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June 30, 2023

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Canada Energy Regulator
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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 and other Matters related
to the Transportation of Petroleum on the Expanded Trans Mountain Pipeline
System (“Application”)
Canada Energy Regulator (“CER” or “Commission”) File OF-Tolls-Group1-
T260-2023-03 01
Reply to Comments from Interested Parties**

In accordance with the Commission’s letter of June 8, 2023,¹ Trans Mountain provides the following reply to comments filed by interested parties on or before June 23, 2023.

I. Introduction

The toll methodology for service on the expanded Trans Mountain Pipeline system (“Expanded System”) was negotiated between Trans Mountain and firm service shippers commencing in 2011 and is reflected in the Facility Support Agreement (“FSA”) that underpinned the Trans Mountain Expansion Project (“TMEP”). The National Energy Board (“NEB”) approved that toll methodology and the FSA in its RH-001-2012 Decision. Trans Mountain sought and obtained approval of that toll methodology prior to applying for and constructing the TMEP so that the NEB, Trans Mountain and shippers had clarity and certainty in advance about how construction cost risks would be allocated between Trans Mountain and shippers, and how Trans Mountain would recover its investment in the TMEP. That approach of seeking approval of the toll methodology for a pipeline prior to its construction is consistent with the regulatory policy of the Commission and its predecessor for more than 30 years.

¹ Filing ID [C24789-1](#).

The Application follows the approved RH-001-2012 toll methodology. In contrast, many of the interested parties in their letters of comment have asked for the Commission to depart from it. The Commission should decline these invitations. Departing from the RH-001-2012 toll methodology would be grossly unfair to Trans Mountain, who relied on that approval to make tens of billions of dollars of investment in the TMEP. Departing from the RH-001-2012 Decision would also be inappropriate given that doing so would undermine longstanding regulatory principles before the NEB and CER, thereby creating serious and unwarranted risk and uncertainty for all parties who make business decisions in reliance on past NEB and CER decisions.

The NEB's decision in RH-001-2012 squarely addresses most of the issues raised in the comments from interested parties on the Application. In particular, the RH-001-2012 toll methodology includes the right for firm service shippers to audit the final TMEP costs as well as a full "true up" process for the final tolls to ensure that shippers are not prejudiced by interim tolls being charged in the period before the Expanded System tolls are finalized.

Instead of departing from the RH-001-2012 Decision and established regulatory principles, Trans Mountain respectfully submits that the Commission should follow the process that its predecessor approved and that Trans Mountain's shippers agreed to. By following this process, the Commission should focus its review of the Application on the narrow scope of issues that require adjudication at this juncture. These issues do not require an extensive or time-consuming evidentiary record. Nor do they require a delay in the issuance by the Commission of its decision on the Application beyond September 14, 2023. Any such delay could jeopardize the in-service date for the TMEP.

Trans Mountain will respond to substantive comments from interested parties on the merits of the Application as part of the process the Commission establishes to consider the Application, including arguments regarding alternative tolls. These include the patently unreasonable suggestion that the Commission should set interim Commencement Date tolls based on the mid-point between Trans Mountain's applied-for tolls and its estimated tolls in 2017, which would represent an approximately 40% (or \$11.7 billion) reduction in the fixed component of the tolls² and could cause Trans Mountain to be unable to meet its financial obligations. Trans Mountain's silence in this letter on any substantive comments from interested parties should not be interpreted as Trans Mountain's agreement with those submissions. Rather, Trans Mountain has focused this letter on the appropriate scope and process for the Commission's review of the Application.

² Although the commenting parties were not clear on specifically how their "mid-point" toll proposal would be calculated, setting the tolls based on the mid-point between the total TMEP costs estimated in the Application (\$30.9 billion) and the 2017 CPCN Cost Estimate (approximately \$7.4 billion) would result in an estimated \$11.7 billion, or approximately 40%, reduction in the overall costs underlying the tolls.

