Trans Mountain Pipeline ULC (Trans Mountain)
Application for Interim Commencement Date Tolls and Other Matters related to the Transportation of Petroleum on the Expanded Trans Mountain Pipeline System
CER File OF-Tolls-Group1-T260-2023-03 01

CER Information Request No. 1
Issued Date: August 1, 2023
Due Date: August 16, 2023

1.1 Appropriate level of Uncapped Costs in interim Commencement Date tolls

Reference:

i) National Energy Board (NEB), Decision on TransCanada PipeLines Limited Mainline Interim 2012 Tolls, PDF page 1 of 3, A2J6K9

ii) Trans Mountain, Reply Comments, PDF pages 3 and 7 of 14, C25338-1

iii) Trans Mountain, Trans Mountain Expansion Project (TMEP) Facility Support Agreement (FSA), A3E7D3

iv) Trans Mountain, Attachment 2 to the Application, PDF page 12 of 38, C24695-4

Preamble

In reference i), the NEB stated: "In light of the limited filings in an application to set or amend interim tolls, absent compelling evidence to the contrary, interim tolls are normally established in a manner that aligns with the [NEB]'s most recent decision which relates to a company's final tolls."

In reference ii), Trans Mountain indicates that the Commission should adhere to the RH-001-2012 Toll Methodology, and that the RH-001-2012 Decision approved the negotiated toll methodology contained in the FSA between Trans Mountain and its firm service shippers. Trans Mountain also "submits that it is not only unnecessary for the Commission to review the reasonableness of Trans Mountain's costs as part of its review of the Application, but doing so would unfairly and inappropriately change the methodology that was approved in the RH-001-2012 Decision."

In reference iii), the FSA defines:

- "Accuracy" as, "in respect of a cost estimate Probability Distribution, the cost range within which 90% of the cost outcomes fall, expressed as +X%/-Y%, where X equals the difference between the P95 Cost and the P50 Cost, divided by the P50 Cost and expressed as a percentage, and where Y equals the difference between the P50 Cost and the P5 Cost, divided by the P50 Cost and expressed as a percentage." (PDF 6 of 31)
- "Uncapped Costs" as, "the Costs and Expenses resulting from or relating to: (a) consultation and accommodation costs, (b) price of steel for pipe, (c) acquisition of property rights, and (d) pipeline construction and inspection as such Costs and Expenses are shown in Schedule B." (PDF 10 of 31)
- "Capped Costs" as, "all Costs and Expenses that are not Uncapped Costs." (PDF 6 of 31)
- "CPCN Cost Estimate" as, "Carrier's P95 Cost estimate of Costs and Expenses as of the issuance date of the CPCN and which estimate shall show the Capped Cost Toll Limit and the Uncapped Costs Toll Estimate." (PDF 7 of 31) [Certificate of Public Convenience and Necessity].
- "Costs and Expenses" as, "all costs and expenses reasonably and necessarily incurred by or on behalf of the Carrier related to work required to be undertaken by or on behalf of the Carrier in connection with the development and construction of the Expansion […]." (PDF 21 of 31)

Further, the FSA states: “The Carrier will use all reasonable technical and commercial efforts during the Expansion to achieve a Class II/III CPCN Cost Estimate, in general accordance with AACE International recommended practices, which shall have a deemed Accuracy of +15%/-10%.” (PDF 14 of 31)

Reference iv) provides the following project cost estimates, with the Commission adding the percentage change numbers:

	Uncapped Cost	Capped Cost	Total Project Cost
CPCN ($MM)	1,767.3	5,651.0	7,418.3
Commencement Date (applied-for) ($MM)	9,087.0	21,820.3	30,907.3
Percentage change	414%	286%	317%

Request

a) Confirm what Accuracy the CPCN Cost Estimate had. If an Accuracy of +15%/-10% was not achieved, explain why not.

b) Confirm that it is Trans Mountain’s view that its applied-for interim Commencement Date tolls, based on an Uncapped Cost of $9,087.0 MM, best align with the RH-001-2012 decision. If not confirmed, explain why not.

