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September 14, 2023

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Attention: Ms. Ramona Sladic, Secretary of the Commission

Dear Ms. Sladic:

**Re: Trans Mountain Pipeline ULC on behalf of Trans Mountain Pipeline L.P.
(collectively, “Trans Mountain”)
Application for Interim Commencement Date Tolls (“Interim Tolls”) and
other Matters related to the Transportation of Petroleum on the Expanded
Trans Mountain Pipeline System (“Application”)
Canada Energy Regulator (“CER” or “Commission”) Proceeding File OF-
Tolls-Group1-T260-2023-03 01
Reply to Intervenor Comments regarding Trans Mountain Responses to CER
Information Request (“IR”) No. 1**

In accordance with the Commission’s Process Letter No. 2¹ and Ruling No. 1,² Trans Mountain provides the following reply to intervenor comments regarding Trans Mountain’s responses to CER IR No. 1 (“IR Responses”).³

I. Introduction

At the outset, Trans Mountain notes that the intervenor comments primarily consist of legal arguments which are unsupported by evidence,⁴ and which largely relate to matters that

¹ Filing ID [C25730-1](#).

² Filing ID [C25996-1](#).

³ Filing ID [C25905-2](#).

⁴ See e.g. CNRL’s claims regarding the impact of cost increases on the applied-for tolls at Filing ID [C26115-1](#) at PDF 15 of 24; allegations by Total and Parkland that the applied-for Interim Tolls will cause rate or toll shock at Filing ID [C26112-1](#) at PDF 2 of 3 and Filing ID [C26118-1](#) at PDF 2 of 4; and Marathon’s claims of inadequate consultation with shippers at Filing ID [C26090-1](#) at PDF 3-4 of 9.

Trans Mountain has previously responded to in this proceeding.⁵ Trans Mountain continues to rely on its previous submissions and will not repeat those submissions except to the extent necessary to identify where key issues have previously been addressed.

Many of the comments filed by intervenors question aspects of Trans Mountain's IR Responses, although the intervenors do not provide any evidence that casts doubt on the accuracy of Trans Mountain's statements. Trans Mountain stands behind its IR Responses and submits that the information in that filing, together with the information in the Application, comprise all of the relevant evidence before the Commission in this first stage of the proceeding contemplated in the Commission's Process Letter No. 2 ("Phase 1"). To the extent intervenors seek to challenge Trans Mountain's evidence, Trans Mountain expects they will have the ability to do so in the hearing process contemplated in the Commission's Process Letter No. 2 ("Phase 2").⁶ The fact that the intervenors baldly claim that they disagree with Trans Mountain's evidence or do not understand it should be given little weight by the Commission.

This reply submission focuses on specific aspects of the key issues raised by intervenors that Trans Mountain has not already sufficiently addressed in its previous submissions. Trans Mountain's silence on any argument advanced by an intervenor should not be construed as its agreement with that argument.

In summary, Trans Mountain submits:

1. The Commission's decision in Phase 1 should focus on whether the applied-for Interim Tolls adhere to the RH-001-2012 toll methodology and are just and reasonable on that basis.

In accordance with Canada Energy Regulator ("CER") tolling principles and past practice, tolls on CER-regulated pipelines that are regulated on a Group 1 basis (such as Trans Mountain) are either set on a Cost of Service basis or on the basis of a toll methodology negotiated between the pipeline and its shippers. For the expanded Trans Mountain system, tolls are to be determined based on the approved tolling formula prescribed in the Facility Support Agreement ("FSA") between

⁵ Trans Mountain's Application for Interim Commencement Date Tolls (Filing ID [C24695](#)); Trans Mountain's Reply to Comments from Interested Parties (Filing ID [C25338-1](#)); Trans Mountain Response to CER IR No. 1 (Filing ID [C25905-2](#)); and Trans Mountain's Response to CNRL's Request for Extension (Filing ID [C25980-1](#)).

⁶ Filing ID [C25730-1](#) at PDF 2 of 6.

Trans Mountain and its shippers.⁷ The National Energy Board (“NEB”) concluded in its RH-001-2012 decision that the FSA toll methodology will produce just and reasonable tolls.

Trans Mountain has provided evidence on the record of this proceeding demonstrating that the applied-for tolls adhere to the approved methodology. There is no evidence to the contrary. Further, there is no evidence before the Commission that the toll methodology no longer produces just and reasonable tolls. Quite the contrary, the approved toll methodology is essentially a cost risk sharing framework, and Trans Mountain’s applied-for Interim Fixed Tolls would result in Trans Mountain bearing *more than two thirds* of the construction cost increases for the Trans Mountain Expansion Project (“TMEP”) since 2017.

In short, the evidence before the Commission in Phase 1 only supports one determination: that the Interim Tolls in the Application should be approved as applied-for on an interim basis, subject to the Commission’s ability to assess the tolls in more detail in Phase 2.

2. The contested charges, fees or penalties in the Application for which Trans Mountain is seeking approval on a final basis can be addressed in the Phase 2 hearing. However, Trans Mountain requests final approval from the Commission of certain uncontested charges and fees in the Commission’s Phase 1 decision.⁸ Each of these items has been considered and approved in prior NEB or CER decisions.
3. The Phase 2 hearing should commence and conclude as soon as possible to provide all parties (and the broader market) certainty regarding the Interim Tolls.

Contrary to the requests from some parties, the Phase 2 hearing should not include a detailed review of the reasonableness or prudence of individual cost items for the TMEP. Such a review would require extensive discovery over many months, prolong unnecessary uncertainty regarding the final Interim Tolls, and undermine the purpose of the audit for final tolls under the FSA.

Instead, to the extent the Commission decides to conduct a more detailed review of the reasonableness of Trans Mountain’s costs as part of the Phase 2 hearing, it should focus its review on (1) whether Trans Mountain has appropriately

⁷ Facility Support Agreement (Filing ID [A3E7D3](#)).

⁸ Namely: (1) Petroleum Loss Allowance Percentages; (2) Westridge Dock Bid Premiums; (3) Bulk Oil Cargo Fee(s); and, (4) Capital Asset & Loan Fee(s).

categorized the Commencement Date Cost Estimate (at a summary/aggregate level) between Capped and Uncapped costs, in accordance with the RH-001-2012 toll methodology; and (2) the key reasons for the differences between Trans Mountain's CPCN Cost Estimate and the Commencement Date Cost Estimate. The latter issue would allow the Commission and intervenors to more closely review whether Trans Mountain has provided reasonable explanations for the differences and on that basis whether the costs in the Interim Tolls were reasonably and necessarily incurred for the purposes of the FSA, without assessing the reasonableness of individual cost items (which would be addressed through the subsequent audit of final tolls and the Commission's adjudication of those tolls).

The remainder of this reply submission elaborates on the points above and responds to certain additional issues raised by the intervenors' comments that do not relate to the foregoing.

II. Level of Phase 1 Tolls

The majority of intervenors submit that Trans Mountain's applied-for Interim Tolls should not be approved,⁹ with many citing the magnitude of cost increases for the TMEP as the primary basis for the Commission to approve tolls below what Trans Mountain has applied for.¹⁰ But despite their shared objection to Trans Mountain's applied-for Interim Tolls, there is little alignment between the shippers as to what the appropriate level of Interim Tolls should be.

The fact that TMEP costs are higher than estimated in the CPCN Cost Estimate is not evidence that the costs are unreasonable. Nor is it evidence that the approved toll methodology from RH-001-2012 no longer produces just and reasonable tolls. The Commission cannot decide the justness or reasonableness of the Interim Tolls based on loose arguments about "fairness" or "compromise" as the intervenor submissions urge the Commission to do. Rather, the Commission must base its decision on tolling principles and the evidence before it.

⁹ See Filing ID [C26090-1](#) (Marathon) at PDF 5 of 9; Filing ID [C26091-1](#) (TWN) at PDF 1 of 20; Filing ID [C26112-1](#) (Total) at PDF 2 of 3; Filing ID [C26114-1](#) (Cenovus) at PDF 3 of 11; Filing ID [C26115-1](#) (CNRL) at PDF 1-2 & 8 of 24; Filing ID [C26116-1](#) (PetroChina) at PDF 1 of 7; Filing ID [C26118-1](#) (Parkland) at PDF 1 of 4.

¹⁰ Filing ID [C26090-1](#) (Marathon) at PDF 6 of 9; Filing ID [C26111-1](#) (Suncor) at PDF 2 of 4; Filing ID [C26112-1](#) (Total) at PDF 2 of 3; Filing ID [C26113-1](#) (BP) at PDF 2 of 2; Filing ID [C26114-1](#) (Cenovus) at PDF 2 of 11; Filing ID [C26115-1](#) (CNRL) at PDF 2, 4 & 15-16 of 24; Filing ID [C26116-1](#) (PetroChina) at PDF 2-6 of 7; Filing ID [C26118-1](#) (Parkland) at PDF 4 of 4.