II. The Commission Should Adhere to the RH-001-2012 Toll Methodology

The RH-001-2012 Decision approved the negotiated toll methodology contained in the FSA between Trans Mountain and its firm service shippers, which included: (i) an agreed sharing of cost risks between Trans Mountain and shippers (whereby certain construction costs would be capped and others would not be); (ii) rights for firm service shippers to have Trans Mountain's costs audited by a third-party at prescribed milestones; (iii) setting of interim tolls for the commencement of service on the Expanded System (the "Commencement Date") based on Trans Mountain's then-current estimate of TMEP costs, but without an audit of those costs; and (iv) setting of final tolls following an audit of Trans Mountain's final TMEP costs (if requested by firm service shippers), including a "true up" mechanism where shippers and Trans Mountain are kept whole for any difference between the interim and final tolls. In its RH-001-2012 Decision, the NEB concluded that Trans Mountain's applied-for toll methodology was "essentially a negotiated agreement allocating risk among parties, which includes gives and takes" and that "the toll methodology will produce tolls that are just and reasonable and will not be unjustly discriminatory".³

In their comments on the Application, several Trans Mountain shippers and the Tsleil-Waututh Nation ("TWN") suggested that the Commission should establish a process to reconsider the appropriateness of the approved RH-001-2012 toll methodology.⁴ Trans Mountain strongly disagrees.

It would be fundamentally unfair to Trans Mountain and entirely inappropriate for the Commission to reconsider the RH-001-2012 toll methodology at this time, now that Trans Mountain has incurred billions of dollars of costs and construction of TMEP is almost complete. The entire purpose of the RH-001-2012 proceeding was to provide the NEB with an opportunity to determine whether the toll methodology negotiated between Trans Mountain and firm service shippers would produce tolls that are just and reasonable and not unjustly discriminatory, and give parties certainty over risk allocation and toll methodology to allow Trans Mountain to make an informed business decision, prior to

³ RH-001-2012 Decision [Filing ID [A51913-1](#)], PDF 38 & 40 of 54.

⁴ For example, CNRL has stated that the proposed tolls will "negatively impact the overall competitiveness of Canada's oil industry and the public interest," the Commission has an obligation "to ensure tolls are in the public interest," and that the proposed tolls "will not only materially impact shippers but potentially the entire industry and the public interest." [Filing ID [C25062-1](#)], PDF 2-3 & 7 of 9. Marathon has urged the Commission to exercise its "public-interest jurisdiction" to ensure the proposed interim tolls are just and reasonable. [Filing ID [C25051-1](#)], PDF 4 of 5. Parkland has encouraged the Commission to consider whether the costs included in rates are "so large as to justify alterations to the approved rate methodology". [Filing ID [C25095-1](#)], PDF 2 of 3. TWN argues that the approved toll methodology will not produce tolls that are just and reasonable. [Filing ID [C25110-2](#)], PDF 11 of 17.

proceeding with the TMEP. In its cover letter to the RH-001-2012 Hearing Order, the NEB explicitly rejected the suggestion from some parties that it should delay its consideration of Trans Mountain's tolls application until later, once it had also received the TMEP facilities application.⁵

That decision of the NEB in this matter is consistent with decades of other NEB decisions that toll methodologies for major new pipelines should be decided before the facilities are constructed, to ensure the pipeline is economically viable before any physical impacts of the project occur.⁶ In its GH-5-89 decision more than 30 years ago, the NEB stated that:

The Board notes the serious concern of parties regarding the continuing climate of uncertainty created by re-examining the toll methodology issue in a number of facilities applications. The issue has now been reviewed thoroughly in two facilities applications (GH-2-87, GH-5-89); consequently, the Board expects there would have to be a clear demonstration of a radical change in circumstances before the issue would warrant reexamination.⁷

The CER has stated that while it is not bound by precedents set by the NEB, “it strives for consistency in decision-making,”⁸ and is “guided by the established regulatory framework, including past decisions of its predecessor, the NEB, regarding toll and tariff regulation.”⁹ Courts have similarly recognized that while tribunals like the Commission are not strictly

⁵ Filing ID [A3A4F7](#), PDF 2 of 28.

⁶ In NEB Decision GH-001-2012 regarding NGTL's Application for the Northwest Mainline Komie North Extension, the NEB stated that “where possible, Part III and Part IV proceedings should either be held at the same time or Part IV matters should precede Part III proceedings. This is because the Board's decision regarding toll treatment can impact the financial feasibility of a project applied for under Part III.” [Filing ID [A50255-1](#)], PDF 25 of 180. See also, NEB Decision GH-001-2014 regarding NGTL's Application for the North Montney Mainline Project [Filing ID [A69520-1](#)]; NEB Decision GH-5-89, Part 1 regarding Tolling and Economic Feasibility for Facility Additions on the TransCanada Mainline; NEB Decision GH-2-87 concerning Applications for Facilities and Approval of Toll Methodology and Related Tariff Matters on the TransCanada Mainline.