c) If b) is confirmed, discuss why this is the case in light of the following: Trans Mountain’s estimate of Commencement Date Uncapped Costs is 414% higher than CPCN Uncapped Costs; the FSA outlines that the CPCN Cost Estimate represented a P95 estimate of Costs and Expenses; the FSA contemplated the prospect of the CPCN Cost Estimate having an Accuracy of +15%/-10%; and the reasonableness of Trans Mountain’s costs has not been reviewed by the Commission, shippers, or auditors. As part of this discussion, address:

c.1) The extent to which determining that costs and expenses are “reasonably and necessarily incurred” pursuant to the FSA requires interpretation and judgement, particularly given project costs increasing to the extent shown in reference iv).

c.2) Whether, given Trans Mountain’s submission that it is unnecessary and would be inconsistent with RH-001-2012 for the Commission to review the reasonableness of Trans Mountain’s costs as part of reviewing the Application, Trans Mountain submits that interim Commencement Date tolls must be based on Trans Mountain’s interpretation and judgement regarding the amount of “costs and expenses reasonably and necessarily incurred” pursuant to the FSA.

c.3) Whether and, if so, why it would not be consistent with the RH-001-2012 decision for the Commission to require that interim Commencement Date tolls be based on a lower Uncapped Costs amount.

c.4) What, if anything, in the RH-001-2012 decision or FSA specifically suggests that the Commission should accept the level of Uncapped Costs submitted by Trans Mountain for calculating interim Commencement Date tolls, regardless of the size of increase from earlier estimates.

Response

a) Following the definition from the American Association of Cost Engineering International (AACEi) 18R-97 (Nov. 2011), the CPCN Cost Estimate was a Class 3 estimate with an expected accuracy range of +15% / -10%, based on information available to Trans Mountain at the time. The estimate was also a P95 estimate in accordance with the requirements of the Facility Support Agreement (FSA). In the period of more than six years since the estimate was prepared, actual Trans

Mountain Expansion Project (Expansion Project or TMEP) costs have exceeded the CPCN Cost Estimate for numerous reasons, as explained below.

Preparation and Accuracy of the CPCN Cost Estimate

Trans Mountain prepared the CPCN Cost Estimate in general accordance with AACEi recommended practices, including those shown in the following table:

Table 1.1-1 AACEi Recommended Practices

Practice No.	Practice Name
17R-97	Cost Estimate Classification System
18R-97	Cost Estimate Classification System – As Applied in Engineering, Procurement, and Construction for the Process Industries
20R-98	Project Code of Accounts
31R-03	Reviewing, Validating, and Documenting the Estimate
33R-15	Developing the Project Work Breakdown Structure
34R-05	Basis of Estimate
27R-03	Schedule Classification System
40R-08	Contingency Estimating – General Principles
41R-08	Risk Analysis and Contingency Determination Using Range Estimating
44R-08	Risk Analysis and Contingency Determination Using Expected Value

Based on the above guidelines and industry standard practice, cost estimates for major capital projects are typically developed using three foundational concepts, which Trans Mountain followed in preparing the CPCN Cost Estimate:

1. Establish Baseline Estimate with Underlying Assumptions

   The project owner first establishes a "baseline estimate", which comprises a defined project scope and execution schedule, based on a set of detailed assumptions. By definition, these assumptions are forward looking in nature and cannot be proven with certainty at the time the estimate is prepared. For a major pipeline project, these assumptions include factors such as the length of heavy wall line-pipe and non-heavy wall line-pipe, the number of anticipated bad weather days per month and the availability of required construction resources. These assumptions are typically reviewed and validated by project estimators, contractors, and subject matter experts as part of the cost estimation process. Because the baseline estimate is the foundation for the cost estimate, if the underlying assumptions in the baseline estimate do not ultimately materialize as expected during construction, actual project costs may differ from the cost estimate (potentially significantly, depending on the nature of the deviation from the underlying assumptions and concurrence with other factors).

