTL System functions as an integrated system and the virtual NIT transaction hub effectively integrates all natural gas supplies, storage, intra-basin and export markets and interconnected pipelines to the NGTL System. Supply and demand adjust over time based on market forces, as illustrated by historical contracting on the System.

The NMML, an approximately 204 km portion of the NGTL System in northeast British Columbia, originates at the Blair Creek meter station and ends at the Saturn facility. WVI is a Group 1 delivery point⁴ located on the Groundbirch Mainline portion of the NGTL System, between the NMML and the BC-Alberta boundary. It has a nominal capacity of approximately 16,150 thousand cubic metres per day or 570 million cubic feet per day (**MMcf/d**). The WVI meter station, expected to be in service on 1 April 2024, will be the interconnecting delivery point between the NGTL System and the large-diameter Coastal GasLink pipeline which will transport gas to LNG Canada Development Inc.'s (**LNG Canada**) export facility.

³ Revenue requirement is the total cost of providing service, including operating and maintenance expenses, depreciation, amortization, taxes, and return on rate base, CER Energy Information Program – [Glossary](#)

⁴ A Delivery point that interconnects with major downstream pipelines.

Figure 1: Map of the North Montney Mainline



2.3 Markets and supply context

NGTL submitted that its System needs access to economic natural gas supply because production from existing wells in the WCSB declines by 17-19 per cent per year. This means the System needs to continually add an average of 2 billion cubic feet per day (**Bcf/d**) of incremental gas supply. NGTL expects more natural gas will be produced in the WCSB, particularly in the North Montney, to satisfy not only the incremental demand at WVI, but also the future demand of other markets connected to the System. The Commission's predecessor, the National Energy Board (**NEB**), determined previously, that the proposed export volumes from the LNG Canada facility are surplus to reasonably foreseeable Canadian demand.⁵ Given the size of gas resources and the additional demand that could come from LNG exports, the NEB assessed the implications, and in 2016, issued a gas export licence to LNG Canada for the export of natural gas from its liquefaction terminal near Kitimat, BC, for up to 40-years from the date of the first export.

In Decision MH-031-2017, the NEB noted that North American markets will continue to function and that increases in demand, including LNG for exports, from Canada or the United States, will be met with increases in supply.⁶ The NEB stated that natural gas markets in North America have functioned efficiently and there is no evidence to suggest that they will not continue to do so into the long-term future.

Gas volumes upstream of WVI, after being comingled, will exceed the capacity of WVI, and most of the comingled gas stream will continue to flow downstream of WVI to other points on the NGTL System. Collectively, seven FT-R customers on the NMML currently hold 1.91 Bcf/d of firm receipt contracts along the NMML, and these customers also hold 3.17 Bcf/d of firm delivery contracts, none of which are located at WVI. Gas received along the NMML will continue to meet the long-term needs of the NGTL System, downstream of WVI. Current FT-D contract volumes at WVI are 0.481 Bcf/d. NGTL stated that the total contractual commitments at WVI captured to-date are representative of the FT-D volumes associated with Phase 1 of the LNG Canada export facility and of the anticipated volumes that NGTL may capture at WVI in the near-to medium term. NGTL forecasted that deliveries through the NGTL System to LNG facilities may reach approximately 1 Bcf/d by 2030. However, any substantial increase in flows through WVI above the current WVI capacity would require a new facility application.

⁵ NEB *Reasons for Decision – LNG Canada Development Inc. – Application for a 40-Year Licence to Export Natural Gas as Liquefied Natural Gas*, Filing ID [A75001-1](#) (January 2016) at 4 (pdf 4).

⁶ NEB *Reasons for Decision – NOVA Gas Transmission Ltd. – North Montney Mainline Variance Application MH--031--2017*, Filing ID [A92071-1](#) (May 2018) at 60-61 (pdf 78-79).

2.4 Relevant past decisions

Original NMML application (GH-001-2014)

On 8 November 2013, NGTL filed an application to build and operate an approximately 301 km extension of the NGTL System to the North Montney area in BC (**Original Project**). The Original Project was proposed in response to demand from Progress Energy Canada Ltd. to connect large volumes of incremental gas supply from the North Montney area to the NGTL System and the Pacific NorthWest Liquefied Natural Gas Project (**PNW LNG Project**) via the proposed Prince Rupert Gas Transmission pipeline.

A Certificate of Public Convenience and Necessity (**CPCN GC-125**) ([A70644-2](#)), was issued on 11 June 2015 for the Original Project. Condition 4 of CPCN GC-125 required NGTL to file confirmation with the NEB prior to commencing construction, that Progress Energy Canada Ltd. had made a positive final investment decision on the PNW LNG Project.

Toll Order TG-002-2015 ([A69520-1](#)) issued to NGTL allowed it to continue its current tolling methodology during a transition period. However, following the transition period, NGTL would have the option of implementing stand-alone tolling on the Original Project, or applying to the NEB for a revised tolling methodology.

NMML Variance Application (MH-031-2017)

On 20 March 2017, NGTL filed an application to vary CPCN GC-125 (**Variance Application**). The Variance Application sought approval to proceed with construction of a subset of the Original Project. In the Variance Application, NGTL requested that NEB approval be independent of any final investment decision related to LNG development, in light of the need for the NMML and new, related contractual commitments. In contrast to the Original Project, NGTL submitted that gas received on the NMML would be commingled with gas on the existing NGTL System.⁷ On that basis, NGTL submitted that rolled-in tolling was appropriate.

On 25 July 2017, Pacific NorthWest LNG Limited Partnership announced that the PNW LNG Project would not proceed as previously planned. Although the PNW LNG Project was not going ahead, in its Reasons for Decision on the Variance Application ([A92071-1](#)), the NEB found that there was a need for the NMML and that the NMML would be economically feasible.⁸

In the decision, the NEB rejected the rolled-in tolling proposed by NGTL. The NEB acknowledged that the NMML would be integrated with and would offer services similar to those offered on the existing NGTL System. However, the NEB found that integration and similarity of

⁷ “Existing NGTL System” referred to the NGTL System as it existed prior to construction of the NMML. The built and operational NMML is part of the NGTL System.

⁸ *Ibid*, Reasons for Decision MH-031-2017 at 62 (pdf 80).

services were not sufficient alone to support the use of rolled-in tolling over the long term, as applied for by NGTL.

The NEB found that NGTL's proposed tolling methodology would result in excessive levels of cross-subsidization of the NMML by shippers on the existing NGTL System. The NEB concluded that such tolls would not be just and reasonable as they would neither adhere to the principle of cost causation nor foster the goal of economic efficiency.

The NEB also found that the FT-R toll ceiling rates employed in NGTL's proposed toll methodology would contribute to problematic price signals and were not, therefore, in accordance with the goal of economic efficiency. For instance, tolls at the Blair Creek end of the NMML, approximately 200 km upstream from Saturn, would be no different than the tolls at Saturn.