In accordance with CER tolling principles and past practice, tolls on CER-regulated pipelines that are regulated on a Group 1 basis (such as Trans Mountain) are either set on a Cost of Service basis or on the basis of a toll methodology negotiated between the pipeline and its shippers. For a pipeline with a negotiated toll methodology like Trans Mountain's, this means that the Commission must start with the methodology negotiated between the pipeline and its shippers and determine whether that methodology will produce just and reasonable tolls. As Trans Mountain has stated previously, the toll methodology for the expanded Trans Mountain system reflects the outcome of extensive negotiations between sophisticated parties culminating in the executed FSA.¹¹

The FSA expressly contemplates that actual TMEP costs may be higher than the pre-construction indicative cost estimate. It allocated the risk of cost increases between Trans Mountain and shippers. The evidence is that the negotiated risk allocation has resulted in Trans Mountain bearing 68.84% of the incremental costs above the CPCN Cost Estimate in the Application, and shippers bearing 31.16%.¹²

Despite Trans Mountain bearing the disproportionate amount of cost increases, that is the result of the toll framework that Trans Mountain agreed to. There is no evidentiary or legal basis for the Commission to relieve the shippers from their corresponding obligations under the FSA. Doing so would not represent a "compromise" as certain shippers claim. To the contrary, it would effectively void the contractual risk sharing framework that was freely negotiated between Trans Mountain and its shippers, all of whom are sophisticated commercial parties.

Further, this is not solely a matter of contractual arrangements between Trans Mountain and its shippers. The negotiated toll methodology and the FSA itself have already been reviewed and approved by the Commission's predecessor in the NEB's RH-001-2012 Decision. The NEB characterized the FSA toll methodology as "essentially a negotiated agreement allocating risk among parties, which includes gives and takes".¹³ The NEB approved this risk sharing framework and concluded that the negotiated methodology will produce just and reasonable tolls.¹⁴

As Trans Mountain explained previously, the reason why it entered into the FSA and applied for approval of the toll methodology in RH-001-2012 was to provide Trans

¹¹ Application (Filing ID [C24695-2](#)) at PDF 9-10 of 145.

¹² Filing ID [C25905-2](#) at PDF 7 of 47.

¹³ NEB RH-001-2012 Decision (Filing ID [A51913-1](#)) at PDF 38 of 54.

¹⁴ NEB RH-001-2012 Decision (Filing ID [A51913-1](#)) at PDF 40 of 54.

Mountain (and its shippers) certainty regarding the toll methodology for the expanded Trans Mountain system before Trans Mountain incurred significant expansion costs. Trans Mountain relied on the executed FSA and the NEB's approval of its toll methodology to invest tens of billions of dollars in constructing the TMEP. It had every right to do so. Parties must be able to trust that contracts entered into in good faith and toll decisions from their regulator will be relied on, without the risk that contracts and toll decisions will be upended where one side of a bargain becomes disgruntled.

To be clear, Trans Mountain agrees with certain intervenors that the Commission has broad discretion to determine whether tolls are just and reasonable, and it has the jurisdiction to determine that a previously approved toll methodology no longer produces just and reasonable tolls. But Trans Mountain is not aware of any prior case in which the Commission or its predecessor approved a negotiated toll methodology and then subsequently determined that the methodology no longer produces just and reasonable tolls.

The circumstances before the Commission do not justify such an unprecedented determination here. As noted, a determination that the RH-001-2012 toll methodology no longer produces just and reasonable tolls would effectively void the contract between Trans Mountain and its shippers regarding how construction cost risks would be allocated between them, after such risks have materialized. It would effectively relieve shippers from contractual commitments they freely entered into, and depending on the resulting methodology force Trans Mountain to absorb costs that it never agreed to cover. As demonstrated in Trans Mountain's response to CER IR No. 1.4, requiring Trans Mountain to absorb any additional costs would seriously jeopardize Trans Mountain's ability to earn any return on its investment (let alone a "fair" return), after Trans Mountain has already invested tens of billions of dollars. And to the extent the Commission re-opens the RH-001-2012 toll methodology but does not decide with finality what the replacement methodology will be, such a decision would also create significant uncertainty regarding future tolls on the Trans Mountain pipeline that would prevent any party, including Trans Mountain, from making informed business decisions going forward.

For these reasons, as well as those that Trans Mountain has discussed previously,¹⁵ re-opening the RH-001-2012 toll methodology would have profoundly negative commercial and regulatory impacts, not just on Trans Mountain but also the broader market and future project proponents deciding whether to invest in facilities that are under the CER's jurisdiction. The Commission should not entertain the possibility of these outcomes unless

¹⁵ Filing ID [C25338-1](#) at PDF 5 of 14; Filing ID [C25905-2](#) at PDF 7, 9 & 13 of 47.

it has clear and compelling evidence that the RH-001-2012 methodology no longer produces just and reasonable tolls. There is no such evidence before the Commission.

The Commission's decision in Phase 1 should accordingly be based on adherence to the RH-001-2012 toll methodology, and whether the tolls in the Application follow that methodology. Trans Mountain notes that this view is shared by certain intervenors. For example, Cenovus Energy Inc. ("Cenovus") submits that the Commission should set Interim Tolls "at a level that is as close as possible to what the final Commencement Date Toll will likely be" and make "a [preliminary] decision that is consistent with the tolling methodology for TMEP (as approved in RH-001-2012)."¹⁶ Trans Mountain agrees with that statement. Trans Mountain also agrees with PetroChina Canada Ltd. ("PetroChina") when it submits that the Interim Tolls "need to be set as close as possible to the final tolls as the evidence available to the Commission allows."¹⁷ These statements support Trans Mountain's view that the Commission's decision on Interim Tolls should be based on the approved RH-001-2012 methodology.

The RH-001-2012 methodology provides that the Interim Tolls are to be set based on the Carrier's Commencement Date Cost Estimate.¹⁸ As discussed in Trans Mountain's response to CER IR No. 1.1, Trans Mountain – as the Carrier – did not have unfettered discretion when developing this cost estimate.¹⁹ Trans Mountain was required to act "prudently and reasonably and in a manner that is consistent with customary and good operating procedures of the crude petroleum and transportation industry."²⁰ The FSA also requires that the underlying costs be "reasonably and necessarily incurred". Trans Mountain understood these obligations from the outset and executed the TMEP accordingly, knowing that its costs would be subject to contractual audit rights and the Commission's regulatory oversight.

Trans Mountain submits there is no evidence before the Commission that (i) Trans Mountain failed to follow the prescribed formula under the FSA in calculating the Interim Tolls, (ii) Trans Mountain did not act prudently and reasonably in calculating the Commencement Date Cost Estimate, or (iii) the Commencement Date Cost Estimate includes costs that were not reasonably and necessarily incurred. The Commission should

¹⁶ Filing ID [C26114-1](#) at PDF 3 of 11.

¹⁷ Filing ID [C26116-1](#) at PDF 2 of 7.

¹⁸ FSA (Filing ID [A3E7D3](#)), ss 1.1 and 3.2(c) at PDF 6 & 14-15 of 31.

¹⁹ Filing ID [C25905-2](#) at PDF 10 of 47.

²⁰ Filing ID [C25905-2](#) at PDF 10 of 47 citing FSA (Filing ID [A3E7D3](#)) s 1.12 at PDF 12 of 31.

not presume that Trans Mountain did not act prudently and reasonably, or that it incurred costs that were unreasonable or unnecessary, as several of the intervenors implore the Commission to do. The Commission must have actual evidence to make such findings, and there is no such evidence before it.

Trans Mountain respectfully submits that the evidence before the Commission demonstrates that Trans Mountain calculated the applied-for Interim Tolls in accordance with the RH-001-2012 methodology, and there is no evidence that would justify a reduction in those tolls in the Commission's Phase 1 decision. For example, the record of this proceeding provides:

- (a) A complete description of how the Fixed Toll Component of the applied-for Interim Commencement Date Tolls was calculated.²¹
- (b) Evidence of the Initial Cost Estimate and Indicative Toll Estimates²² and the audited CPCN Cost Estimate (including the preparation of the CPCN Cost Estimate and its purposes),²³ and the adjustment of the Indicative Toll Estimates by \$0.07/bbl for every one hundred million dollars, or portion thereof, increase or decrease from the Initial Cost Estimate to determine the Revised Tolls.²⁴ The Capped Cost portion of the Fixed Toll was set at the time of the CPCN Cost Estimate.
- (c) Evidence of the Commencement Date Cost Estimate²⁵ and the adjustment of the Revised Tolls by \$0.07/bbl for every one hundred million dollars, or portion thereof, increase or decrease of the Uncapped Costs component from the CPCN Cost Estimate to determine the applied-for Interim Tolls.²⁶ The increase in the

²¹ Filing ID [C24695-5](#), Attachment 3.