2. Conduct Probabilistic Analysis

The project owner will develop the costs of the baseline estimate, based on the underlying assumptions, and will then perform a risk analysis of those costs. This analysis will include three key steps:

i) identification of possible risks and opportunities that may impact the project;

ii) assessment of probabilities and impacts (cost and time) for each risk and opportunity; and

iii) a probabilistic analysis (i.e., Monte Carlo Simulation) to determine the likelihood of risks and opportunities impacting the project, and the resulting impacts.

For a P95 cost estimate, the proponent will select the outcome from the probabilistic analysis that represents the level of confidence of achieving the cost estimate with a 95% probability based on the information available at the time. The cost estimate will not reflect extreme risks that fall outside the P95 range. If such extreme risks occur during project execution, actual project costs may differ significantly from the cost estimate.

3. Exclude Exogenous Factors

AACEi guidelines and industry standard practice exclude unforeseen external events from the cost estimate that are outside of the project owner's control (see, for example, AACEi 41R-08, PDF 3 of 9). These external events include "Acts of God", such as extreme weather events. If such external events occur during project execution, actual project costs may differ significantly from the cost estimate.

Cost estimates of this nature are forward looking and inherently uncertain. That is particularly true where, as in the case of the Expansion Project, the estimate pertains to a complex, multi-billion dollar "mega project" to be built in challenging environments over a period of years. Such forward looking estimates will not be achieved if (i) key assumptions in the baseline estimate are not achieved during execution; (ii) significant risks materialize that go beyond the probabilistic analysis; and/or (iii) exogenous factors arise. If multiple of these circumstances occur, each may compound the impacts associated with the other.

In preparing the CPCN Cost Estimate in 2016 and 2017, Trans Mountain worked diligently with internal and external experts, including engineering firms, Engineering Procurement and Construction Contractors (EPCs), and General Construction Contractors (GCCs), to develop the assumptions within its CPCN Baseline Estimate (Baseline Estimate). This work included preparing detailed basis of estimates, defined scopes of work, construction execution plans and exclusions, and resulted in several hundred detailed assumptions regarding project scope and execution. Trans Mountain's internal and external experts also assisted with the probabilistic analysis by identifying and validating Expansion Project risks and opportunities, as well as the probabilities and impacts associated with the identified risks and opportunities. Trans Mountain then conducted a quantitative risk analysis of the Baseline Estimate in general accordance with AACEi guidelines and industry standard practice to determine the P95 value.

At the request of the Firm Service Shippers[1], details regarding the CPCN Cost Estimate, including the Baseline Estimate, underlying assumptions, and risk analysis, were compiled in an estimate package comprised of 43 binders that was provided to the Firm Service Shippers' independent auditor in 2017. The auditor reviewed the CPCN Cost Estimate through multiple sets of detailed questions and interviews of Trans Mountain personnel, which were prepared in coordination with the Firm Service Shippers. At the conclusion of this process, the auditor validated the CPCN Cost Estimate, including the underlying assumptions and exclusions, and communicated the results to the Firm Service Shippers.

[1] As defined in the Expanded System Rules & Regulations (Rules & Regulations), PDF 5 of 22, Filing ID: C23061-3.

Causes of Cost Increases in the Period since the CPCN Cost Estimate was Prepared

The Expansion Project's actual costs have exceeded the CPCN Cost Estimate due to a combination and compounding impacts of (1) assumptions underlying the Baseline Estimate not materializing as expected, (2) extreme risks outside of the P5/P95 range, and (3) exogenous factors, including Acts of God.