The NEB granted some latitude to NGTL to calculate its revenue requirement during an interim period using its existing tolling methodology by combining the incremental revenue requirement of the NMML with the revenue requirement of the existing NGTL System (**Provisional Period**).⁹ The resulting NMML tolls were not to be constrained by the FT-R toll ceiling. Thereafter, in the post-provisional phase, NGTL was required to calculate the tolls for services on the NMML using a stand-alone tolling methodology, unless NGTL applied for, and received approval of, a new tolling methodology. The NEB noted that the requirement for stand-alone tolling was not an indication that the NEB favoured stand-alone tolling for the post-provisional phase; rather, it reflected the NEB's finding that there were no other persuasive long-term tolling alternatives proposed during the hearing on the Variance Application.

The NEB provided guidance with respect to the tolling methodology for the post-provisional phase and suggested that at least three alternatives could be used, such as:

- 1) Developing a separate cost pool for the NMML, which would be recovered from NMML shippers as part of a stacked toll with the FT-R toll at Saturn.
- 2) Applying a surcharge to shippers on the NMML, in addition to the rate these shippers would pay under NGTL's existing toll methodology.
- 3) Creating a toll zone, including the NMML, which would result in an increased allocation of the costs caused by the NMML shippers to the FT-R rates.

The NEB suggested NGTL evaluate and justify the appropriateness of any proposed ceiling and floor rates for its FT-R service, particularly with respect to the distance sensitivity of its tolling methodology. In the NEB's view, NGTL's tolling methodology was insufficiently distance

⁹ The Provisional Period is a period of one year, starting from the date Governor in Council approves amendments to the Certificate for the Variance Facilities, *Ibid, Reasons for Decision MH-031-2017* at ix, (pdf 12).

sensitive to address a major supply extension like the NMML. Simply removing the toll ceiling was not sufficient to address the deficiencies identified in that decision.

NMML post-provisional tolling methodology (RH-001-2019)

On 14 March 2019, NGTL applied for approval of a rate design methodology and terms and conditions of service for the NGTL System, supported by a contested settlement (**Settlement**). NGTL also sought approval of a surcharge formula to be paid by FT-R shippers on the NMML. The proposal that NMML customers would be subject to a surcharge in addition to the NGTL System rate was addressed within the Settlement and the NMML surcharge formula and coefficient were addressed outside of the Settlement. The Commission found that the Settlement should be treated as a package and found that the Settlement would produce tolls that are just and reasonable and not unjustly discriminatory, and therefore was consistent with the requirements of the *National Energy Board Act* (**NEB Act**) ([C05448-1](#)).

The Commission approved NGTL's proposed NMML tolling methodology which was made up of two components:

- The rate resulting from the proposed NGTL System rate design, which reflected increased distance sensitivity for the System as a whole, including the NMML; and
- A formula-based surcharge applicable only to services on the NMML.

NGTL submitted that the effect of the surcharge had to be considered in conjunction with the proposed changes in NGTL's rate design. NGTL submitted that the proposed changes to the rate design increased the degree to which distance was reflected in the FT-R rates, increasing cost accountability from shippers on the NMML.

The second component of the NMML tolling methodology was a surcharge applicable to service on the NMML, which would be calculated annually based on NGTL's proposed NMML surcharge formula. The ratio of the NMML revenue requirement associated with the NMML and the NMML billing determinants, including the firm contract levels and forecast interruptible flows on the NMML, would yield a NMML unit cost. The NMML surcharge coefficient would be applied to this unit cost.

$$\textit{The NMML Surcharge Formula} = \textit{NMML Surcharge Coefficient} \left(\frac{\textit{NMML Revenue Requirement}}{\textit{NMML Billing Determinants}} \right)$$

Supported by expert evidence, NGTL proposed a surcharge coefficient of 0.3. With the exception of Westcoast Energy Inc. (**Westcoast**), which is not a shipper on the NGTL System, parties supported a surcharge concept for the NMML. ARC Resources Ltd (**ARC**), Black Swan Energy Ltd. (**Black Swan**), Canbriam Energy Inc., and PETRONAS Energy Canada Ltd. (**Petronas**) argued the proposed coefficient of 0.3 was excessive. The Commission noted that no shipper on the existing NGTL System advocated for a surcharge greater than 0.3.

Given the direct impacts of the toll methodology on NGTL System shippers, the Commission found it relevant and persuasive that no shipper on the NGTL System tendered evidence or argument that the proposed surcharge coefficient was too low. In addition, the Commission noted that there was no consensus amongst NMML shippers on the level of the coefficient if it were reduced below 0.3. Canadian Association of Petroleum Producers (**CAPP**) found 0.3 to be at the upper end of acceptability. Petronas, Black Swan, and other producers argued that the market competition evidence supported reducing the surcharge coefficient below 0.3. Black Swan's consultant, London Economics International LLC, proposed a coefficient as high as 0.24 while Petronas proposed a coefficient in the range of 0.05 to 0.10.

The Commission approved the applied-for coefficient of 0.3. The Commission found that the lower coefficient advocated by Petronas would significantly reduce the revenue generated by the NMML shippers so that compliance with the cost causation principle would be problematic. In that scenario, the NMML shippers would not make a meaningful contribution for the use of the existing NGTL System, which involves one of the longest distances of haul flow paths on the NGTL System. Furthermore, the Commission found the market evidence on inter-basin competition did not provide adequate comparative financial information for NMML producers versus producers in competing basins, and for producers in conventional areas of the WCSB south and east of the North Montney.

Application for a new service, designation of WVI, and reaffirmation of NMML toll methodology (RH-001-2021)

On 31 May 2021, NGTL applied for an Order of the Commission:

- approving a proposed Firm-Transmission – Linked North Montney Service (**FT-L(NM) Service**) and related tolling methodology;
- designating WVI as a Group 1 delivery point; and
- affirming the tolling methodology approved in the RH-001-2019 decision for existing services that utilize the NMML ([C18261-1](#)).

The Commission denied the FT-L(NM) Service and associated toll methodology. The Commission found that a toll designed mainly to cover incremental costs does not satisfy the cost causation principle, and the circumstances did not justify a departure from the cost causation principle. Therefore, the tolls would not have been just and reasonable. While the FT-L(NM) Service was developed in response to a credible competitive alternative, the Commission found 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. The Commission encouraged all market participants to continue to work together to find innovative service offerings that result in tolls that are just, reasonable, and not unjustly discriminatory.

The Commission approved the designation of WVI as a Group 1 delivery point, finding it met the definition of Group 1 delivery point as defined in the tariff. The Commission found 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.

The Commission denied NGTL's request for the affirmation of the continued use of the existing NMML tolling methodology upon commencement of gas deliveries at the WVI delivery point. The Commission required more detailed and reliable information regarding contracted 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.

The Commission left 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 required information about the quantity of 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.

Application for Firm Transportation-Linked Export Service

On 23 May 2023, NGTL applied for approval of a new Firm Transportation-Linked Export (**FT-LE**) service intended to provide a cost-based, short haul service alternative targeted at meeting the needs of the emerging Canadian LNG market. The application was unopposed by the Tolls, Tariff, Facilities & Procedures Committee (**TTFP**) and was submitted as a negotiated settlement. NGTL committed to include supporting information related to the derivation of the cost of service for the relevant regions, as well as information related to the applicable billing determinants and operational flow, as required, when annual interim or final rate applications are filed with the Commission.

The Commission approved the application as filed and noted that the settlement appeared to be in line with the Commission's direction in RH-001-2021 ([C26214-1](#)). The Commission found the toll methodology and tariff provisions would result in tolls that are just and reasonable and not unjustly discriminatory. The Commission gave significant weight to support for FT-LE and the absence of submissions opposing the application.