⁷ NEB Decision GH-5-89, Volume 1 regarding Tolling and Economic Feasibility for Facility Additions on the TransCanada Mainline [Filing ID [GH-5-89_Part_1](#)], PDF 65 of 69.

⁸ CER July 14, 2020 Letter Decision re Hydro-Québec TransÉnergie Request for Review of Decision on Confidential Filings in Appalaches-Maine Interconnection Power Line Project Proceeding [Filing ID [C07323-1](#)], PDF 3 of 4; CER May 15, 2020 Letter Decision re Trans Mountain MH-048-2018 Application for the Westridge Delivery Line Relocation [Filing ID [C06322-1](#)], PDF 11 of 19, FN 14.

⁹ CER September 27, 2019 Letter Decision re Complaints regarding Enbridge Pipelines Inc. Mainline Open Season [Filing ID [C01893-1](#)], PDF 1 of 6.

bound by precedent, previous regulatory decisions should provide a direct contextual comparison against which the reasonableness of a new decision can be assessed.¹⁰

Establishing a process that would re-open the RH-001-2012 Decision or the toll methodology approved in that Decision would violate the above regulatory principles and legal authorities. In particular, it would potentially jeopardize Trans Mountain's ability to recoup its investment in the TMEP, and thereby threaten the economic viability of the TMEP, after the physical impacts of construction have already occurred. It would also re-open a negotiated toll agreement between sophisticated commercial parties, and the regulatory approval of that agreement, after one of the parties has invested tens of billions of dollars in reliance on that agreement and regulatory approval. Such a decision would be truly unprecedented, and would undermine the ability of any party to make investments based on past NEB or CER decisions for fear that those decisions may subsequently be reversed.

While Trans Mountain acknowledges the concerns raised by some interested parties about cost escalation for the TMEP, they are no doubt well aware that significant cost escalations for major projects in Canada have very much been the rule rather than the exception in recent years. It has been public knowledge for years that TMEP construction costs have been increasing materially. Shippers have known that they would bear a portion of those costs through the approved RH-001-2012 toll methodology. No shipper raised any suggestion that the RH-001-2012 toll methodology was unfair, inappropriate or should be revisited prior to the recent comments on this Application. Instead, the parties raising this issue in their comments appear to have made the deliberate tactical choice to wait to take that position until the vast majority of the costs in question have been incurred by Trans Mountain and construction of the TMEP has almost been completed. Re-opening the RH-001-2012 toll methodology in these circumstances would be grossly unfair and entirely inappropriate.

Similarly, several shippers in their letters of comment have requested an opportunity for a rigorous or robust review of the costs included in the fixed component of the interim tolls,¹¹

¹⁰ *Altus Group Limited v. Calgary (City)*, 2015 ABCA 86, para 32.

¹¹ For example, CNRL has called for "a rigorous review, fulsome audit and reconciliation of incurred costs and expenses to the 2017 CPCN Cost Estimate" and has proposed a list of issues for the Commission's consideration, including "Whether the costs allocated to Uncapped Costs were reasonably and necessarily incurred." [Filing ID [C25062-1](#)], PDF 3 & 8 of 9. Marathon has stated "Trans Mountain's currently estimated costs ... have not been properly vetted by an independent third party, nor have they been subject to audit by the shippers." [Filing ID [C25076-1](#)], PDF 2 of 5. Parkland has specifically asked the Commission to determine whether "the applied-for costs have been adequately demonstrated to be prudently incurred costs of providing Expanded System transportation service." [Filing ID [C25095-1](#)], PDF 2 of 3. BP has indicated it "seeks a review by the CER of the costs incurred by TMPL to determine

which would effectively amount to an audit and prudence review of TMEP construction costs before interim tolls are established or implemented. That request is also unfair and inappropriate. Such a review was never contemplated for the interim tolls under the RH-001-2012 toll methodology. Instead, according to the established procedure, Trans Mountain and firm service shippers negotiated a right for firm service shippers to audit Trans Mountain's final TMEP costs, once construction of the TMEP has been completed and all costs have been fully accounted for.¹² Those final construction costs will be used to set the final Expanded System tolls under the RH-001-2012 toll methodology.