Key examples of assumptions underlying the Baseline Estimate that did not materialize as expected include:

- The Baseline Estimate assumed that all critical permits and regulatory approvals for the Expansion Project would be obtained in 2017. Ultimately, however, the Federal Court of Appeal quashed the Expansion Project's CPCN in 2018 and the NEB did not issue a new CPCN until 2019, following a reconsideration hearing. Provincial regulatory processes also took far longer to complete than expected. These regulatory delays and legal challenges resulted in significant standby costs caused by multiple starts and stops in construction, and ultimately pushed the Expansion Project construction schedule out several years.
- At the time the CPCN Cost Estimate was prepared, the market had an abundance of available resources for construction, with an expected downturn in major capital projects starting in 2017. However, market conditions changed significantly between 2017 and 2019, with multiple large projects such as Site C and Coastal GasLink starting construction in British Columbia (B.C.). The regulatory approval delays noted above caused the Expansion Project to be constructed during a period of low availability and high cost for construction resources. For example, approximately 15% to 20% of the workforce employed for Expansion Project execution consisted of apprentices ("green hands"), resulting in the need for additional oversight and ultimately lower productivity than assumed in the Baseline Estimate.
- Although the Baseline Estimate included assumptions regarding land acquisition costs based on then-current land values, land values increased significantly during the lengthy period of Expansion Project execution. For example, land values in the Lower Mainland in B.C. increased by roughly 350% from the time of the CPCN Cost Estimate to the time of land acquisition.
- The Baseline Estimate assumed that consultation with Indigenous groups was substantially complete at the time the CPCN was issued. However, following the Federal Court of Appeal's decision quashing the original CPCN, Trans Mountain was required to conduct significant additional Indigenous consultation. This further delayed the execution of the Expansion Project.
- At the time of the CPCN Cost Estimate, access to the right-of-way was constrained in many locations due to absence of landowner consents and the need to complete future detailed permitting. As such, assumptions in the Baseline Estimate concerning items such as construction quantities, terrains, alignments, site conditions and geotechnical data were based on available desktop data only. In many cases, actual site conditions ultimately differed from this desktop data, requiring changes to the Expansion Project scope and execution plans.

Extreme risks outside the P95 range that materialized during Expansion Project execution include, for example, encountering a previously unidentified, extensive abandoned landfill site during construction along Spread 7B that required prolonged and extensive mitigation. Acts of God that occurred during Expansion Project execution include the COVID-19 pandemic, which resulted in significant additional delays as well as increases in cost associated with the logistics of labour, materials, and equipment. Other examples of Acts of God include the wildfires and atmospheric river flooding that occurred in 2021, which resulted in forced shut-downs, associated demobilization and remobilization of resources, and missing key seasonal construction windows.

Overall, Trans Mountain has identified five key categories of root causes for cost increases that arose between the preparation of the CPCN Cost Estimate in 2016/2017 and the filing of the Commencement Date Tolls Application (Application) in June 2023:

1. **Evolving and Additional Compliance Requirements:** Costs driven by legal and regulatory requirements that went beyond the assumptions in the Baseline Estimate (for example, additional required mitigations as part of the Amphibian Salvage Program and the Bird Nesting Program, as well as compliance with updates to the B.C. Labour Code).

2. **Information Maturity**: Costs driven by changes in the availability and accuracy of information to support Expansion Project planning (for example, ground truthing resulting in an increase in the number of major trenchless crossings from 20 in the Baseline Estimate to more than 70).

3. **Indigenous Accommodations**: Costs driven by changes to support and accommodate the concerns of Indigenous communities (for example, the Coldwater re-route and the change in construction methodology in the Pipsell area from open trench to micro-tunnelling).

4. **Stakeholder Engagement and Compensation**: Costs to secure access to the right-of-way and construction workspaces, including the acquisition of land rights and compensation to landowners, occupants and communities, exceeding the assumptions in the Baseline Estimate.

5. **Exogenous Factors**: Costs driven by external events and Acts of God impacting the execution of the Expansion Project that were outside of Trans Mountain's control.

Each of these root causes resulted in changes to the scope of work (e.g., additional materials for re-routes), construction methodology (e.g., addition of sheet piling required to protect construction in high water table areas), productivity levels (e.g., trenchless operations taking longer due to geotechnical conditions) and schedule delays.