The Commission is not aware of any FT-LE contracts being executed at this time.

3 Legal framework

3.1 Legislative requirements

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].”¹⁰ Under the CER Act, there continues 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.

...

¹⁰ *British Columbia Hydro and Power Authority v Westcoast Transmission Co.*, [1981] 2 FC 646 (Fed. Court of Canada – Appeal Division) at para 17.

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

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 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. Adherence to the principle of cost causation lays the foundation for fair competition among regulated pipelines.
- 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.¹¹
- 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.¹² In other words, previous toll payers have no acquired rights.

¹¹ *Supra* note 6, *Reasons for Decision MH-031-2017* at 33, (pdf 51).

¹² NEB, *Reasons for Decision – TransCanada PipeLines Limited – Gros Cacouna Receipt Point application RH-1-2007*, Filing ID [A16008-1](#) (July 2007) at 22 (pdf 34).

Without offending the prohibition against 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.

Whether these features exist in a given case is a question of fact for the Commission to decide based on the evidence before it.

4 North Montney Mainline tolling

NGTL submitted that the existing NMML tolling methodology should be maintained because the factors that supported its establishment will continue to apply following the commencement of deliveries at WVI. For the reasons set out below, the Commission approves the applied-for tolling methodology for the NMML including the current coefficient of 0.3 for the formula-based surcharge that applies to services on the NMML.

4.1 Integration

Views of parties

NGTL

NGTL stated that delivery at WVI will not reduce commercial integration nor materially change physical integration of the NMML to the rest of the NGTL System. The level of integration between the NMML and the rest of the NGTL System is meaningful and has not materially changed since the RH-001-2019 decision.

Like any other receipts on the NGTL System, all gas received on the NMML will continue to be transported on the NGTL System and will continue to serve markets across the System through NIT, including the new WVI delivery point. NGTL stated that the level of FT-D contracts at WVI represents a relatively small percentage (15 per cent) of the total upstream FT-R contracts that could physically be delivered at WVI. Further, all gas received upstream of WVI will be comingled prior to delivery at WVI, such that no distinction can be made in the share of gas received at any specific location upstream of WVI that will be physically delivered at WVI.

NGTL stated that, commercially and physically, gas received under FT-R service along the NMML will continue to utilize the rest of the NGTL System and contribute to meeting the aggregate requirements of customers on the NGTL System. Since the NMML was placed into service, contract utilization has increased from 40 per cent to 60 per cent as production has ramped up. The rest of the NGTL System will also continue to use the NMML following commencement of deliveries at WVI by accessing supply received on the NMML through NIT and by having access to the Aitken Creek Gas Storage facility at the extremity of the NMML.

NGTL argued that deliveries to WVI will not necessarily impact physical flow on the NMML. The comingled gas stream (from receipt points including NMML, the Saturn Extension and Groundbirch East) that is delivered at WVI, and subsequently to the LNG market, will result in a change in physical flow at that part of the System. This change will impact all gas upstream of WVI and there is no factual basis to discriminate against NMML supply relative to other supply upstream of WVI.

NGTL argued that the issue of integration should be looked at beyond the physical flow on the System with consideration of the commercial construct of the NGTL System and other factors such as the nature of service. NGTL stated that the NEB did specifically rely on commercial integration in assessing integration in past North Montney cases. NGTL referred to the MH-031-2017 decision where the NEB found that the NMML facilities would be commercially integrated with the existing NGTL System through the NIT hub.

Other parties

Westcoast argued that the level of integration between the NMML and the rest of the NGTL System was determined in previous decisions by having regard to the physical gas flows between the two sets of facilities and not access to the NIT market by NMML shippers. With the commencement of gas deliveries at WVI, Westcoast argued that gas from the NMML that is comingled with gas from other NGTL facilities upstream of WVI does not establish meaningful and extensive integration between the NMML and the rest of the NGTL System. Westcoast argued that the Commission must decide whether NGTL has established that the rolled-in tolling methodology remains appropriate for the NMML extension “in spite of its reduced level of integration with the existing NGTL System”.

Westcoast argued that the volume of contracts on the NMML and at WVI will continue to change based on additional FT-R and FT-D contracting as well as contracting for the new FT-LE service. Westcoast indicated that the degree of integration of the NMML with the rest of the NGTL System will be impacted by future FT-LE service open seasons for deliveries to WVI.

4.2 Cost causation and cross-subsidization

Views of parties

NGTL

NGTL stated that delivery at WVI will not reduce the revenue contribution of the NMML to the NGTL System. Services on the NMML will continue to make a significant revenue contribution to the NGTL System, comparable to what was expected when the Commission approved the NMML tolling methodology. In the RH-001-2019 proceeding, the Commission considered three different measures used to evaluate the revenue contribution of the NMML. NGTL provided evidence of the ratios used in RH-001-2019 and recalculated the same ratios based on current circumstances. The revenue contribution measures increased as more FT-R commitments have been executed and FT-R rates have risen on the System.

Table 1: Comparison of Revenue Measures from RH-001-2019

Revenue Contribution Measure	RH-001-2019 ¹³	Current ¹⁴
Allocate NMML FT-R revenue first to cover the NMML cost of service, and then allocate residual revenue to partially cover the “existing” NGTL System’s cost of service at Saturn.	NMML FT-R service revenues cover roughly 140 per cent to 170 per cent of the NMML annual cost of service over the first 20 years of the contract term. Residual revenue covers 35 per cent of the “existing” NGTL System’s notionally allocated cost of service at Saturn.	NMML FT-R service revenues cover roughly 185 per cent of the NMML annual cost of service over the first 20 years of the contract term. Residual revenue covers roughly 60 per cent of the “existing” NGTL System’s notionally allocated cost of service at Saturn.
Aggregate cost coverage relative to the NMML shippers’ share of the two cost pools (NMML and the rest of the NGTL System).	73 per cent of the revenue that would be generated under the stand-alone stacked toll for the first 20 years of the contract term	Roughly 80 per cent of the revenue that would be generated under the stand-alone stacked toll for the first 20 years of the contract term.
Allocate NMML revenue to first cover FT-R Service at Saturn, with remainder to NMML cost of service.	NMML revenue would cover all of the NMML shippers’ share of the “existing” NGTL System cost of service allocated notionally to the Saturn receipt point and approximately 40 per cent of the NMML cost of service.	NMML revenue would cover all of the NMML shippers’ share of “existing” NGTL System cost of service allocated notionally to the Saturn receipt point and approximately 48 per cent of the NMML cost of service.

NGTL provided the 2022 NMML accounting records which demonstrated NMML-generated revenues exceeded NMML costs by \$115.9 million. The annual operating surplus generated from services along the NMML is illustrative of the contribution made by customers on the

¹³ *Supra* note 1, *Reasons for Decision RH-001-2019*, at 38 (pdf 49).

¹⁴ Calculated using 2023 NGTL Final Rates. Application filed for approval with the Commission, Filing ID [C24116](#) (21 April 2023).

NMML towards the costs of the rest of the NGTL System. The forecasted NMML revenues are expected to cover approximately 174 per cent of the NMML cost of service in 2023, with revenue coverage forecast to rise further over the remaining 20-year contract term.