²² Filing ID [C24695-2](#) at PDF 13-16 of 145; Filing ID [C24695-5](#), Attachment 3.

²³ Filing ID [C24695-5](#), at PDF 5-11 of 15; Filing ID [C25905-2](#) at PDF 3-6 & 6-10 of 47.

²⁴ Filing ID [C24695-2](#) at PDF 5-11 of 15; Filing ID [C24695-4](#), Schedule 4.1 at PDF 12-15 of 38; Filing ID [C24695-5](#), Attachment 3.

²⁵ Filing ID [C24695-2](#) at PDF 13-16 of 145; Filing ID [C24695-5](#) at PDF 11-15 of 15.

²⁶ Filing ID [C24695-2](#) at PDF 13-16 of 145; Filing ID [C24695-5](#) at PDF 11-15 of 15; Filing ID [C24695-4](#), Schedule 4.1 at PDF 12-15 of 38.

Capped Costs between the CPCN Cost Estimate and the Commencement Date Cost Estimate had no impact on the applied-for Interim Tolls.²⁷

- (d) Categorization of costs as Capped or Uncapped, based on the category descriptions in the FSA.²⁸
- (e) Reasons for the Commencement Date Cost Estimate exceeding the CPCN Cost Estimate.²⁹
- (f) Determination of the specific tolls for each Firm Service contract type.³⁰

This evidence demonstrates that the applied-for Interim Tolls were calculated in accordance with the approved toll methodology.

In contrast, for the reasons below, the alternative toll proposals presented by intervenors do not follow the RH-001-2012 methodology and are not supported by the evidence.

A. Parkland’s Proposal for Interim Tolls at a Level Not Significantly Higher than the “Current Approved Toll Levels”

Parkland Refining (B.C.) Ltd. (“Parkland”) submits that the Interim Tolls should be set in a manner that is “not significantly higher than the current approved toll levels”,³¹ and that the “full toll impacts” should only take effect prospectively when the final tolls are determined.³²

There are no “current approved toll levels” for the expanded Trans Mountain system. The “current approval” for calculating tolls on the expanded Trans Mountain system is the RH-001-2012 approval, which is the basis for the tolls in the Application.

Trans Mountain understands Parkland’s proposal to be that tolls should be set at, or close to, the tolls for the existing Trans Mountain system on the basis that any increase from

²⁷ Filing ID [C24695-2](#) at PDF 13-16 of 145; Filing ID [C24695-5](#), Attachment 3.

²⁸ Filing ID [C24695-5](#) at PDF 4, 11-15 of 15; Filing ID [C25905-2](#) at PDF 6-10 of 47.

²⁹ Filing ID [C24695-5](#) at PDF 11-15 of 15; Filing ID [C25905-2](#) at PDF 2-10 of 47.

³⁰ Filing ID [C24695-4](#) at PDF 5-8 of 38; Filing ID [C24695-3](#) at PDF 4-7 of 12.

³¹ Filing ID [C26118-1](#) at PDF 2 of 4.

³² Filing ID [C26118-1](#) at PDF 2 of 4.

those existing tolls would “materially and adversely impact domestic end-users”³³ and cause “rate shock”.³⁴

Parkland’s approach would have the Commission entirely disregard the toll methodology that Parkland and other shippers agreed to for the expanded Trans Mountain system, which the NEB approved in RH-001-2012. For the reasons set out above, there is no evidentiary or legal basis for the Commission to depart from the RH-001-2012 toll methodology in making its Phase 1 decision on the Interim Tolls.

Further, Trans Mountain disagrees with Parkland’s submissions on “rate shock” (which are similar to the comments from TotalEnergies EP Canada Ltd., or “Total”, on “toll shock”³⁵), and Parkland’s submissions about Trans Mountain’s tolls impacting end-use customers in British Columbia.

With respect to “rate shock”, there can be no “shock” from a toll being established for an expanded pipeline system providing new services. The NEB previously approved contracts and terms of service that reflect the premise that when the TMEP is brought into commercial operation, the tolls and terms of firm service for the entirety of service provided over the expanded system will be governed by the negotiated contracts, with the toll for uncommitted service being derived from those firm tolls. It is hardly surprising that shippers would prefer a toll that “is not significantly higher than current approved toll levels,” but even on an interim basis, that position undermines the entire premise that the TMEP and its associated toll methodology were based upon. The expanded Trans Mountain system’s tolls were never intended or expected to be even close to the tolls for the existing Trans Mountain system. To suggest otherwise is to assume away the requirement for many billions of dollars of capital to expand the system and meet the needs of the marketplace for a large increase in capacity to export markets.

With respect to Parkland’s submissions about impacts on end-use customers, Parkland argues that tolls, once charged to customers, flow through other prices in the economy and cannot later be reconciled or trued-up.³⁶ Parkland makes this argument to support its request that the Interim Tolls be set below the levels in the Application, and that “full toll impacts” should only take effect prospectively when the final tolls are determined.³⁷ This

³³ Filing ID [C26118-1](#) at PDF 2 of 4.

³⁴ Filing ID [C26118-1](#) at PDF 1 of 4.

³⁵ Filing ID [C26112-1](#) at PDF 2 of 3.

³⁶ Filing ID [C26118-1](#) at PDF 1 of 4.

³⁷ Filing ID [C26118-1](#) at PDF 2 of 4.

argument is contrary to the CER's established tolling principles and Parkland's own evidence about the relationship between pipeline tolls and fuel prices for end-use customers.

One of the CER's fundamental tolling principles is the promotion of economic efficiency. In the context of regulated tolls, this principle generally means that tolls should send proper price signals regarding the cost of meeting market demands, which will protect against over investment and promote the efficient development and use of pipeline systems.³⁸ Parkland's proposal to assume away billions of dollars of costs of meeting market demands, and set tolls which more nearly reflect the costs of the existing Trans Mountain system, would not support efficient use of the expanded pipeline system. It would instead promote distorted consumption of pipeline services and leave an enormous future reckoning for shortfalls when final tolls are established. Based on the economic efficiency tolling principle, the Interim Toll should be set as close as possible to the likely final toll, following the RH-001-2012 toll methodology. This approach would send proper price signals that are more reflective of the costs of the pipeline infrastructure being used by shippers.

Trans Mountain further notes that Parkland's submissions about impacts on end-use customers appear to contradict Parkland's evidence in the British Columbia Utilities Commission ("BCUC") 2019 Gasoline and Diesel Prices Inquiry ("BCUC Inquiry"). In its submissions in the BCUC Inquiry, Parkland argued that as an infra-marginal supplier it can only charge a competitive price and must absorb any costs associated with crude supply challenges.³⁹ In this regard, Parkland stated: "it is important to note that, just because our cost of goods (raw material) and transportation costs are increasing does not mean that we can necessarily pass on those costs with a higher crack spread. The market sets the wholesale prices and the crack spread, and Parkland faces competition from other wholesale suppliers."⁴⁰ The BCUC similarly found that the "evidence received demonstrates that changes in cost for BC refineries does not affect wholesale prices. Even if they could produce gasoline at no cost, the wholesale price would be unaffected."⁴¹ This

³⁸ Reasons for Decision, NOVA Gas Transmission Ltd., RH-001-2021, (March 2022) (Filing ID [A8C7C1](#)) at PDF 19.

³⁹ Parkland Fuel Corporation Final Submission. BCUC – An Inquiry into Gasoline and Diesel Prices in British Columbia – Project No. 1599007. August 8, 2019. [doc_54939_2019-08-08-parkland-finalargument.pdf \(bcuc.com\)](#) at PDF 13 of 111, para 18.

⁴⁰ Parkland Evidence. June 27, 2019 – Parkland Submitting Evidence. [doc_54405_c5-2-parkland-evidence.pdf \(bcuc.com\)](#) at PDF 40 of 244, Appendix A at p 3.

⁴¹ Gasoline and Diesel Prices Inquiry. BCUC. August 2019. [doc_55253_2019-08-30-bcuc-gas-diesel-inquiry-executive-summary.pdf](#) at PDF 4 of 14.

evidence and the findings of the BCUC appears at odds with Parkland's submissions to the Commission about impacts on end-use customers from the applied-for Interim Tolls. In any event, Parkland's submissions are not substantiated by any evidence and should be disregarded by the Commission.

B. Marathon's Proposal for Interim Tolls Based on the CPCN Cost Estimate

Marathon Petroleum Canada Trading & Supply ULC ("Marathon") argues that the Interim Tolls should be set based on the CPCN Cost Estimate, instead of the Commencement Date Cost Estimate.⁴² This approach would again be directly contrary to the RH-001-2012 toll methodology, which expressly states that the Interim Tolls should be based on the Carrier's Commencement Date Cost Estimate.⁴³ As Trans Mountain has previously explained,⁴⁴ the toll methodology agreed to in the FSA and approved by the NEB is effectively a risk sharing framework for construction cost risks. Trans Mountain agreed to bear the risk that costs in the "Capped" cost category would exceed the pre-construction cost estimate, in exchange for the shippers bearing the risk of increases in the "Uncapped" cost category. Marathon's approach would effectively eliminate this risk sharing and have Trans Mountain bear all costs above the pre-construction cost estimate, both for Capped and Uncapped costs. This approach would fundamentally upset the balance that was struck in the negotiations, and there is no legal or evidentiary basis for the Commission to accept it.