While these root causes resulted in significant cost increases above the CPCN Cost Estimate, they do not undermine the validity of the CPCN Cost Estimate. As noted above, the cost increases can all be attributed to one or more of: (1) assumptions in the Baseline Estimate not materializing as expected; (2) extreme risks outside of the P5/P95 range; and (3) exogenous factors, including Acts of God. These items were not included in the CPCN Cost Estimate, consistent with AACEi guidelines and industry standard practice.

Trans Mountain notes that it has regularly updated its cost and schedule estimates during Expansion Project execution, including by completing: (1) a Class 2 Cost Estimate in 2019; (2) a Class 1 Cost Estimate in 2021; and (3) a Validated Cost Forecast in 2022. Trans Mountain shared the results of each update with its Firm Service Shippers, including updated estimates of Capped Costs and Uncapped Costs under the FSA.

b) Confirmed, for the reasons discussed in the response to c).

c) Trans Mountain calculated the applied-for Commencement Date Tolls based on the toll methodology that was negotiated with its Firm Service Shippers and agreed to in the FSA, and that was also approved by the NEB in the RH-001-2012 Decision. The NEB held in that Decision that tolls calculated in accordance with the FSA would be just and reasonable.[2] The fact that actual Expansion Project costs have exceeded the CPCN Cost Estimate does not invalidate the underlying methodology or make the resulting tolls unjust or unreasonable.

For the reasons discussed below, the possibility of cost overruns was well known to all potentially affected stakeholders and expressly contemplated under the FSA. Trans Mountain and the Firm Service Shippers agreed to allocate the risks of cost overruns, such that certain types of overruns would be to Trans Mountain's account and others would be to the account of shippers. Both risks have materialized, with Trans Mountain bearing the majority of the increased costs to date. Modifying the applied-for Commencement Date Tolls to reduce the amount of Uncapped Costs recovered from shippers would materially change the agreed-upon risk allocation and upset the balance that was struck during the negotiations of the FSA. In Trans Mountain's view, such an approach would be improper and fundamentally unfair. Trans Mountain relied on the approved risk allocation in the FSA to invest tens of billions of dollars in the TMEP, and shippers expressed no concerns about the continued appropriateness of the agreed-upon risk allocation until their comments on the Application.

Trans Mountain respectfully submits that instead of re-visiting the approved RH-001-2012 toll methodology, when determining whether the applied-for Commencement Date Tolls are just and reasonable, the Commission should focus its inquiry on whether Trans Mountain has calculated the tolls in accordance with the agreed-upon formula specified in the FSA. A detailed review of costs underlying the tolls should only be considered at the time Trans Mountain's final tolls are filed with the Commission, after such costs have been finalized and audited. As discussed below, this approach aligns with the methodology negotiated between Trans Mountain and its Firm Service Shippers and approved by the NEB in the RH-001-2012 Decision.

Cost Overruns were Addressed in the FSA

The approved toll methodology in the FSA is, in essence, a framework to allocate the risks associated with executing the Expansion Project.[3] This allocation reflects the parties' agreement that some costs should be "capped" and that others should be "uncapped". The "uncapped costs" category comprised cost items that were inherently difficult to predict prior to construction (such as Indigenous accommodation costs, costs to acquire steel for pipe, property acquisition costs, and construction costs within Spreads 5B and 7). Any "capped" Expansion Project costs were not allowed to increase fixed tolls above the agreed-upon cap (and therefore would be borne by Trans Mountain), while costs in the "uncapped" category could increase fixed tolls. The parties did not agree to any limit on the ultimate amount of "uncapped" costs that could be included in the tolls.

In the period of more than six years since the CPCN Cost Estimate was calculated, an incremental $23.489 billion of total costs are estimated to be incurred on the Expansion Project. Using the figures underlying Trans Mountain's applied-for Commencement Date Tolls, 68.84% of these costs will be borne by Trans Mountain while only 31.16% will be passed on to shippers in the form of higher tolls. Table 1.1-2 below summarizes this conclusion:

[2] NEB, RH-001-2012 Reasons For Decision, PDF 40 of 54 (May 2013) ("In this case, given that the Open Season was found to be appropriate and considering that Trans Mountain did not use market power to abuse a potential dominant position, the Board concludes that the toll methodology will produce tolls that are just and reasonable and will not be unjustly discriminatory."), Filing ID: A51913-1.