NGTL stated that the commencement of deliveries at WVI will not impact any of the determinations made by the Commission in the RH-001-2019 decision when it concluded that the NMML tolling methodology would not result in excessive cross-subsidization. Shippers will pay the same rates for similar services for FT-R contracts on NMML and FT-D contracts at WVI. NGTL stated that determining cross-subsidization requires achieving a balance in benefits and costs between two or more parties. NGTL added that the Commission was cognizant in its RH-001-2019 decision that under the stand-alone tolling methodology advocated by Westcoast, “NMML shippers would subsidize the shippers on the existing NGTL System because their contribution would be in excess of the aggregate costs, they caused on the NMML and the existing NGTL System.”¹⁵ NGTL currently projects NMML revenues to be higher since the RH-001-2019 decision. Directionally, this suggests that any level of cross-subsidization from other NGTL System customers to NMML customers has decreased and that any level of cross-subsidization from NMML customers to other NGTL System customers has increased. NGTL suggested that there were significant changes to the facts and circumstances surrounding NMML from when it was first proposed to when it was built. NGTL indicated that considering the current circumstances, there might not be a clear need to change the tolling methodology on the NMML. This is because fewer historical factors are relevant now, and the level of FT-R contracts and qualitative factors related to covering costs have improved since the original tolling methodology was approved. NGTL submitted that under the current circumstances, including following commencement of deliveries at WVI, the existing NMML tolling methodology represents the upper limit of an alternative to the default tolling methodology that does not result in excessive cross-subsidization from NMML customers to other NGTL System customers and does not offend the prohibition against unjust discrimination.

Other parties

ConocoPhillips Canada (**ConocoPhillips**) continues to support NGTL’s tolling methodology for the NMML. ConocoPhillips argued that the existing NMML tolling methodology continues to be appropriate for the same reasons it was originally approved, despite the anticipated commencement of deliveries at WVI. In particular, and of importance to ConocoPhillips, NGTL has presented uncontested evidence that NMML shippers now pay through their tolls, an even higher contribution to the cost of the remainder of the System than what the Commission considered to be a sufficiently meaningful contribution in its past approvals.

FortisBC Energy Inc. (**FortisBC**) acknowledged a small increase in North Montney FT-R contracted volumes resulted in increased revenue from NMML to the rest of the NGTL System. However, beyond those increased volumes, FortisBC did not agree that any increase in

¹⁵ *Supra* note 1, *Reasons for Decision RH-001-2019* at 39 (pdf 50).

revenues from the NMML mean that the contribution of NMML revenues is greater than forecast at the time of the RH-001-2019 proceeding, or that there should be no concerns with cross-subsidization. Instead, FortisBC argued that aside from the additional contracts, the revenue increase is attributable to the increases in NGTL's rolled-in FT-R tolls that have occurred since the RH-001-2019 proceeding as compared to NMML costs. FortisBC argued that the costs that NMML receipts impose on the rest of the NGTL System is unknown, so while there has been a numerical increase in revenue contribution, the resulting tolls may not be cost-based.

CAPP submitted that the NMML tolling methodology remains appropriate. It stated that revenue contribution is a better mechanism to assess cross-subsidization and cost causation which are indicators of just and reasonable tolls that are not unjustly discriminatory.

Tourmaline Oil Corp. (**Tourmaline**) submitted that the NGTL System continues to evolve, both in terms of supply migration and new demand emergence. The company pointed to NGTL's evidence that NMML FT-R revenue contribution continues to contribute well above the current and projected costs of service for the NMML and that the contribution has already increased roughly seven per cent in the first three years of NMML being in-service. Tourmaline raised a concern that NMML FT-R shippers may, in the future, unreasonably subsidize the rest of the NGTL System.

4.3 Economic efficiency

Views of parties

NGTL

NGTL submitted that tolls on the NMML continue to reflect the distance sensitivity of the existing rate design and are either unconstrained or minimally constrained by the ceiling. With the surcharge, NMML customers continue to pay some of the highest receipt rates on the NGTL System, which are well above the NGTL System average.

NGTL submitted that, with the NMML surcharge of 8.3 cents per million cubic feet per day (**cents/Mcf/d**), receipts points at Blair Creek and Aitken Creek West along the NMML have the highest FT-R rates of 49.1 cents/Mcf/d. The NGTL System average FT-R rate is 25 cents/Mcf/d. The NGTL FT-R ceiling rate and FT-R floor rate are 40.8 cents/Mcf/d and 11.3 cents/Mcf/d respectively.

Mr. Reed, an expert witness for NGTL, reviewed the Application, the joint evidence of John J. Reed and Tony Bishop of Concentric Energy Advisors, Inc. (**Reed/Bishop evidence**) and the reply evidence submitted in the RH-001-2019 and RH-001-2021 proceedings. Mr. Reed affirmed that he is now the sole sponsor of the Reed/Bishop evidence. Mr. Reed believes his evidence regarding the appropriate tolling methodology continues to apply and so endorsed the evidence and reply evidence from the RH-001-2019 and the evidence from the RH-001-2021

proceeding as his own for the purposes of this proceeding. The Reed/Bishop evidence indicated that the economic efficiency toll principle is one of three core ratemaking principles the NEB has used in determining whether tolls are just and reasonable. The Reed/Bishop evidence summarized this principle as “Tolls should promote, to the greatest extent possible, appropriate price signals such that pipeline utilization is maximized and costs are lowered.”

The Reed/Bishop evidence also stated that the toll design approved in RH-001-2019 would be consistent with promoting economic efficiency. When tolls are set in a manner in which the tolls reasonably reflect shippers’ use of the pipeline, tolls promote proper price signals, and thus, shippers are appropriately incented to contract for capacity and relinquish capacity.

The Reed/Bishop evidence also stated that the tolling methodology applicable to the NMML shippers that was approved in RH-001-2019 would substantially increase the financial responsibility of those shippers for the costs of the NMML facilities and use of the rest of the NGTL System – both by enhancing the degree to which the tolls reflect distance sensitivity and assessing the NMML surcharge. As such, the proposed tolling methodology would encourage efficient contracting and use of the new facilities and mitigate against overbuilding of capacity due to otherwise distorted price or tolling signals.

Other parties

Western Export Group (**WEG**) stated that tolls for six receipt points along the NMML are at or near the ceiling in 2023. As some NMML FT-R tolls are now at or near the ceiling, distance sensitivity, appropriate price signals, and economic efficiency become issues of concern again. WEG stated that it continues to be concerned about a lack of sufficient distance sensitivity in the current rate design. In WEG’s view, there are several changes that occurred since the RH-001-2019 decision. While these changes may not yet result in unjust and unreasonableness tolls, and may not yet result in unjustly discriminatory tolls, WEG argued that it is important to continue to monitor the incremental and collective impact of changes as circumstances on the NGTL System continue to evolve and to have access to relevant information to monitor the impact of such changes.