As noted above, shippers will be kept whole for any differences between the fixed component of the interim tolls and the fixed component of the final tolls, with interest applied,¹³ through a "true up" mechanism (the details of which are proposed in the Application). Through this agreed-upon and approved procedure, the rights and interests of shippers will be fully protected even if their request for a full review of costs as part of the Commission's review of the Application is denied.

Moreover, it would be inefficient and unfair for shippers to audit and assess Trans Mountain's construction costs in multiple different forums. As noted, the audit right that Trans Mountain and its firm shippers negotiated and that the NEB approved specifically permits the shippers to retain a third-party to fully review the TMEP costs after construction has been completed. Allowing for a full regulatory review of TMEP costs now as part of the Commission's review of the Application would allow shippers to first litigate the reasonableness of costs before the Commission, and then, if they are unsatisfied with the result from the CER, raise the same challenges through the third-party audit process. Given that many TMEP costs are still subject to change prior to the completion of construction, shippers could also presumably challenge the reasonableness of Trans Mountain's costs when Trans Mountain applies in the future for its final Expanded System tolls. This would effectively give shippers three kicks at the same can.

For all of these reasons, Trans Mountain respectfully submits that it is not only unnecessary for the Commission to review the reasonableness of Trans Mountain's costs as part of its

whether those costs have been reasonably incurred and allocated in accordance with the tolling methodology." [Filing ID [C25098-2](#)], PDF 2 of 2. Total has advocated for "information to determine if costs were prudently incurred and properly allocated." [Filing ID [C25102-2](#)], PDF 1 of 2. Similarly, PetroChina Canada has indicated that "detailed information is required to confirm whether the costs were necessarily and reasonably incurred, and to verify which costs properly constitute the Uncapped and Capped portions of the Fixed Toll." [Filing ID [C25112-2](#)], PDF 1 of 2.

¹² Filing ID [A3E7D3](#), PDF 21-22 of 31.

¹³ Filing ID [C24695-2](#), PDF 28 of 145.

review of the Application, but doing so would unfairly and inappropriately change the methodology that was approved in the RH-001-2012 Decision.

III. The NEB's Past Consideration of Interim Toll Applications Supports an Efficient Review of the Application

The Commission's review of the Application should be guided by the NEB's past consideration of interim toll applications. As noted above, the Commission should strive for consistency with the NEB's past decisions unless there are good reasons to deviate from that past practice. The NEB's past practice regarding interim toll applications supports Trans Mountain's request for an efficient and timely process for the Application.

In the NEB's decision regarding Enbridge Pipelines Inc. ("Enbridge")'s application for 2010 Canadian Mainline interim tolls, the NEB considered the same types of arguments from Enbridge shippers that have now been raised again in relation to the present Application; namely, that a thorough review of underlying costs was needed prior to approving Enbridge's applied-for interim tolls. The NEB expressly rejected these arguments, emphasizing that: (i) Enbridge's application was for interim tolls, rather than final tolls; (ii) the NEB's "general practice is to establish such tolls without an extensive examination of substantive issues"; and (iii) interim tolls may be subject to future refund or recovery once the final tolls are determined.¹⁴

While some parties in their comments on the Application expressed concerns that they may not be able to challenge underlying costs in the final Expanded System tolls if those costs are included in the interim tolls, the NEB expressly confirmed in a past decision that parties may raise concerns respecting costs that were included in an interim toll when the application for the final toll is filed.¹⁵ Trans Mountain confirms irrevocably that the same process can and should be followed here.

Similarly, with respect to concerns from some parties in their comments on the Application that Trans Mountain's applied-for interim tolls could be in effect for roughly two years (suggesting that a more extensive review is warranted when interim tolls are in place for a longer time), the NEB rejected that argument in the proceeding to consider TransCanada PipeLines Limited's Application for Approval of Mainline Interim 2012 Tolls. In that proceeding, the NEB emphasized that even where interim tolls are in place for an extended period of time, they will be subject to a final determination. The NEB specifically noted in

¹⁴ Filing ID [A1S3X6](#), PDF 4 of 5.