[3] NEB, RH-001-2012 Reasons For Decision, PDF 38 of 54 (May 2013) ("The applied-for toll methodology is essentially a negotiated agreement allocating risk among parties, which includes gives and takes."), Filing ID: A51913-1.

Table 1.1-2 Estimated Expansion Project Cost Increases

($MM's) unless otherwise indicated	**Uncapped Cost**	**Capped Cost**	**Total Expansion Project Cost**
CPCN Cost Estimate	1,767.3	5,651.0	7,418.3
Commencement Date Tolls Application	9,087.0	21,820.3	30,907.3
Increase in Cost Since CPCN Cost Estimate	**7,319.7**	**16,169.3**	**23,489.0**
Cost Percentage of Total Increase Since CPCN Cost Estimate	31.16%	68.84%	100%

The purpose of the CPCN Cost Estimate under the FSA was primarily to (1) establish the cap that applied to "capped" costs under the approved toll methodology, and (2) enable the Firm Service Shippers to exercise their termination right under the FSA in the period before construction of the Expansion Project began. However, the level of Uncapped Costs included in the CPCN Cost Estimate was not intended to limit or constrain the level of Uncapped Costs in the Commencement Date Tolls.

Trans Mountain and its Firm Service Shippers are large, sophisticated parties with extensive experience in major capital projects. When negotiating the risk allocations provided for in the FSA, the parties understood that pre-construction cost estimates are inherently uncertain, and that numerous exogenous factors such as Acts of God could give rise to material cost overruns. The parties also understood that costs in the "uncapped" cost category were inherently difficult to predict prior to construction. Again, as part of the risk allocation that was negotiated and accepted by all parties, cost overruns in "capped" costs were to Trans Mountain's account, and cost overruns in "uncapped" costs were to the shippers' account.

Trans Mountain notes that cost overruns on major capital projects in Canada are not uncommon. According to the Independent Project Analysis (IPA)[4], "less than 45 percent of projects actually end up within +/-10 percent of their cost estimate at authorization". Similarly, the CATO Institute has found that "nine out of ten […] megaprojects have cost overruns. Overruns of up to 50 percent in real terms are common".[5] Examples of recent major capital projects in Canada that have experienced significant cost overruns are provided in Table 1.1-3 below.

[4] Cost & Schedule Risk Analysis (CSRA): https://www.ipaglobal.com/services/cost-engineering/cost-schedule-risk-analysis-csra/ (Accessed August 14, 2023).
[5] Megaprojects: Over Budget, Over Time, Over and Over dated February, 2017: https://www.cato.org/policy-report/january/february-2017/megaprojects-over-budget-over-time-over-over (Accessed August 14, 2023).

Table 1.1-3 Capital Cost Overruns of Major Capital Projects in Canada

Project	Description	Original Cost Estimate	Revised Cost Estimate	% Increase
Site C Clean Energy Project	Hydroelectric generating station in British Columbia	$7.9B (2010)[6]	$16B (2021)[7]	103%
Bipole III Transmission Project	Delivery of renewable power to southern parts of Manitoba	$1.88B (2006)[8]	$5.04B (2016)[9]	168%
Muskrat Falls Hydroelectricity Project	Hydroelectric generation project in Newfoundland & Labrador	$6.2B (2010)[10]	$13.4B (2022)[11]	116%
Coastal Gas-Link Project	Pipeline to the west coast to transport gas for LNG processing	$4B (2012)[12]	$14.5B (2023)[13]	263%