4.4 Unjust discrimination

Views of parties

NGTL

NGTL stated that the primary physical, operational, and commercial characteristics associated with the NMML are similar to those on other portions of the NGTL System. NGTL noted that there are no impacts resulting from deliveries at WVI that are unique to the NMML. Like all other NGTL System facilities, the NMML will operate in accordance with the normal functioning of the NGTL System and NIT. Even when looking solely at the physical flows to WVI, the gas received from all points upstream of WVI, including those on the Saturn Extension and at Groundbirch East, is expected to be used to enable cost-efficient deliveries at WVI, independent of the

commercial arrangements that may exist between receipt customers anywhere on the NGTL System and delivery customers at WVI.

In NGTL's view, imposing further differences in tolling on NMML FT-R customers as a result of commencement of deliveries at WVI would be unjustly discriminatory. The gas received from FT-R customers along the NMML will be indistinguishable from other gas receipts upstream of WVI, which in aggregate will enable physical deliveries at WVI. In addition, gas received along the NMML will continue to be commercially available through NIT to supply any delivery location on the NGTL System. As a result, there is no principled basis for NMML FT-R customers to be treated differently than any other FT-R customers with respect to the impact of commencement of deliveries at WVI.

Other parties

Parties that argued that the current NMML tolling methodology will result in just and reasonable tolls that are not unjustly discriminatory included:

- CAPP;
- Canadian Natural Resources Limited (**CNRL**);
- ConocoPhillips;
- Ovintiv Canada ULC (**Ovintiv**);
- Shell Canada Energy (**Shell**);
- Centra Gas Manitoba Inc. (**Centra**);
- WEG;
- FortisBC; and
- Tourmaline.

4.5 Commission analysis and findings

No parties other than NGTL submitted their own written evidence in this proceeding, other than responding to the information request related to conditions, and there was no opposition to the continued use of the NMML tolling methodology. Most parties expressed support for the existing methodology. Several parties submitted that all the same reasons that contributed to the original approval of the NMML tolling methodology are still applicable, notwithstanding the anticipated commencement of deliveries at WVI.

Integration

The degree of integration of the NMML and the rest of the NGTL System has been assessed in previous proceedings. The Commission finds that there is meaningful and extensive integration between the NMML and the rest of the NGTL System, as was found in previous proceedings.

The Commission agrees with NGTL's submissions that delivery of gas at WVI will not materially change the physical and commercial integration of the NMML to the rest of the NGTL System. Westcoast's argument that the Commission must make a decision about the tolling methodology for the NMML "in spite of its reduced level of integration" is not in the Commission's view, supported by the evidence. While it is possible that when flows commence at WVI some gas could be diverted, the Commission finds there is no evidence that gas flows to the rest of the NGTL System will necessarily decrease. Approximately 1.9 Bcf/d of receipt service is contracted on the NMML. With a contract utilization rate of 60 per cent, approximately 0.760 Bcf/d of contracted receipt service on the NMML is currently unused. The 0.481 Bcf/d contracted for delivery at WVI could be accommodated with incremental supply using existing receipt service with no impact to flows downstream of WVI.

Similar to FT-R services offered on the rest of the NGTL System, gas entering the NMML flows to the rest of the NGTL System under FT-R contracts, and shippers anywhere on the NGTL System can make nominations through NIT. From a physical integration perspective, FT-D contracts at WVI represent approximately 15 per cent of the 3.1 bcf/d of receipt contracts upstream of WVI. Consequently, a large portion of the comingled gas received along the NMML will flow past WVI and continue east onto the rest of the NGTL System. The Commission found in RH-001-2021 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. The Commission is of the view that this continues to be the case and that NGTL has demonstrated that putting WVI into service with the proposed delivery capacity of 570 MMcf/d will not change the degree of NGTL System integration.

On an integrated system, it is likely that the degree of integration of any portion of that system may vary over time. However, it is not the usual practice in toll proceedings to examine the degree of integration of each portion of an integrated system. Integration is usually assessed in detail when facilities are added or removed from a system. In GH-001-2014 the NEB stated that "when the [NEB] considers the principle of cost causation as it pertains to proposed tolling for a project, the [NEB] examines the level of cross-subsidization, the level of integration, and the nature of the services offered. As the level of integration and nature of services may have cost implications, it is not appropriate to separately consider integration and services apart from the cost causation principle."¹⁶

¹⁶ NEB *Reasons for Decision – NOVA Gas Transmission Ltd. – North Montney Mainline Project GH-001-2014*, Filing ID [A69520-1](#) (April 2015) at 32-33 (pdf 56-57).

It is the usual practice in toll proceedings to assess adherence to the cost causation toll principle. The factors that may be considered in assessing integration could instead be considered in an assessment of cost causation. These factors may include:

- how various portions of a pipeline system are used;
- supply, demand, and market dynamics;
- similarities or differences in services offered on the pipeline; and
- costs and benefits to different parties using the pipeline.

As these factors change, costs can be reallocated in a variety of ways (such as among different parts of the system or different services) to ensure the cost causation principle is respected.

In the past, it was necessary for the Commission to assess integration to determine whether the appropriate tolling methodology for NMML would be stand-alone tolling, rolled-in tolling, or a combination of the two. After the NMML tolling methodology was initially approved, concerns remained about whether gas from NMML might be diverted entirely to LNG markets via WVI, and the Commission continued to assess integration. However, gas has now been flowing on NMML for four years and it has been established at this time that gas flows at WVI will be relatively minor at a maximum of 15 per cent of upstream receipt contracts. The Commission finds it is not necessary to reconsider whether rolled-in tolling remains appropriate on the NGTL System each time there is a variation in the degree of integration of any portion of the System.

Cost causation and cross-subsidization

The Commission finds that the NMML tolling methodology – rolled-in tolling with the rest of the NGTL system plus a 0.3 coefficient surcharge – continues to adhere to the cost causation principle. As previously found in its RH-001-2019 decision, the Commission still finds that following the commencement of deliveries at WVI the NMML will provide indirect or qualitative benefits to the NGTL System as a whole and its shippers, and that such benefits may be considered in the evaluation of cost causation. The Commission agrees that the NGTL System benefits from the replacement of declining gas supplies in the WCSB to maintain an efficient utilization of the System. The Commission also finds that through incremental supply, the NMML will maintain and improve gas supply security while ensuring sustainability and enhancing liquidity on the System.

In the RH-001-2019 proceeding, the Commission considered evidence on the level of the coefficient in the surcharge formula. In that proceeding, parties provided evidence that supported a range of appropriate levels for the coefficient. The Commission approved the applied-for coefficient of 0.3 after an extensive hearing process in which all NGTL interested parties had an opportunity to participate. In this proceeding, NGTL provided evidence that demonstrated the coefficient of 0.3 remains appropriate at this time. The Commission finds that the factors that supported the initial establishment of the NMML tolling methodology will continue to apply following the commencement of deliveries at the WVI. The Commission

further finds that the NMML toll adequately covers the cost of service and continues to make a meaningful contribution to the NGTL System. There is no evidence of excessive cross-subsidization caused by the NMML tolling methodology.

The Commission heard concerns from some parties that future events may call into question the appropriateness of the surcharge as the 0.3 coefficient may be too low, or too high. However, no party provided evidence that this is currently the case or raised doubt as to whether the surcharge methodology remains just and reasonable. Parties have the ability to raise concerns with the Commission if circumstances should arise in the future that call into doubt the appropriateness of the NMML toll surcharge.