¹⁵ Filing ID [A1J6R1](#), PDF 1 of 3.

that case that “it is not unusual for interim tolls to be in place for an extended period of time while final tolls are being determined”.¹⁶

The above guidance from the NEB confirms that extensive and time-consuming regulatory processes are neither necessary nor appropriate in considering and deciding interim toll applications because interim tolls will be “trued up” in the future when final tolls are established, and shippers will have the ability to challenge the underlying costs at the time of the final toll application. This process of approving interim tolls and truing them up in final tolls is now expressly confirmed in section 232 of the *Canadian Energy Regulator Act*. In Trans Mountain’s respectful submission, timely and expedited reviews of interim toll applications are entirely appropriate and advance the public interest. Such reviews avoid unnecessary regulatory delays and costs, while also ensuring that shippers are not harmed or prejudiced because they will ultimately be kept whole in the process that will be followed to determine final tolls.

IV. Proposed List of Issues

For the reasons stated above, Trans Mountain strongly disagrees that the Commission should revisit the appropriateness of the RH-001-2012 toll methodology or assess the prudence of TMEP construction costs in its consideration of the Application.

Instead, consistent with the level of review applied to past interim toll applications by the NEB, the Commission’s review of the Application should focus on (1) whether the applied-for tolls comply with the RH-001-2012 toll methodology, and (2) whether the aspects of the Application that were not addressed in the RH-001-2012 Decision (the majority of which were not raised in the comments from interested parties) are just and reasonable, and not unjustly discriminatory, pursuant to Part 3 of the *Canadian Energy Regulator Act*.

Specifically, Trans Mountain respectfully submits that the only issues before the Commission that should be decided in considering the Application are:

1. Whether the following toll components shown in the Toll Schedule (Attachment 1) to the Application¹⁷ have been established based on the toll methodology approved in the RH-001-2012 Decision:

¹⁶ Filing ID [A2K0H9](#), PDF 1 of 1.

¹⁷ Filing ID [C24695-3](#).

- a. interim fixed toll component, including the application of section 3.2 of the FSA to “Capped” and “Uncapped” costs;¹⁸
 - b. direct inject credit;¹⁹
 - c. demurrage charge;²⁰
 - d. interim alternate delivery point fee;²¹ and
 - e. interim power costs subject to a true-up.²²
2. Whether the following toll components in the Application not approved in the RH-001-2012 Decision are just and reasonable and not unjustly discriminatory, having regard to any applicable NEB or CER orders already issued in relation to these toll components, namely:
- a. Edmonton to Edmonton interim tolls,²³ as previously approved in CER Order TO-001-2023;²⁴
 - b. the Enhanced Response Regime Cost Recovery Fee, as previously approved in NEB Letter and Order TO-001-2016,²⁵
 - c. the Bulk Oil Cargo Fees and Capital Asset & Loan Fees, the collection of which was approved in NEB Order TOI-2-96²⁶ and TOI-2-2008;²⁷

¹⁸ Filing ID [C24695-3](#), PDF 3-7 of 12.

¹⁹ Filing ID [C24695-3](#), PDF 3-7 of 12; see also, Filing ID [C24695-4](#), PDF 29 of 38.

²⁰ Filing ID [C24695-3](#), PDF 12 of 12.

²¹ Filing ID [C24695-3](#), PDF 12 of 12.

²² Filing ID [C24695-3](#), PDF 9 of 12 ; see also, Filing ID [C24695-6](#), PDF 5 of 13.

²³ Filing ID [C24695-3](#), PDF 8 of 12.

²⁴ Filing ID [C24145-3](#); see also Filing ID [A3H4S5](#), [A1S3J6](#), and [A08592-1](#).

²⁵ Filing ID [A75224](#).

²⁶ NEB Decision [RHW-2-96](#).

²⁷ Filing ID [A1F2Y0](#).