C. PetroChina's Proposal for Interim Tolls Based on the CPCN Cost Estimate Plus Estimated Costs of Exogenous Factors

PetroChina argues that tolls should be set based on the CPCN Cost Estimate, with the addition of \$1.4 billion in costs attributable to "Exogenous Factors". PetroChina claims that Trans Mountain has not demonstrated other causes of capital cost increases since the CPCN Cost Estimate were unforeseeable, reasonable or necessary.⁴⁵

PetroChina's submissions dismiss Trans Mountain's response to CER IR No. 1.1, in which Trans Mountain explained the key reasons why the Commencement Date Cost Estimate exceeds the CPCN Cost Estimate (which include, but are not limited to, exogenous factors). PetroChina instead relies on Trans Mountain's February 18, 2022 Project Update, in which Trans Mountain attributed roughly \$1.4 billion to extreme weather and measures associated

⁴² Filing ID [C26090-1](#) at PDF 5 of 9.

⁴³ FSA (Filing ID [A3E7D3](#)) ss 1.1 and 3.2(c).

⁴⁴ Filing ID [C25338-1](#) at PDF 3 of 14.

⁴⁵ Filing ID [C26116-1](#) at PDF 3 of 7.

with the Covid pandemic.⁴⁶ The costs described in that Project Update were an estimate and are now more than 18 months out of date, they only comprised a subset of costs associated with exogenous factors, and they excluded the knock-on effects of exogenous factors on other cost categories, such as missed construction windows and schedule extensions. As a result, the \$1.4 billion figure in PetroChina's proposal is not an accurate reflection of the actual costs attributable to exogenous factors.

PetroChina's proposal to allocate the costs attributable to exogenous factors between Capped and Uncapped Costs in accordance with the percentage of total costs reflected in the Application⁴⁷ also ignores the reality that certain exogenous factors disproportionately impacted Uncapped Costs. For example, the 2021 floods primarily affected Spreads 5B and 7, the costs of which fall into the Uncapped Cost category.

In any event, there is no evidentiary basis for the Commission to accept PetroChina's submission that exogenous factors are a valid reason for Uncapped Costs to exceed the CPCN Cost Estimate, but the other factors discussed in Trans Mountain's response to CER IR No. 1.1 are not. As noted above, the intervenors' arguments in this regard are all based on speculation and conjecture, not evidence. For example, when PetroChina discusses the TMEP costs relative to cost increases for the Coastal GasLink Project, PetroChina ignores the materially different scope between those projects (e.g., 980 kilometres versus 670 kilometres; port facilities versus no port facilities; urban construction versus no urban construction, etc.). While Trans Mountain provided high-level information about cost increases on other recent projects in Canada to demonstrate that significant cost escalation for major projects is unfortunately now common in our country, information about total costs on other projects is not evidence that Trans Mountain's Commencement Date Cost Estimate is unreasonable.

For all of these reasons, the evidence does not support PetroChina's proposal for Interim Tolls to be based on the CPCN Cost Estimate, plus \$1.4 billion in costs attributable to "Exogenous Factors".

PetroChina also proposes that the Interim Tolls "should not be subject to any annual inflation."⁴⁸ This argument is directly contrary to Section 2.3 of Schedule C (Tolling Principles) of the FSA and TSA Schedules, which states that: "Starting on the first

⁴⁶ Filing ID [C26116-1](#) at PDF 3 of 7 citing Productivity Challenges section on page 3 of Trans Mountain's February 18, 2022 Project Update: <https://docs.transmountain.com/220218-Project-Update-FINAL.pdf#asset:241182>.

⁴⁷ Filing ID [C26116-1](#) at PDF 3 of 7.

⁴⁸ Filing ID [C26116-1](#) at PDF 6 of 7.

anniversary of the Commencement Date and each year thereafter, the Fixed Toll component will be increased by two and one half percent (2.5%).”⁴⁹ This escalation factor was an integral part of the value proposition negotiated between Trans Mountain and the shippers. The Commission cannot modify this aspect of the methodology without upsetting the overall balance that was struck. For the reasons discussed above, there is no legal or evidentiary basis for the Commission to deviate from the approved RH-001-2012 methodology in its Phase 1 decision.

D. CNRL’s Proposal for Interim Tolls Set at a Mid-Point Between the 2017 CPCN Fixed Tolls and the Interim Commencement Date Tolls

Canadian Natural Resources Limited (“CNRL”) and Total propose setting the Interim Tolls at the mid-point between the audited 2017 CPCN Cost Estimate Fixed Tolls and the Interim Commencement Date Tolls as applied-for in the Application.⁵⁰ Trans Mountain has previously addressed this proposal in several instances,⁵¹ and will not repeat those prior submissions. In summary, however, like the other intervenor proposals, the mid-point proposal is not supported by the approved toll methodology, which again states that the Interim Tolls will be based on the Carrier’s Commencement Date Cost Estimate.⁵² Further, the mid-point toll proposal is not based on any evidence that Trans Mountain’s Commencement Date Cost Estimate includes any costs that have not been reasonably or necessarily incurred. It is instead an arbitrary “compromise” that has no support in law or the evidence.

CNRL cites the NEB’s order regarding Enbridge’s 2010 Canadian Mainline Interim Tolls Application for the Alberta Clipper Expansion Project as support for its mid-point toll proposal.⁵³ In that proceeding, the NEB rejected Enbridge’s application for interim tolls in favor of tolls based on a toll estimate from Order TO-02-2008 approving the expansion project.⁵⁴ In order to fully understand the NEB’s decision in the Enbridge case, however,

⁴⁹ Schedule C of FSA / TSA Schedules (Filing ID [A3E7D5](#)), s 2.3 at PDF 5 of 7.

⁵⁰ Filing ID [C26115-1](#) (CNRL) at PDF 7-9 of 24; Filing ID [C26112-1](#) (Total) at PDF 2 of 3.

⁵¹ Filing ID [C25338-1](#) at PDF 2 of 14; Filing ID [C25905-2](#) at PDF 19-22 of 47.

⁵² FSA (Filing ID [A3E7D3](#)), ss 1.1 and 3.2(c).

⁵³ Filing ID [C26115-1](#) (CNRL) at PDF 6 of 24 citing NEB Letter to Enbridge Pipelines Inc., NEB Tariff No. 303, 2010 Canadian Mainline Interim Tolls Application, PDF 3 of 5 (March 31, 2010) ([A1S3X6](#)).

⁵⁴ Filing ID [A1S3X6](#) at PDF 4 of 5 (“Nevertheless, based on the authority of section 59 and Part IV of the NEB Act, the Board directs Enbridge to re-file interim tolls for the Mainline that would use the same unit toll increases as estimated during the OH-4-2007 proceeding (as per the P55 2011 column, adjusted for nine months, of Table 8-2 of OH-4-2007 Reasons for Decision) for the Clipper Project in the MET.”)

there are two important parts of the decision that CNRL does not discuss. First, the NEB noted its “general practice is to establish such [interim] tolls without an extensive examination of substantive issues.”⁵⁵ This statement fully supports Trans Mountain’s position that the Commission should not conduct a detailed assessment of the costs underlying the Interim Tolls at this stage in its review of the Application (as discussed further below in this reply submission). Second, and importantly, the NEB’s prior Order TO-02-2008 setting Enbridge’s tolls restricted Enbridge from obtaining interim tolls that were different from the previous end-of-year tolls: “Each 1 January, the tolls in effect at 31 December of the previous year for the Mainline Expansion Toll shall continue to be charged on an interim basis until final tolls for that year are approved by a further order of the Board.”⁵⁶ Under that Order, while Enbridge could obtain new final tolls which included the Alberta Clipper Expansion Project costs, it arguably could not do so for interim tolls.⁵⁷ There is no similar tolling order that applies to Trans Mountain or TMEP, and instead the approved RH-001-2012 toll methodology expressly contemplates that the Interim Tolls will be set based on Trans Mountain’s Commencement Date Cost Estimate, not the prior CPCN Cost Estimate.

For these reasons, the NEB’s decision in the Enbridge Alberta Clipper case was premised on materially different facts than those that exist in the present circumstances, and it does not support CNRL’s mid-point proposal.

The other NEB case cited by CNRL – the Westcoast case⁵⁸ – simply stands for the proposition that when an interim toll application is contested, the NEB may approve the interim tolls and then solicit comments from interested parties as to whether the NEB’s preliminary approval should be reconsidered. That case has no bearing on the merits of CNRL’s mid-point proposal, and the Commission’s process for the Application already exceeds the process established by the NEB in the Westcoast case.