It was precisely because of the risk of significant cost overruns occurring during the lengthy period of construction in challenging environments that the parties negotiated to allocate risks by capping the majority of Expansion Project cost items (and having Trans Mountain bear the risk that such costs would exceed the CPCN Cost Estimate), while having other costs uncapped. As shown in Table 1.1-2 this risk allocation has resulted in Trans Mountain bearing more than two thirds of the cost overruns on the Project. If the Commission were to lower the amount of Uncapped Costs included in the Commencement Date Tolls below what Trans Mountain included in the Application, that would materially change the bargain that was struck at the time the FSA was entered into by requiring Trans Mountain to not only bear risks that it agreed to under the FSA, but also a portion of the risks the shippers agreed to bear. Such an approach would be fundamentally unfair for multiple reasons, including because Trans Mountain relied on the agreed-upon (and approved) risk allocation in the FSA to invest tens of billions of dollars in the TMEP, and shippers never expressed any concern about the continued appropriateness of the risk allocation until this proceeding.

With respect to reference i), the NEB's decision in TransCanada's 2012 interim tolls application holds that the Commission's standard is that interim tolls should reflect the methodology that "aligns with the [Commission's] most recent decision which relates to a company's final tolls."[14]

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[6] Site C Capital Cost Estimate dated October 2014 (PDF 1 of 3): https://www.sitecproject.com/sites/default/files/backgrounder-site-c-cost-estimate_0.pdf (Accessed August 14, 2023).
[7] Province provides update, next steps for Site C dated February 26, 2021: https://news.gov.bc.ca/releases/2021PREM0014-000342 (Accessed August 14, 2023).
[8] Economic Review of Bipole III and Keeyask dated November 2020 (PDF 103 of 172): https://manitoba.ca/asset_library/en/proactive/2020_2021/ERBK-Report-Volume1.PDF (Accessed August 14, 2023).
[9] Economic Review of Bipole III and Keeyask dated November 2020 (PDF 103 of 172): https://manitoba.ca/asset_library/en/proactive/2020_2021/ERBK-Report-Volume1.PDF (Accessed August 14, 2023).
[10] Lower Churchill Project to Become a Reality; Province Signs Partnership Agreement with Emera Inc. for Development of Muskrat Falls dated November 18, 2010: https://www.gov.nl.ca/lowerchurchillproject/release.htm (Accessed August 14, 2023).
[11] Cost of Muskrat Falls Project Up After Repeated Delays dated June 17, 2022: https://vocm.com/2022/06/17/muskrat-falls-revised-cost/ (Accessed August 14, 2023).
[12] TransCanada selected by Shell and partners to develop multi-billion dollar natural gas pipeline to Canada's west coast dated June 5, 2012: https://www.coastalgaslink.com/whats-new/news-stories/2012/2012-06-05transcanada-selected-by-shell-and-partners-to-develop-multi-billion-dollar-natural-gas-pipeline-to-canadas-west-coast/ (Accessed August 14, 2023).
[13] TC Energy Provides Coastal Gaslink Project Update dated February 1, 2023: https://www.tcenergy.com/announcements/2023-02-01-tc-energy-provides-coastal-gaslink-project-update/ (Accessed August 14, 2023).
[14] NEB Letter and Order TGI-004-2011, PDF 1 of 3 (December 2011), Filing ID: A2J6K9.

For the Expansion Project, the most recent decision approving a tolling methodology for the Expanded System is that contained in the RH-001-2012 Decision. For the reasons discussed above, the Commencement Date Tolls were calculated in accordance with the methodology approved in that decision.

In Trans Mountain's view, arguments of certain intervenors that seek to implement an interim toll level that only partially reflects the inclusion of Trans Mountain's estimate of Uncapped Costs are, in effect, seeking to overturn or modify the toll methodology approved in RH-001-2012, after Trans Mountain relied on the NEB's approval of that methodology to invest tens of billions of dollars in the Expansion Project. Trans Mountain fully accepts that adoption of the filed-for interim tolls by the Commission will not limit the right or ability of the Commission to subsequently review the costs that will be included in Trans Mountain's final tolls, and that all of the cost-related issues raised by intervenors in this Application can be raised and addressed in the future final tolls, as discussed further below and in response to 1.2. In Trans Mountain's view, the intervenors' arguments do not provide a basis for the Commission to now apply a risk-sharing or cost recovery standard other than that agreed to by shippers and Trans Mountain, and approved by the NEB, in the Expansion Project's "most recent decision which relates to a company's final tolls."