- d. the Pipeline Reclamation Surcharge within the variable toll component,²⁸ as authorised by NEB Decision RH-2-2008²⁹ and CER Order TO-005-2019;³⁰
- e. the portion of Indigenous accommodation costs being reflected as a matter of toll design within the variable toll component;³¹
- f. Trans Mountain’s collection of the Gateway Infrastructure Fee 2 (“GIF2”) through its tariff on behalf of the Vancouver Fraser Port Authority (“VFPA”);³²
- g. the Westridge Dock Bid Premium, as previously approved in the NEB’s July 20, 2006 Letter Decision³³ and Order TO-002-2022;³⁴
- h. the interim non-performance penalty, the concept of which was previously approved by the Commission;³⁵
- i. Trans Mountain’s proposed Single Settlement Approach,³⁶ to refund or recover any difference between the fixed component of the interim Commencement Date tolls and the fixed component of the adjusted final tolls; and
- j. Trans Mountain’s proposed true-up mechanisms for the following variable toll elements: Pipeline Reclamation Surcharge; Enhanced Response Regime Cost Recovery Fee; and Indigenous Consultation and Accommodation Costs.

²⁸ Filing ID [C24695-3](#), PDF 9 of 12; see also, Filing ID [C24695-4](#), PDF 21 of 38.

²⁹ Filing ID [A21835-1](#).

³⁰ Filing ID [C03631-1](#). See also the CER June 2023 Report re Five-Year Review of Abandonment Cost Estimates and Set-Aside and Collection Mechanisms 2021 [Filing ID [C24949-3](#)].

³¹ Filing ID [C24695-3](#), PDF 9 of 12; see also, Filing ID [C24695-4](#), PDF 24 & 27 of 38 &.

³² Filing ID [C24695-3](#), PDF 11 of 12.

³³ Filing ID [A12678-1](#).

³⁴ Filing ID [C18955-3](#).

³⁵ Filing ID [A51914](#); see also Filing ID [C24695-3](#), PDF 12 of 12; Filing ID [C24509-1](#).

³⁶ Filing ID [C24695-2](#), PDF 25-28 of 145.

Trans Mountain submits that all other issues raised by interested parties in their comments on the Application are either outside the scope of the Application or do not require consideration by the Commission as part of any process that the Commission may establish to consider the Application, for the reasons discussed above.

V. Participation

In the Commission's June 8, 2023 letter, the Commission stated that "Interested parties' participation should correspond with the degree to which they may be impacted by the Application."³⁷ The NEB has consistently denied participant status to parties who do not demonstrate that: (i) they will be sufficiently affected by the NEB's decision; or (ii) their participation may assist the NEB's decision making.³⁸ The NEB has also denied parties participant status where the party's basis for participating is beyond the scope of the specific and narrowly construed issues of the case at hand.³⁹ Consistent with this past regulatory guidance, Trans Mountain submits that parties should only be afforded participant status in any process established by the Commission to consider the Application if they have the potential to be sufficiently or directly impacted by it. Kelly Lake First Nation Society, TWN and Pro Information Pro Environment United People Network should not be granted participant status because they have not demonstrated that they may be sufficiently or directly impacted by the Commission's decision on the Application. In Trans Mountain's view, many of the concerns raised by those parties are more appropriately addressed in other existing forums.

VI. Time is of the Essence

As Trans Mountain explained in the Application, time is of the essence. Trans Mountain and its shippers (as well as other third parties) have a significant interest in ensuring that the Expanded System is placed into service as soon as possible. Trans Mountain is working to achieve the earliest possible in-service date (i.e., Commencement Date), which, while uncertain at this time, could be as early as January 2024.

Trans Mountain has requested the Commission issue a decision on the Application on or before September 14, 2023. Contrary to suggestions from some parties in their letters of comment, this requested decision date is neither arbitrary nor unreasonably early. As Trans Mountain described in the Application,⁴⁰ while the FSA contemplated that the interim tolls

³⁷ Filing ID [C24789-1](#), PDF 2 of 3.

³⁸ See e.g. Filing ID [A6R0H3](#); Filing ID [A5K6X4](#); and Filing ID [A4C3V1](#).

³⁹ Filing ID [A3C7I0](#).

⁴⁰ Filing ID [C24695-2](#), para 108-114, PDF 29-30.

for the Expanded System be finalized at least 30 days prior to the Commencement Date, the September 14, 2023 date was specifically determined based on various steps that must occur after approval of interim tolls is granted and before the Commencement Date.