In summary, CNRL’s proposal does not follow the RH-001-2012 toll methodology, it is not supported by evidence, and consequently, it cannot be accepted by the Commission in its Phase 1 decision.

⁵⁵ Filing ID [A1S3X6](#) at PDF 4 of 5.

⁵⁶ TO-02-2008 (Filing ID [A1E0C4](#)) at PDF 3 of 3. [Emphasis added].

⁵⁷ Filing ID [A1S3X6](#) at PDF 4 of 5 (“The Board has considered Enbridge’s application for a variance of paragraph 4 of Order TO-02-2008 and determined that insufficient information was provided to support its request.”)

⁵⁸ Order TG-2-2022 (Filing ID [A02703-1](#)) at PDF 3-4 of 4.

E. Submissions from Other Intervenors

The remaining intervenors do not propose any alternative tolls to those in the Application.⁵⁹

F. Conclusion on Phase 1 Tolls

While the Commission's preliminary decision at the conclusion of Phase 1 may result in tolls that are only in place for a short period of time and subsequently tried up, the Commission should not base its Preliminary Decision in Phase 1 on arbitrary requests to deviate from the RH-001-2012 toll methodology because shippers would prefer lower tolls, or because future regulatory processes may result in changes to the underlying costs. Instead, the Commission should rely on the existing approved toll methodology and the evidence before it demonstrating that the applied-for tolls comply with that methodology. Trans Mountain respectfully submits that the evidence before the Commission only supports one outcome in Phase 1: that the Commission approve Trans Mountain's applied-for Interim Tolls, pending the outcome of Phase 2.

III. Approval of Toll Components on a Final Basis

As explained in Trans Mountain's response to CER IR No. 1.5, the Application requests approval from the Commission of several toll components on a final basis.⁶⁰ The majority of those items have not been contested by any intervenors. Nonetheless, several intervenors submit that any decision from the Commission regarding final toll components in its Phase 1 decision should be subject to reconsideration in Phase 2.⁶¹

Trans Mountain agrees that most of the toll components for which it is requesting approval on a final basis can be addressed in the Phase 2 hearing, including the items that intervenors have contested to date, namely the Enhanced Response Regime Cost Recovery Fee ("ECRF"), Gateway Infrastructure Fee 2 ("GIF2") and Demurrage. Trans Mountain provides reply submissions to the intervenors' comments on those items below. However, Trans Mountain is requesting final approval for the following four toll components in the

⁵⁹ See Filing ID [C26113-1](#) (BP); Filing ID [C26091-1](#) (TWN); Filing ID [C26104-1](#) (CAPP); Filing ID [C26111-1](#) (Suncor); Filing ID [C26114-1](#) (Cenovus) at PDF 3 of 11.

⁶⁰ Filing ID [C25905-2](#), Table 1.5-1 under the column "Components for which Relief is Requested on a Final Basis" at PDF 26 of 47.

⁶¹ For example, Suncor submits that "any decision on final costs as part of this proceeding (if at all) should only be issued following further comprehensive process steps, including the opportunity for shippers to test Trans Mountain's evidence and make submissions in response." Filing ID [C26111-1](#) at PDF 3 of 4.

Commission's Phase 1 decision, and requests that these items not be reconsidered in the Phase 2 process:

1. Petroleum Loss Allowance Percentages ("PLAPs")
2. Westridge Dock Bid Premium
3. Bulk Oil Cargo Fee(s) ("BOCF")
4. Capital Asset & Loan Fee(s) ("CALF")

As discussed below, each of these toll components has already been considered and approved by prior NEB or CER decisions, and no specific concerns have been raised about any of these components in relation to the Application. Further, Trans Mountain notes that both CNRL and Cenovus explicitly state in their submissions that they have no concerns with these elements being approved on a final basis in the Preliminary Decision.⁶²

A. Toll Components for which Trans Mountain Requests Approval on a Final Basis in Phase 1

Petroleum Loss Allowance Percentages ("PLAPs")

The inclusion of Petroleum Loss Allowance was approved as part of the RH-001-2012 Decision,⁶³ and subsequently approved as part of Trans Mountain's Rules & Regulations.⁶⁴

In the Application, Trans Mountain stated that it will adjust the PLAPs shown in Section IV of the Toll Schedule and Schedule 7 of the Toll Calculation Schedules to maintain a neutral petroleum loss allowance balance over time (approximately +/- \$5 million) and will report the balance annually in the Toll Calculation Schedules.⁶⁵ Given that PLAPs are set as a percentage of volume and not a \$/m3 toll, a retroactive adjustment of the PLAPs could create significant volatility in the petroleum loss allowance balance as well as administrative burden for both Trans Mountain and shippers. Such an adjustment would also be unnecessary because PLAPs are to be adjusted as needed on an ongoing basis to

⁶² Filing ID [C26115-1](#) (CNRL) at PDF 9 of 24; Filing ID [C26114-1](#) (Cenovus) at PDF 11 of 11.

⁶³ Appendix 10 Final form of the Rules and Regulations (Filing ID [A3E7D6](#)) at PDF 11 of 16, approved by [TO-004-2013](#)).

⁶⁴ Revisions to Expanded System Rules (Filing ID [C23061-3](#)), Rule 11.4 at PDF 15 of 22, approved by [C24509-1](#)).

⁶⁵ Filing ID: [C24695-7](#), PDF 3 of 7.

maintain a neutral petroleum loss allowance balance. As a result, Trans Mountain requests that the PLAPs be approved on a final basis in the Preliminary Decision and submits that they should not be reconsidered or “trued up” in the Phase 2 process.

Westridge Dock Bid Premium

The inclusion of a Westridge Dock Bid Premium was approved as part of the RH-001-2012 Decision,⁶⁶ and subsequently approved as part of Trans Mountain’s Rules & Regulations.⁶⁷

Westridge Dock Bid Premiums are used as a mechanism to allocate uncommitted capacity during months of apportionment at the Westridge Marine Terminal, with capacity being allocated to the Shipper(s) with the highest Bid Premium(s). Trans Mountain will return any Westridge Dock Bid Premiums collected to shippers through future toll filings, consistent with the NEB’s 20 July 2006 Decision, as amended.⁶⁸

The Westridge Dock Bid Premiums collected by Trans Mountain are based solely on what Uncommitted Shippers choose to bid for capacity. Uncommitted Shippers receiving an allocation of capacity for nominations to the Westridge Marine Terminal will pay the Bid Premium on the volume of petroleum delivered. Consequently, Trans Mountain requests that the inclusion of the Westridge Dock Bid Premiums be approved on a final basis in the Preliminary Decision and submits that adjustments cannot and should not be made to this previously approved mechanism at the outcome of the Phase 2 process.

Bulk Oil Cargo Fee(s) and Capital Asset & Loan Fee(s)

With respect to the BOCF and CALF, both fees are included in Tariff No. 113⁶⁹ which is currently in effect for the Trans Mountain system.⁷⁰ These are fees determined by the Western Canada Marine Response Corporation (“WCMRC”), and Trans Mountain’s only role is to administer the collection of fees from shippers and to remit the fees to WCMRC. As such, Trans Mountain requests that these fees administered by Trans Mountain on

⁶⁶ Appendix 10 Final form of the Rules and Regulations (Filing ID [A3E7D6](#)) at PDF 9 of 16, approved by [TO-004-2013](#)).

⁶⁷ Revisions to Expanded System Rules (Filing ID [C23061-3](#)), Rule 7.7 at PDF 13 of 22.

⁶⁸ Filing ID [A12678-1](#), as amended by [Order TO-002-2022](#).

⁶⁹ Filing ID [C23858-4](#) at PDF 5 of 6.

⁷⁰ Approved by Commission Order TO-001-2023 (Filing ID [C24145-3](#)).

behalf of the WCMRC be approved on a final basis in the Preliminary Decision and submits that they should not be reconsidered or “trued up” in the Phase 2 process.

B. Toll Components for which Trans Mountain Requests Interim Approval in Phase I, and for which Trans Mountain will Request Final Approval in Phase 2

For the remaining toll components described in Trans Mountain’s response to CER IR No. 1.5,⁷¹ Trans Mountain requests that the Commission approve the item as applied-for in the Application, subject to further review during the Phase 2 process. This includes the ECRF, GIF2 and Demurrage, as discussed further below. Trans Mountain disagrees, however, with submissions from certain intervenors that these toll components should be reviewed again in Trans Mountain’s final toll application. Trans Mountain explained in its response to CER IR No. 1.5 why these toll components should be approved on a final basis, without subsequently being reviewed in any process that the Commission may establish to consider final tolls. The intervenors requesting reconsideration of these items in connection with final tolls completely ignore the rationale provided in Trans Mountain’s response to CER IR No. 1.5. For example, Trans Mountain explained that Commission approval of the toll components listed in CER IR No. 1.5 will “provide more certainty with respect to the toll elements,” “avoid the need to ‘true-up’ any differences between interim and final tolls for these elements,” and “avoid the administrative burden for Trans Mountain, the Commission, and shippers which may otherwise arise if these same issues need to be considered in multiple regulatory proceedings.”⁷² Trans Mountain further explained that “[g]iven that no new information relevant to the appropriateness of these components will be available at the time of Trans Mountain’s final tolls filing, ... reconsidering these components at a later date would be unnecessary and inefficient.”⁷³

Trans Mountain’s concern regarding parties re-litigating the same issues in the current proceeding and the final tolls application is highlighted by CNRL’s suggestion that the Commission should approve a 5-year amortization period for the ECRF as part of the Interim Tolls, but that CNRL may advocate for a different approach in the final toll

⁷¹ Filing ID [C25905-2](#) at PDF 25-27 of 47.