Economic efficiency

The Commission finds that the NMML tolling methodology continues to adhere to the economic efficiency principle. The commencement of gas flowing at WVI does not materially change the facts and circumstances under which the toll methodology was approved in the RH-001-2019 decision. The Commission agrees with NGTL's submissions in this proceeding that the FT-R rates along the NMML corridor remain the highest on the NGTL System and continue to reflect the distance sensitivity of the existing rate design. Accordingly, the Commission finds that rates along the NMML continue to promote appropriate price signals through distance sensitivity.

No unjust discrimination

In the RH-001-2019 decision, the Commission found that the NMML facilities are unique because the very long extension requires a toll surcharge layered over the basic FT-R tolls to satisfy the cost causation principle and eliminate excessive cross-subsidization. The Commission found that the applied-for tolls were just and reasonable and not unjustly discriminatory.¹⁷ No party submitted evidence in this proceeding that challenged the conclusion reached in RH-001-2019.

The NMML tolling methodology treats the NMML portion differently as it is subject to a surcharge unlike any other portion of the NGTL System, including points adjacent to the NMML. The Commission finds this discrimination continues to be justified by the fact that the NMML was a long extension of the NGTL System. Therefore, the Commission finds that the NMML tolling methodology is not unjustly discriminatory.

¹⁷ *Supra* note 1, *Reasons for Decision RH-001-2019* at 41 (pdf 52).

5 Conditions

In this proceeding the Commission considered whether Condition 2 of Toll Order TG-002-2020 was met. The Commission also considered whether it should impose or modify the condition NGTL proposed in its Application, or whether the objective of the proposed condition could be met in other ways.

5.1 Condition 2 of Toll Order TG-002-2020

In RH-001-2019, the Commission found that diversion from the NMML could result in a material change in utilization of segments of the NMML and NGTL's planned downstream capacity expansions. Commission stated that such a scenario would call into question the reasoning underpinning the Commission's findings regarding integration and therefore included Condition 2 in Toll Order TG-002-2020 ordering that:

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.

Views of Parties

NGTL

NGTL argued that Condition 2 was intended to be a one-time event, with no enduring effect, and the Commission does not need to make a ruling that Condition 2 has expired. The continuation of the condition would be unjust discrimination of traffic of the same description over the same route. NGTL argued that it is unreasonable to re-apply for an NMML tolling methodology every time there are incremental contracts for LNG delivery.

Other parties

CAPP argued that undue attention was placed on physical flows with Condition 2, and the Commission should be more concerned with commercial integration. Shell and CNRL supported CAPP. FortisBC submitted that the condition should be allowed to expire. WEG requested that the Commission declare Condition 2 expires upon gas deliveries commencing at WVI.

Westcoast argued that Condition 2 needs to be retained over the life of the NMML due to ongoing concerns about the degree of integration centered on the physical flows from NMML. Westcoast's interpretation of Condition 2 was that it was not "a one and done thing" and ought to be maintained over NMML's operating life. On this basis, Westcoast argued that physical flow was the focus and determining factor of the degree of integration by the Commission and NEB in prior decisions. The physical flows are significant as they determine the cost and the benefits incurred, and there could be other new large LNG projects that would change the physical flow

and level of integration. For this reason, Westcoast argued that if Condition 2 expires, then, there should be a new condition to apply for a tolling methodology each time gas is transported on the NMML to a large new LNG project.

5.2 NGTL's proposed condition and information sharing alternatives

In the Application, NGTL proposed a new condition:

NGTL must re-apply to the Commission for approval of a tolling methodology on the NMML if, over the operating life of the NMML, a change that materially impacts the relative revenue contribution provided by services located on the NMML occurs.

On 26 October 2023, having heard concerns about NGTL's proposed condition, the Commission asked an information request to NGTL and all intervenors indicating their responses would form part of the evidentiary record ([C26938-2](#)). The request sought parties' views on the proposed condition and on any additional information that would need to be shared by NGTL to enable shippers to assess the need for a potential future toll complaint if circumstances changed and NGTL did not bring an application.

Views of Parties

NGTL

NGTL acknowledged that its proposed condition could be redundant within the existing regulatory framework and collaborative steps and that it would not be concerned if the Commission does not include a new condition. NGTL submitted that this condition focuses on the relative revenue contribution with the goal of creating a greater degree of commercial certainty for NMML contract holders. On this basis, NGTL initially believed that this approach could potentially be supported by a broad cross-section of stakeholders and address future uncertainty over conditions. Therefore, NGTL submitted that the wording was general to encompass a range of possible future conditions which might include:

- a major market designation associated with significant delivery volumes at WVI;¹⁸
- a new or revised NGTL rate design affecting the tolling methodology applicable to the NMML and the resulting rates; or
- substantial new NMML contractual commitments.

¹⁸ Currently, the WVI delivery point is not designated as a major market. In its 2021 application, NGTL stated that delivery points with over 1 Bcf/d of deliveries with a stable delivery level over time were typically considered major markets in its System for the purpose of FT-R pathing.

NGTL indicated there was an application of judgment to determine a “material change” and there was no quantitative bright line test. NGTL would consider various ratios, the factors that led to the change, and conceptually would represent a step change that would be sustained over time. NGTL also indicated that changes to circumstances with a material impact would likely require a filing, however it would be discussed with interested parties through the TTFP collaborative forum, or alternatively any interested party could raise the issue within the forum.

NGTL submitted that it currently publicly provides and files with the Commission as part of annual rates filings, and annual surveillance reports detailed information related to the NMML and the overall NGTL System. For the NMML specifically, this includes:

- the NMML surcharge level;
- FT-R rates for each NMML receipt point;
- NMML billing determinants;
- a NMML revenue requirement summary;
- a NMML income summary;
- a NMML rate base summary;
- NMML return on rate base information;
- NMML average capitalization and overall rate of return information;
- a NMML summary of revenue by class of service;
- NMML abandonment surcharge revenues;
- NMML adjustment for prior year variances; and
- traffic data at Saturn pursuant to the *Toll Information Regulations* and Guide BB.2 of the CER's Filing Manual.¹⁹

NGTL submitted that similar information is contained in these reports for the NGTL System overall and that additional information is also included in various other reports, including the NGTL Annual Plan and related updates, which are provided to NGTL customers. Therefore, NGTL believes that customers have access to sufficient information to determine whether and when to file a toll complaint and no additional information or condition is required. NGTL argued there is no evidence of the need for additional specific information for parties to understand or assess the North Montney toll methodology going forward. NGTL argued that it “is always committed to receiving information from its customers and stakeholders through the TTFP following the TTFP process, and being open to changing things on the System”. NGTL submitted that there is “no evidence that things are not working as they should at the TTFP or

¹⁹ CER [Filing Manual](#) – Guide BB – Financial Surveillance Reports - [Toll Information Regulations](#), SOR/79-319.

that there's a need for additional direction or conditions from the Commission to force NGTL to look at certain things.”

NGTL argued that the Commission's information request on additional reporting did not expand the scope of this hearing into a broad inquiry into NGTL's information reporting to shippers. The Commission was simply interested in whether certain additional information sharing could obviate the need for a condition on the North Montney toll methodology specifically. NGTL stated that the level of information shared between NGTL and its customers is a matter of interest to all NGTL customers, many of whom are not participating in this hearing.