For additional clarity, and in addition to the other factors described in the Application, prior to commencement of service on the Expanded System, Trans Mountain will need to fill the pipeline with line fill. This is part of the “wet commissioning” process and will take approximately seven weeks. The first volumes necessary to support line fill must be physically received by Trans Mountain in the month prior to the start of line fill. Nominations to supply these volumes must be submitted in the middle of the month prior to receipt, which is a minimum of six weeks prior to the start of wet commissioning and possibly longer depending on the exact commissioning start date. This means that nominations for line fill will likely be due 13-15 weeks in advance of the Commencement Date. If the Commencement Date occurs in January 2024, this means that nominations would be due on September 15, 2023.⁴¹ Approving the interim Commencement Date tolls in advance of that nomination deadline would allow shippers (not all of whom have filed letters of comment with the Commission, and who also include uncommitted shippers) to make informed business decisions about pipeline nominations based on the approved tolls.

For these reasons, based on the available information at this time, September 14, 2023 is the latest decision date for the Application that would ensure shippers understand the approved interim tolls in advance of their nominations and also ensure the Commission’s approval of interim tolls does not cause the Commencement Date itself to be delayed.

VII. Proposed Process

The Commission has historically ordered expedited processes where urgent circumstances warrant expediency.⁴² For the reasons discussed above and in the Application, it is critical that interim tolls be established by September 2023.

Further, the narrow issues that need to be decided by the Commission in this case do not require an extensive or time-consuming evidentiary proceeding. In particular, while the Commission and intervenors may require additional details from Trans Mountain to verify that Trans Mountain has determined the fixed toll component of the interim tolls in

⁴¹ See Trans Mountain’s nomination schedule, online: <https://www.transmountain.com/nomination-dates>.

⁴² See e.g. NGTL Application for Approval of Amendments to Gas Transportation Tariff - Temporary Service Protocol (NEB Decision RH-002-2019) [Filing ID [C02965-1](#)]; TransCanada Application for Approval to Amendments to Transportation Access Procedure of the Canadian Mainline Gas Transportation Tariff (NEB Decision RH-002-2013) [Filing ID [A54343-1](#)]; NGTL Application for Approval of Amendments to Gas Transportation Tariff Temporary Service Protocol (NEB September 26, 2019 Letter Decision RH-002-2019) [Filing ID [C01880-1](#)].

accordance with the RH-001-2012 toll methodology, and understand the rationale for other aspects of the Application, there is no need for expert or intervenor evidence. Instead, Trans Mountain respectfully submits that an appropriate process would consist of one round of written Information Requests to Trans Mountain (and to the VFPA regarding the GIF2), followed by oral argument, as set out in the chart below:

Process Step	Responsible Participant(s)	Deadline
Issuance of Process Direction or Hearing Order	Commission	July 11, 2023
Information Requests to the Applicant and VFPA	Commission and Intervenors	July 21, 2023
Responses to Information Requests	Trans Mountain and VFPA	August 11, 2023
Oral argument	All parties	August 28 to 30, 2023

Trans Mountain respectfully submits that the processes proposed by interested parties in their comments would require significantly more time and put the Commencement Date at risk, contrary to the public interest. Those processes are not required given the narrow scope of issues to be decided in the Application.

Trans Mountain further notes that its shippers have been aware for more than a year, since at least June 2022, that Trans Mountain planned to file the Application in Q2 2023. As such, they should be prepared to participate immediately over the coming weeks in any process the Commission may direct.

VIII. Conclusion

The Commission’s process to consider the Application should reflect the narrow scope of relief sought therein, the fact that approving the requested interim tolls will not compromise or jeopardise the rights or interests of the shippers, as well as the urgent need to finalize interim tolls and other applied-for matters prior to commencement of service on the Expanded System.

For the reasons set out above and in the Application, Trans Mountain respectfully submits that the Commission can and should establish an efficient and expedited process that

supports the issuance of a decision from the Commission on the Application no later than September 14, 2023.

Yours truly,

A handwritten signature in blue ink, appearing to be 'Sander Duncanson', with a long horizontal line extending to the right.

Sander Duncanson
Counsel for Trans Mountain

cc: Parties who filed requests to participate and/or letters of comment