⁷² Filing ID [C25905-2](#), Table 1.5-1 under the column “Components for which Relief is Requested on a Final Basis” at PDF 26 of 47.

⁷³ Filing ID [C25905-2](#) at PDF 27 of 47.

application.⁷⁴ Such an approach would be grossly unfair and inefficient, and would amount to an abuse of the Commission's process.

For the reasons set out in its response to CER IR No. 1.5, Trans Mountain submits that the toll components for which it is seeking final approval in the Application should not be subject to further review in the final tolls application.

Trans Mountain's reply to intervenor comments regarding the ECRF, GIF2 and Demurrage is provided below.

ECRF

Several intervenors argue that the ECRF should be based on a five-year amortization of the Due from Westridge Shippers Deferral Account, instead of the 3+1 year amortization approach that Trans Mountain is applying for approval of in the Application.

CNRL supports its request for a five-year amortization period by citing the increases in the Due from Westridge Shippers Deferral Account since the time Trans Mountain applied for the Bulk Oil Cargo Fee in 2015 (from between \$75 and \$100 million in 2015, to \$179 million currently).⁷⁵ However, the 2015 cost estimate predated issuance of the Certificate of Public Convenience and Necessity for the TMEP and did not include financing costs. That estimate was always understood to be a preliminary estimate that could be higher at the time of collection. The fact that the ultimate amount is higher than the original estimate should not in any way determine the appropriate collection period.

CNRL and Cenovus also both cite the magnitude of overall cost increases for the TMEP and claim that an amortization period of less than five years for the ECRF would compound the impacts of TMEP cost increases to shippers.⁷⁶ However, CNRL and Cenovus fail to consider that Trans Mountain is bearing the majority of the cost increases for the TMEP⁷⁷ and, as explained in its response to CER IR No. 1.6, Trans Mountain will be unable to collect financing costs in the Due from Westridge Shippers Deferral Account starting on the Commencement Date.⁷⁸

⁷⁴ Filing ID [C26115-1](#) at PDF 10 of 24.

⁷⁵ Filing ID [C26115-1](#) at PDF 10 of 24.

⁷⁶ Filing ID [C26115-1](#) (CNRL) at PDF 10 of 24; Filing ID [C26114-1](#) (Cenovus) at PDF 9 of 11.

⁷⁷ Filing ID [C25905-2](#) at PDF 8 of 47.

⁷⁸ Filing ID [C25905-2](#) at PDF 29 of 47.

For the reasons explained in its response to CER IR No. 1.6, Trans Mountain maintains that its proposed approach to the ECRF aligns with the NEB's 2016 decision and reasonably balances the financial interests of both shippers and Trans Mountain.

GIF2

Several of the intervenors oppose the GIF2, although the basis for their opposition varies. For example, certain intervenors allege that the Commission has no jurisdiction to include the GIF2 in Trans Mountain's tolls,⁷⁹ while Cenovus expressly argues that the Commission does have this jurisdiction.⁸⁰ CNRL argues that the GIF2 cannot be included in the Interim Tolls because it "does not relate to the transportation of the shipper's petroleum by the Carrier".⁸¹ But the GIF2 is charged based on the volume of petroleum loaded on vessels at the Westridge Marine Terminal as a result of the transportation service provided by Trans Mountain. The GIF2 therefore "relates to the transportation of the shipper's petroleum by the Carrier". Other intervenors challenge the underlying rationale for how the Vancouver Fraser Port Authority ("VFPA") calculated the GIF2, and the VFPA's engagement with Westridge shippers. In Trans Mountain's view, those are issues between the shippers and VFPA. If shippers dispute how the GIF2 was developed or calculated, Trans Mountain understands that there are mechanisms available for shippers to challenge the GIF2 through the *Canada Marine Act*.⁸²

⁷⁹ Filing ID [C26115-1](#) (CNRL) at PDF 10-11 of 24; Filing ID [C26116-1](#) (PetroChina) at PDF 6 of 7; Filing ID [C26111-1](#) (Suncor) at PDF 3 of 4.

⁸⁰ Filing ID [C26114-1](#) at PDF 6 of 11.

⁸¹ Filing ID [C26115-1](#) at PDF 10 of 24.

⁸² SC 1998, c 10.

Section 49(1) states:

A port authority may fix fees to be paid in respect of

- (a) ships, vehicles, aircraft and persons coming into or using the port;
- (b) goods loaded on ships, unloaded from ships or transhipped by water within the limits of the port or moved across the port; and
- (c) any service provided by the port authority, or any right or privilege conferred by it, in respect of the port.

Section 52(1) states:

CNRL also notes in its submission that Trans Mountain took the position with the VFPA in 2021 that it could not include the GIF2 in its tolls (and CNRL attaches Trans Mountain's letter to the VFPA to its submission). Trans Mountain notes that its letter to the VFPA in 2021 was during the VFPA's initial engagement efforts with industry in 2021 regarding the GIF2. During subsequent meetings with the VFPA, the VFPA highlighted its authority under the Westridge Marine Terminal lease to direct Trans Mountain to comply with the VFPA's Fee Document. This message was further reinforced through the VFPA's letter to Trans Mountain dated May 30, 2023, which was attached to Trans Mountain's response to CER IR No. 1.7.⁸³

As an outcome of its engagement with the VFPA, Trans Mountain committed to take the necessary steps to facilitate the collection of the GIF2 through its tolls, subject to permission by the CER. Trans Mountain shared this update with the Marine Shipper Subcommittee (including CNRL representatives) in May 2022, prior to engagement with shippers on the Application. Trans Mountain subsequently communicated updates related to the GIF2 to shippers, including CNRL, on various occasions. CNRL has been aware of Trans Mountain's current position regarding the GIF2 for more than 15 months.

For the reasons set out in its response to CER IR No. 1.7 and herein, the VFPA has directed Trans Mountain to administer collection of the GIF2 on VFPA's behalf, and Trans Mountain is consequently requesting that the Commission approve incorporation of the GIF2 into Trans Mountain's Tariff as proposed in the Application.

Demurrage

Several of the intervenors argue that Demurrage should be credited to the account of shippers, in the same manner that Demurrage was addressed through prior Incentive Toll Settlements ("ITS") between Trans Mountain and shippers.

Marathon claims that Demurrage should not be utilized as a source of revenue for Trans Mountain, because that would be inconsistent with industry norms.⁸⁴ Trans Mountain

Any interested person may at any time file a complaint with the [Canadian Transportation Agency] that there is unjust discrimination in a fee fixed under subsection 49(1), and the Agency shall consider the complaint without delay and report its findings to the port authority, and the port authority shall govern itself accordingly.

⁸³ Filing ID [C25905-2](#) at PDF 46-47 of 47.

⁸⁴ Filing ID [C26090-1](#) at PDF 8 of 9.

disagrees with this statement. Trans Mountain is not aware of any non-Cost of Service oil pipeline under CER jurisdiction that credits Demurrage charge revenues to shippers.

Demurrage charges, as they relate to oil pipelines, are essentially short-term storage fees charged to shippers that fail to promptly remove their oil from a pipeline system to compensate the pipeline owner for use of its assets and incentivize shippers to promptly remove oil as required by the pipeline's rules and regulations. This is supported by the *Oil Pipeline Uniform Accounting Regulations* ("OPUAR"), which classify Storage and Demurrage Revenue as Operating Revenue, along with Transportation revenue, and other revenue sources.⁸⁵ As Demurrage is a fee charged for use of Trans Mountain's assets, it follows that associated revenues should be to Trans Mountain's account in line with industry norms and as reflected in the OPUAR.

Trans Mountain further notes that under typical Cost of Service toll methodologies, including the 2006-2010 ITS and subsequent ITS agreements negotiated between Trans Mountain and its shippers, all Operating Revenues above the revenue requirement are returned to shippers via a reduction in the following year's revenue requirement (and any shortfall in Operating Revenues resulting in an under collection of the revenue requirement may be added to the following year's revenue requirement). However, under a non-Cost of Service toll methodology, such as that approved in RH-001-2012, shippers typically pay the negotiated toll amount and, unless expressly stated otherwise, all operating revenues are to the pipeline's account.