NGTL also argued that no affidavits were filed by any of the intervenors for their information request responses in this proceeding and that when the information request responses were filed there was no opportunity in this process for NGTL or anyone else to test them. For both of those reasons, NGTL argued the Commission cannot give the intervenors' information request responses the same weight as evidence.

Other parties

Several parties argued a condition was not required, including CAPP, Ovintiv, FortisBC, and WEG. However, CAPP stated that if a condition were required, it supports NGTL's proposed condition due to the focus on commercial factors without an undue focus on physical flow.

FortisBC argued that NGTL's proposed condition is unnecessary and redundant given a shipper can file a toll complaint at any point. FortisBC is concerned about potential confusion and unnecessary process due to lacking a quantitative bright line test for a material change. Westcoast argued that NGTL's proposed condition is not an acceptable replacement for the original condition but took no position of whether NGTL's proposed condition is necessary. Tourmaline argued that NGTL's proposed condition is appropriate because it guarantees the opportunity to review the fitness of the NMML tolling methodology in the future.

Several parties requested further information reporting on customers and contracts, benefits of NMML, financial information, and tolls. Some parties submitted arguments about the proper forum and process for sharing the information. The submissions included the following:

- CAPP argued that a determination on reporting requirements was out of scope for this proceeding and that because this issue was not identified in the List of Issues for this proceeding, it may deny interested parties from meaningfully participating on an issue that would affect them all.
- Tourmaline raised concerns about sufficient information to assess if NMML shippers would unreasonably subsidize other NGTL System shippers in the future.
- Centra stated it has concerns about adequate information of shipper contract reporting, and that shippers do not possess information to assess changes to circumstances. FortisBC agreed with Centra's request for an index of customers and a future contract report. A number of parties opposed Centra's request: ConocoPhillips opposes requests

for shipper-specific information, Tourmaline believes NGTL is obligated to file annual NMML contract reporting and the proper forum for this request is the TTFP, and CAPP submitted this is outside the scope of the issues and the TTFP is the proper forum to raise this issue.

- FortisBC requested an annual summary of revenues from specific facilities such as NMML be shared publicly. FortisBC also argued that the TTFP is not an effective mechanism for obtaining information that might subsequently be necessary to be used as part of a complaint because information provided to the TTFP is confidential and can only be released if the members of the TTFP agree. FortisBC expressed concerns that NGTL “picks and chooses” when to engage with the TTFP, including circumstances when NGTL engages at a deeper level with certain parties to the exclusion of others.
- WEG requested information be shared publicly about potential changes in circumstances, physical flows and costs, benefits of NMML, a customer index, and future contract reports.

5.3 Traffic data

The Commission tested a proposed condition that would require NGTL to include WVI as a key point for reporting traffic data once gas flows commence.

Views of Parties

NGTL

NGTL indicated that it does not have concerns with this condition as it would not result in disclosure of confidential information.

Other parties

Certain parties requested additional traffic data be reported. Submissions included:

- Westcoast argued that traffic data at various points from NMML through WVI should be shared to monitor the extent of gas flow from NMML to WVI; and
- FortisBC requested information on physical flows be shared publicly.

5.4 Toll ceiling and floor rates

NGTL’s receipt service rates are subject to a price floor and ceiling mechanism that was initially introduced in 1999. This mechanism avoids significant outliers in receipt rates. Currently during the calculation of rates each year, NGTL reviews the receipt point-specific rates and establishes the ceiling and floor such that approximately 90 per cent of the FT-R contract demand quantity has rates between the FT-R floor and ceiling rates. Accordingly, floor and ceiling rates fluctuate

with each calculation of rates. To maintain a minimum cost accountability level, an absolute FT-R floor is set at 8 cents/Mcf/d.

Views of Parties

NGTL

NGTL submitted that the same distance sensitivity for FT-R tolls that applies elsewhere on the NGTL System applies to the NMML FT-R locations as well. FT-R rates on the NMML are either unconstrained or minimally constrained by the toll ceiling in NGTL's rate design.

Other parties

Some parties expressed concerns about toll ceilings on NMML. FortisBC requested information on constrained and unconstrained tolls be shared publicly. WEG expressed concerns about distance sensitivity, appropriate price signals, and economic efficiency as points along the NMML near or reach the toll ceiling. WEG argued that it is important to continue to monitor the incremental and collective impact of changes as circumstances on the NGTL System continue to evolve and to have access to relevant information to monitor the impact of such changes.

5.5 Commission analysis and findings

Condition 2 of Toll Order TG-002-2020

The Commission finds that in bringing this Application, NGTL has complied with Condition 2 and that Condition 2 has no enduring effect going forward. The Commission is of the view that the condition has been appropriate in achieving the purpose for which it was conceived – that is, to ensure NGTL returned to the Commission and initiated a timely proceeding to examine the tolling methodology of NMML under updated circumstances of deliveries to a new large market.

NGTL's proposed condition and information sharing alternatives

The Commission finds that NGTL's proposed condition is not required. NGTL can file a toll application and interested parties can file complaints with the Commission at any time. NGTL acknowledged that its proposed condition could be redundant within the existing regulatory framework and collaborative steps. The Commission agrees and finds that lack of clarity about what future changes would trigger the condition may decrease regulatory certainty and could exacerbate potential disputes between interested parties and NGTL.

Greater clarity regarding expected information sharing would further obviate the need for the proposed condition, enhance transparency and address informational inequities between the pipeline company and interested parties. Rather than imposing conditions which attempt to prescribe the circumstances under which interested parties must return to the Commission, the Commission reminds NGTL of its existing statutory obligation to seek additional regulatory approvals as may be required due to future changes on the System.

With respect to the ability of interested parties to initiate regulatory processes, the Commission acknowledges that sufficient information from pipeline companies is essential to enable shippers and others to determine if and when it may be appropriate for them to return to the Commission on their own initiative.²⁰ A party filing a toll complaint must establish an arguable case for the Commission to consider. The Commission reminds all parties that once that is done, the onus is then on the pipeline company to prove that its tolls and tariffs are just and reasonable and not unjustly discriminatory. A complainant does not have the onus to prove that tolls and tariffs are not just and reasonable or that there is unjust discrimination, nor to remedy any defects in a pipeline's tolls and tariffs.

The Commission notes NGTL's submissions that requests for additional sharing of information were outside the scope of this proceeding or were unfair. The Commission disagrees. There is no doubt that submissions made by parties on this issue were properly adduced on the record, are relevant, and must be considered, with the Commission having the discretion to give any submission the weight it deems appropriate. In addition, the Commission notes that the parties' responses were filed in November 2023 and that NGTL did not raise concerns or seek an opportunity to file reply evidence at the earliest opportunity, such that the Commission must also weigh NGTL's delay in raising its concerns.

The NMML tolling methodology has been considered by the Commission several times over the past decade. Circumstances will change when gas begins to flow at WVI, as was anticipated in the RH-001-2019 decision. However, this shift will likely be more in the nature of an evolution than a revolution in terms of the System's utilization. These changes may benefit some parties and not others. The Commission notes the ongoing relevance of the NEB's statements in MH-031-2017 that it "does not pick market winners and losers and it is not the [NEB's] responsibility to protect producers in one area of the WCSB from competition from potentially lower cost sources of gas supply in other areas."²¹ Similarly, the Commission is of the view that it is not responsible to protect natural gas consumers in one market from competition from natural gas demand in other markets.