CNRL claims that because Trans Mountain assumed some risk around uncommitted volumes in the Transportation Service Agreement ("TSA"), allowing Demurrage charge revenue to mitigate that risk would be contrary to the approved toll methodology.⁸⁶ This is a baseless argument. Nowhere does the FSA state that Trans Mountain should have no means of mitigating the risks it assumed in the TSA.

CNRL and Suncor both also argue that allowing Trans Mountain to keep Demurrage revenue would allow Trans Mountain to be financially rewarded in circumstances where its own actions caused events that resulted in Demurrage charges.⁸⁷ Trans Mountain strongly objects to this characterization. As a CER-regulated pipeline, Trans Mountain is required to ensure that its pipeline system is operated in a manner that is safe, secure and efficient. Trans Mountain and its shippers are bound by the Rules & Regulations which

⁸⁵ *Oil Pipeline Uniform Accounting Regulations*, CRC, c 1058, Schedule V.

⁸⁶ Filing ID [C26115-1](#) at PDF 12 of 24.

⁸⁷ Filing ID [C26115-1](#) (CNRL) at PDF 12 of 24; Filing ID [C26111-1](#) (Suncor) at PDF 2 of 4.

detail the specific circumstances under which Demurrage charges apply (and which expressly exclude any “Carrier imposed restriction”).⁸⁸

Contrary to CNRL’s suggestion, Trans Mountain cannot create situations where shippers incur Demurrage charges. While CNRL is correct that Trans Mountain has discretion to assign Load Windows to shippers, those assignments occur prior to the Month of Delivery,⁸⁹ which provides Shippers ample time to contract and schedule vessels to meet the Load Windows they have been assigned. Further, to the extent Shippers request changes to their Load Windows, Trans Mountain is required to apply due diligence to minimize the impact of any such changes on other shippers.⁹⁰ Trans Mountain strongly disagrees with CNRL’s suggestion that it would use its discretion to assign Load Windows to generate Demurrage revenue.

Trans Mountain also notes that it would make no financial sense for Trans Mountain to create disruptions for the purpose of securing incremental Demurrage revenue, even if it had the ability under the Rules & Regulations to do so (which it does not). Disruptions in deliveries off the system often lead to a reduction in overall throughput, and in turn a reduction in uncommitted volumes and lost revenue for Trans Mountain. The lost revenue associated with reduced uncommitted volumes would significantly outweigh any incremental Demurrage charges.

For these reasons, and those set out in Trans Mountain’s response to CER IR No. 1.8, Trans Mountain maintains that the Commission should approve Demurrage charges as being for Trans Mountain’s account.⁹¹

Finally, CNRL requests in its submission that Demurrage charges should be “standardized at a rate of \$0.25/m³ in accordance with the existing Trans Mountain Tariff No. 114.”⁹² However, the proposed level of \$0.75/m³ for Demurrage in the Application is the level approved by the NEB for use on the expanded Trans Mountain system. Specifically, the Rules & Regulations that were approved by the NEB in its RH-001-2012 Decision, which were developed in coordination with shippers prior to the execution of the FSA and TSA, state that a “Demurrage charge of \$0.75/m³ per day shall be charged.” CNRL has not

⁸⁸ See Rules 7.5, 10.2(a) and 21.7 in Trans Mountain’s Rules & Regulations (Filing ID [C23061-3](#)).

⁸⁹ See Rule 21.6 in Trans Mountain’s Rules & Regulations (Filing ID [C23061-3](#)).

⁹⁰ See Rule 21.11 in Trans Mountain’s Rules & Regulations (Filing ID [C23061-3](#)).

⁹¹ Filing ID [C25905-2](#) at PDF 33-35 of 47.

⁹² Filing ID [C26115-1](#) at PDF 12 of 24.

provided any evidentiary or legal basis to revise the previously-approved level of the Demurrage charge.

Other Toll Components for which Trans Mountain is Seeking Final Approval

No other item for which Trans Mountain is seeking final approval was contested by any intervenor, with the exception of Marathon's submissions about Indigenous Accommodation costs.⁹³ Marathon's submissions in this regard appear to misunderstand what Trans Mountain is seeking approval of in the Application, which is its proposed approach to recovering the costs and expenses for Indigenous Accommodation that are incurred after the Commencement Date, which reflects the revised cost recovery approach that Trans Mountain developed with the firm shippers. Trans Mountain is not seeking any determination in the Application regarding the actual costs for Indigenous Accommodation, which are not yet final, and which will be addressed through the audit under the FSA and Trans Mountain's application for approval of final tolls.

IV. Scope and Process for Phase 2 Hearing

The intervenors also assert that the Phase 2 hearing should address whether the costs underlying the Interim Tolls in the Application were reasonably and necessarily (or prudently) incurred. Some intervenors also request that the Phase 2 proceedings address: (1) categorization of costs between Capped and Uncapped costs; (2) the basis for the increases in TMEP costs relative to the CPCN Cost Estimate (including the increases relative to February 2022); (3) the fact that Canada owns Trans Mountain and has broad public policy goals; and (4) whether the approved RH-001-2012 toll methodology should be amended. CNRL and Cenovus also propose specific processes for the Phase 2 hearing. We respond to each of these points below.

A. Scope of Issues for the Phase 2 Hearing

Trans Mountain has already explained why, in its view, the Commission should not assess the reasonableness of the costs underlying the Interim Tolls in the Application, even though it has the jurisdiction to do so.⁹⁴ There are many thousands of individual cost items associated with TMEP construction, each of which includes extensive documentation. As discussed in Trans Mountain's response to CER IR No. 1.1, the CPCN Cost Estimate alone comprised 47 binders. If the Commission uses the Phase 2 hearing to assess the reasonableness of Trans Mountain's individual costs, it is easy to envision requests for

⁹³ Filing ID [C26090-1](#) at PDF 8 of 9.

⁹⁴ Filing ID [C25338-1](#) at PDF 6-7 of 14; Filing ID [C25905-2](#) at PDF 10 of 47.

information that would require Trans Mountain to assemble many tens of thousands of pages of documentation. Respectfully, such discovery could not be completed using the Commission's standard hearing timelines (e.g., between two and four weeks for IR responses). Such extensive discovery would take months for Trans Mountain to compile information, and likely several more months for intervenors and the Commission to review and understand the information provided. It would be unreasonable to expect a hearing process of this nature to be completed in under a year (let alone by the end of Q2 2024 as several intervenors suggest), and it could take much longer.

Trans Mountain respectfully submits that such an approach to the Phase 2 hearing would (i) be inappropriate for interim tolls that will be tried up at a later stage, (ii) completely undermine the purpose of the audit of final tolls under the FSA, and (iii) unreasonably extend the period of uncertainty regarding the interim tolls on the expanded Trans Mountain system. As Trans Mountain explained previously, Trans Mountain needs certainty regarding the Interim Tolls as soon as possible to allow it to proceed with its business plans and manage its finances efficiently.⁹⁵ Trans Mountain will be seriously prejudiced if the Phase 2 hearing is not completed in a timely manner.

For the above reasons, if the Commission decides to conduct a more detailed review of the reasonableness of Trans Mountain's costs as part of the Phase 2 hearing, we respectfully submit that the Commission should clearly establish the scope of this review and place limits on the associated discovery process that balances the need for a meaningful and fair opportunity for intervenors and the Commission to request additional information from Trans Mountain, with the need to complete the Phase 2 hearing in an efficient and timely manner. Trans Mountain proposes that the scope of the Commission's consideration of costs in the Phase 2 hearing be (1) whether Trans Mountain has appropriately categorized the Commencement Date Cost Estimate (at a summary/aggregate level) between Capped and Uncapped costs, in accordance with the RH-001-2012 toll methodology; and (2) the key reasons for the differences between Trans Mountain's CPCN Cost Estimate and the Commencement Date Cost Estimate. The latter issue would allow the Commission and intervenors to more closely review whether Trans Mountain has provided reasonable explanations for the differences and on that basis whether the costs in the Interim Tolls were reasonably and necessarily incurred for the purposes of the FSA, without assessing the reasonableness of individual cost items (which would be addressed through the subsequent audit of final tolls and the Commission's adjudication of those tolls).

Regarding Canada's ownership of Trans Mountain, that issue is irrelevant to the Commission's determination of Interim Tolls. Trans Mountain's mandate from its owner is to operate the existing Trans Mountain pipeline and terminal assets and to complete the

⁹⁵ Filing ID [C25980-1](#) at PDF 4 of 4.

TMEP in a timely and commercially viable manner, arm's length from the federal government. While it is arguable, for example, that regulations to protect the environment have become more stringent in recent years and that legal regimes are demanding more from proponents to advance reconciliation with Indigenous groups, these legal developments do not flow from and are not otherwise related to Trans Mountain's ultimate ownership by the federal government. Trans Mountain's ownership has nothing to do with how the Interim Tolls should be set, and accordingly should not be an issue within the scope of the Phase 2 hearing.