Going forward, NGTL and its shippers should remain best positioned to discuss how to adapt to changes on the NGTL System. Productive and fair discussions depend on an adequate degree of transparency and two-way dialogue between NGTL and its shippers. The Commission is mindful of FortisBC's submission that the TTFP process is not always effective and that NGTL may engage at different levels with different parties as well as NGTL's submission that the TTFP is not a forum for document discovery for litigation.

²⁰ The Commission previously noted in RH-001-2019 that if shippers have concerns with the adequacy of the information being shared, they may raise it with the Commission for determination. *Supra* note 1, *Reasons for Decision RH-001-2019* at 48, (pdf 59).

²¹ *Supra* note 6, *Reasons for Decision MH-031-2017* at 62, (pdf 80).

The Commission has the authority to order pipeline companies to provide information that interested parties require to determine whether tolls are just and reasonable. In this proceeding the submissions were not sufficient to enable the Commission to determine what information was needed and for what purpose. While there were numerous submissions on this topic, and parties requested additional information, these parties did not explain in detail why the information was required to assess just and reasonable tolls on an ongoing basis. However, the submissions on the record raise a clear concern about transparency and the sufficiency of information being shared to enable shippers to determine and discuss if and when the toll methodology or coefficient may need to be modified, or when to seek regulatory intervention. In final argument, several parties referred to the CER's Review of Financial/Commercial Reporting Requirements ([C04489-1](#)). In this proceeding, NGTL did not make any commitments to share additional information outside of the TTFP process and there was no evidence that the Review of Financial/Commercial Reporting Requirements or any other process would address the concerns raised by shippers and other interested parties in this proceeding.

The Commission directs NGTL to consult with shippers and other interested parties and then file with the CER by **2 January 2025**, a report that summarizes:

- a) NGTL's consultation with shippers and other interested parties in response to this condition;
- b) the processes currently in place or that can be developed, to make decisions on information sharing and whether these processes are or would be public or confidential;
- c) the nature of the information currently shared with shippers and other interested parties to determine whether tolls remain just and reasonable, including the frequency, timing, and format in which it is shared and whether this information is shared in confidential or public forums;
- d) additional information that shippers and other interested parties are requesting from NGTL, if any, with a summary of why the parties believe the information is necessary to monitor whether tolls remain just and reasonable, and how parties expect this information would be shared (including the frequency, timing, and format of the information requested and whether this information would be shared confidentially or publicly); and
- e) any objections NGTL has to sharing the requested information, and any commitments NGTL is making to provide additional information (including the frequency, timing, and format of information and whether it is shared confidentially or publicly).

NGTL must copy all shippers and other interested parties on the filing and invite them to file comments on the filing with the CER within 21 calendar days of the filing. The Commission will review the filing and any comments received and will issue further direction on process if required.

Traffic data

The *Toll Information Regulations*²² require companies that charge tolls to file quarterly surveillance reports and traffic data. Pursuant to Guide BB.2 of the CER's Filing Manual²³, NGTL files traffic data at key points on its System. The key points are currently East Gate, West Gate, Upstream of James River, North and East, Saturn, and four intra-basin major markets (Calgary, Edmonton, Oil Sands Delivery Areas Leige, and Kirby²⁴). As WVI is an interconnection with another pipeline system that will serve a new market, the Commission directs NGTL to include WVI as a key point for reporting traffic data beginning with the first quarterly surveillance report filed after flows commence at WVI. This information, combined with traffic data at Saturn, will enable shippers and other interested parties to determine the quantity of gas flowing to WVI, relative to the quantity of gas flowing through Saturn.

Toll ceiling and floor rates

FortisBC and WEG sought information about constrained and unconstrained tolls on the NMML and WEG expressed concerns about distance sensitivity, appropriate price signals, and economic efficiency. However, toll ceiling and floor rates are a feature of the NGTL System's overall toll methodology and not specific to NMML. In RHW-1-2010, the NEB contemplated toll ceiling and floor rates, stating that "the [NEB] views the issue of the footprint of the [NGTL] System covered by the Settlement as being closely linked to the appropriateness of the ceiling rate and floor rate of +/- 8 cents/Mcf from the average FT-R rate for service at individual receipt points."²⁵

In MH-031-2017, the NEB stated that the toll ceiling rates then employed in NGTL's toll methodology, contribute to the problematic price signals. The NEB also stated that demonstrating cost causation with the then-existing tolling methodology, particularly with the toll ceiling, was difficult in the case of major supply extensions, like the NMML facilities. The NEB suggested NGTL evaluate and justify the appropriateness of any proposed ceiling and floor rates for its FT-R service, particularly with respect to the distance sensitivity of its tolling methodology.²⁶

In RH-001-2019, NGTL applied for changes to the FT-R floor and ceiling mechanism. NGTL proposed to establish the ceiling and floor such that approximately 90 per cent of the contract demand quantity has rates that are between the FT-R floor and ceiling rates. An absolute FT-R floor would be set at 8 cents/Mcf/d. This term of the Settlement was unopposed. The

²² NEB [Toll Information Regulations](#), SOR/79-319.

²³ CER *Filing Manual – Guide BB.2 – Traffic Data*.

²⁴ Information about the key points and the corresponding traffic data can be found on the CER Pipeline Profiles: NOVA Gas Transmission Ltd.

²⁵ NEB, *NGTL – Rate Design Methodology and Integration Application Reasons for Decision RHW-1-2010*, Filing ID [A25890-3](#) (August 2010) at 5 (pdf 5).

²⁶ *Supra* note 6, *Reasons for Decision MH-031-2017* at 38 and 42, (pdf 56 and 60).

Commission found that term of the Settlement to be acceptable, and that the proposed changes enhanced distance sensitivity in the rate design.

The NEB and the Commission have considered the evolving toll ceiling and floor rate mechanism and provided guidance in several past proceedings. To address ongoing concerns about toll ceilings and distance sensitivity in the rate design as well as concerns raised in this proceeding, the Commission directs NGTL to provide detailed information in its next toll design filing about its FT-R floor and ceiling mechanism, including:

- whether the mechanism is serving its intended purpose;
- any adverse effects such as dampening distance sensitivity; and
- impacts to pricing signals.

Appendix I – List of issues

The Commission has identified the following issues for discussion in the proceeding.

- 1) Tolling methodology on the North Montney Mainline (**NMML**) that would result in just and reasonable tolls which are not unjustly discriminatory following the commencement of deliveries at the Willow Valley Interconnect.
- 2) The appropriateness of NOVA Gas Transmission Ltd.'s (NGTL) proposed condition.

The factors that the Commission may consider in Issue 1 may include but are not limited to:

- degree of integration between the NMML facilities and the rest of the NGTL System;
- impacts on the rest of the NGTL System and the associated risks (such as underutilization) or benefits if and when gas starts flowing from eastern or other areas to liquified natural gas (**LNG**) markets in the west;
- economic efficiency;
- risk of bypass;
- difference in nature of service, if any, between gas destined to the rest of the NGTL System and the LNG market;
- if a surcharge methodology remains appropriate, and if so, the continued appropriateness of the 0.3 coefficient; and
- cost causation and cross-subsidization.