Regarding CNRL's request for the Phase 2 hearing (or the subsequent final tolls application) to include a review of whether the RH-001-2012 toll methodology should be revised, Trans Mountain has provided extensive comments in this reply submission and previous comments about why the Commission should not revisit the RH-001-2012 toll methodology, and the serious deleterious consequences that would arise with such a review. Trans Mountain continues to rely on those submissions, and strongly urges the Commission not to re-open the approved toll methodology that Trans Mountain has relied on to proceed with the TMEP, and that no shipper challenged until now (once the TMEP has been largely built). Any suggestion that the RH-001-2012 toll methodology may no longer apply will create significant uncertainty for Trans Mountain and the market regarding future tolls to use the Trans Mountain system, and will make it practically impossible for Trans Mountain to move forward with its business plans until the toll methodology is resolved.

For these reasons, Trans Mountain submits that the continued appropriateness of the RH-001-2012 toll methodology should not be an issue for the Phase 2 hearing, and the Commission should instead firmly reject the notion that the toll methodology for the expanded Trans Mountain system is open to review.

In the alternative, if the Commission disagrees with Trans Mountain and decides to review whether the RH-001-2012 methodology remains appropriate, Trans Mountain requests that the Commission address that issue in the Phase 2 hearing and not defer it until the final tolls application, as CNRL suggests. CNRL's approach would further draw out resolution of this important issue and unnecessarily prolong the associated toll uncertainty for all parties, which is not in the public interest. If the Commission decides to review whether the RH-001-2012 methodology remains appropriate in Phase 2, Trans Mountain also submits that additional parties who may be directly affected by such a decision should have the ability to participate in the hearing, even if they did not participate in Phase 1.

B. Process for the Phase 2 Hearing

CNRL and Cenovus both propose expedited hearing processes for Phase 2 that would conclude in the first half of 2024. For the reasons stated above, Trans Mountain supports an expedited process for the Phase 2 hearing and agrees that a timely and efficient Phase 2 hearing should be completed before the end of Q2 2024.

Trans Mountain, however, cannot agree to a process with asymmetric procedural rights. CNRL's proposed process would allow intervenors to ask IRs to Trans Mountain, but it would not allow Trans Mountain to ask any IRs of the intervenors. While Trans Mountain does not yet know what types of evidence the intervenors may choose to file in the Phase 2 hearing, as a matter of fairness it should have the ability to submit IRs to the intervenors to ensure that it fully understands their evidence and can meaningfully respond to it.

With respect to Cenovus's proposed process, Trans Mountain disagrees with bifurcating the Phase 2 hearing because such an approach would likely result in unnecessary delays and inefficiencies. For the reasons stated above and previously, Trans Mountain also disagrees that the Phase 2 hearing should include a review of whether individual cost items were reasonably and necessarily incurred. While Cenovus suggests that most cost items should be finalized by late 2023, the reality is that many cost items will continue to evolve until TMEP construction is complete and costs have been internally reconciled. Commencing a detailed review of costs before they have been finalized would be inefficient and prone to confusion as information evolves during the course of the hearing. In Trans Mountain's view, for the reasons stated previously, it would be more logical and efficient to first proceed with the audit under the FSA, to initiate that audit as soon as possible (something Trans Mountain has already signaled it is supportive of), and then to address any residual concerns with the TMEP costs as part of the final tolls application.

Finally, with respect to the scope of discovery in the Phase 2 hearing, for the reasons stated above Trans Mountain proposes that the scope of discovery in the Phase 2 hearing be limited to requests for information that Trans Mountain should have readily available or that Trans Mountain can reasonably compile within the timeframe for responding to IRs. This approach would be sufficient for intervenors and the Commission to meaningfully explore Trans Mountain's evidence, while also ensuring that the Phase 2 hearing can be completed in a timely and efficient manner.

V. Other Matters in Intervenor Submissions

Trans Mountain's Financial Information

Several intervenors argue that the information about Trans Mountain's financial position contained in its response to CER IR No. 1.4 is irrelevant to whether the Interim Tolls adhere

to the approved toll methodology. Trans Mountain agrees with those submissions. The details of its finances (including the issues discussed extensively, and erroneously, in Tsleil-Waututh Nation's submission) are not relevant to whether the tolls have been calculated in accordance with the approved RH-001-2012 toll methodology. Trans Mountain's submissions about financial impacts in its reply to comments from interested parties on the Application,⁹⁶ which led to the CER's IR No. 1.4, were in the context of the Commission approving tolls that do not align with the RH-001-2012 toll methodology. Trans Mountain's evidence demonstrates that approval of Interim Tolls below what the RH-001-2012 toll methodology produces would cause Trans Mountain significant financial harm.

Trans Mountain's Engagement with Shippers

Marathon's submission states that "Trans Mountain's assertion ... that it has 'regularly updated' shippers about its cost estimates is not accurate."⁹⁷ Marathon then goes on to discuss cost information from various public announcements, but it does not discuss Trans Mountain's direct engagement with shippers, including Marathon specifically, during that timeframe.

Marathon's characterizations of Trans Mountain's engagement are grossly inaccurate and misleading and should be disregarded by the Commission. Trans Mountain held dozens of working group meetings and update calls between its leadership and each shipper's leadership on TMEP construction progress, risks, and costs (including periodic updates of Capped and Uncapped cost estimates). Marathon or its predecessor was invited to participate in these engagement activities.

Mischaracterizations of Shipper Audit in 2017

In its submission, CNRL states that the shippers' audit of the CPCN Cost Estimate did not include categorization of costs between the Capped and Uncapped categories.⁹⁸ That is not true. During the shippers' audit of the CPCN Cost Estimate in 2017, the shippers engaged an independent third-party auditor to perform a number of specified procedures in relation to the CPCN Cost Estimate. One of the specified procedures performed by the auditor was the inspection and identification of documentation relating to the assignment of Capped

⁹⁶ Filing ID [C25338-1](#) at PDF 2 of 14.

⁹⁷ Filing ID [C26090-1](#) at PDF 3 of 9.

⁹⁸ Filing ID [C26115-1](#) at PDF 5 of 24.

and Uncapped costs. Trans Mountain provided the auditor with detailed information to facilitate the auditor's review of cost categorization in this regard.

CNRL also states that the 2017 shipper audit did not include a determination of whether the costs in the CPCN Cost Estimate were (a) properly classified or (b) reasonable and necessary.⁹⁹ While true, the reason for this is that at the time the audit, Trans Mountain had only incurred \$0.5 billion of costs for the TMEP and the remainder of the CPCN Cost Estimate consisted of future, estimated costs. It would not have been possible for the auditor to make a determination on whether such costs that had not yet been incurred were (a) properly classified or (b) reasonable and necessary. This timing discrepancy between when costs are known (actual) and when the audit is performed is the exact reason why the audit rights are most effectively exercised at the final toll stage, once costs have been finalized.

Toll Treatment for Prior-Injected Volumes

In its submission, Suncor states that it is unclear what toll treatment will be attributed to volumes injected into the Trans Mountain system prior to the Commencement Date.¹⁰⁰ This matter is addressed in Section 7.1 of Trans Mountain's Rules & Regulations, which specifies that "Petroleum accepted for transportation shall be subject to the tolls in effect on the date of Delivery of such Petroleum by the Carrier after transportation on the Mainline System".¹⁰¹ This means that if volumes are delivered when the Interim Commencement Date Toll tariff is in effect, those volumes will be assessed at the tolls that are specified in the Commencement Date Toll tariff.

VI. Conclusion

The evidence before the Commission demonstrates that Trans Mountain's applied-for Interim Tolls comply with the approved toll methodology in RH-001-2012. As such, in accordance with the Commission's Process Letter No. 2, Trans Mountain requests that, subject to the four toll components set out in section III.A of this reply, the Commission approve the Interim Tolls in the Application on an interim basis in the Commission's Preliminary Decision, subject to the outcome of Phase 2. Trans Mountain also requests that the Commission proceed with the Phase 2 hearing as soon as possible, and establish a clear

⁹⁹ Filing ID [C26115-1](#) at PDF 5 of 24.

¹⁰⁰ Filing ID [C26111-1](#) at PDF 2 of 4.

¹⁰¹ Existing Rules & Regulations, Tariff No.114 (Filing ID [C24069-3](#)) at PDF 9 of 14; Expanded System Rules & Regulations, [C23061-3](#) at PDF 13 of 22

scope and process for the hearing that will allow for the Commission to render a final decision on the Interim Tolls before the end of Q2 2024.

Yours truly,

A handwritten signature in blue ink, consisting of a large, stylized 'S' followed by a horizontal line extending to the right.

Sander Duncanson
Counsel for Trans Mountain

cc: Intervenors