<u>The FSA Contemplates that Reasonableness of Costs will be Addressed *After* Approval of Commencement Date Tolls</u>

With respect to the Commission's questions about whether the parties intended for there to be a review of the reasonableness of the Uncapped Costs estimate underlying Trans Mountain's Application, that was not expressly addressed in the FSA or the RH-001-2012 Decision. However, the process agreed to in the FSA involved Trans Mountain making the initial determination of how costs would be categorized for the Commencement Date Tolls, with shippers having the subsequent right to audit the costs in the final tolls, all subject to reconciliation. There is nothing in the FSA or in the RH-001-2012 Decision to indicate that the negotiating parties or the NEB contemplated that costs would be reviewed as part of the Application. Given that (i) such a review of costs would be a large undertaking, (ii) Expansion Project costs are not final at the time of the Application, (iii) the parties agreed to allow the Firm Service Shippers to audit the costs as part of the process for setting the <u>final tolls</u>, (iv) any difference between the Commencement Date Tolls and final tolls will be "trued up" and reconciled, and (v) any review of costs as part of the Application followed by a subsequent review or audit of costs underlying the final tolls would necessarily result in overlap and duplication. Trans Mountain respectfully submits that the agreed-to framework under the FSA contemplated that the reasonableness of the costs underlying the Expanded System tolls would be addressed <u>after</u> Commission approval of the Commencement Date Tolls.

Trans Mountain agrees with the Commission's suggestion in request c.1) that a determination of whether costs and expenses are "reasonably and necessarily incurred" pursuant to the FSA requires interpretation and judgement. However, the FSA did not leave Trans Mountain with unfettered discretion in calculating the Commencement Date Tolls and imposed a standard of prudent and reasonable performance of its obligations in this regard.[15] For the reasons set out above and in reference ii), to the extent the Commission reviews whether the costs underlying the Expanded System tolls were "reasonably and necessarily incurred", that review should occur as part of the Commission's review of Trans Mountain's final tolls, not the Commencement Date Tolls.

[15] Trans Mountain, RH-001-2012 Appendix 7 Final Form of FSA, PDF 12 of 31 (January 2013), Filing ID: A3E7D3.

1.2 Forums for reviewing Trans Mountain costs

Reference

i) Trans Mountain, Reply Comments, PDF pages 6 to 8 of 14, C25338-1

ii) NEB, 17 August 2012 decision regarding an application from Suncor Energy Products Partnership related to the TMEP open season, A44942

Preamble

In reference i), Trans Mountain describes the audit rights that committed shippers have in the FSA with respect to final TMEP costs. Trans Mountain indicates that, "it would be inefficient and unfair for shippers to audit and assess Trans Mountain's construction costs in multiple different forums". Trans Mountain also states that, "for the Commission to review the reasonableness of Trans Mountain's costs as part of its review of the Application […] would unfairly and inappropriately change the methodology that was approved in the RH-001-2012 Decision."

Trans Mountain also states: "While some parties in their comments on the Application expressed concerns that they may not be able to challenge underlying costs in the final Trans Mountain 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. Trans Mountain confirms irrevocably that the same process can and should be followed here." [footnote omitted] Trans Mountain further states that, "shippers will have the ability to challenge the underlying costs at the time of the final toll application."

In reference ii), the NEB directed Trans Mountain to remove section 2.2 from the FSA and indicated that "[t]he ability of prospective shippers to raise valid concerns is a key part to the Board's adjudicative process."

Request

a) Describe in detail what the RH-001-2012 decision or the FSA say about the role of the NEB or successor regulator in reviewing the Commencement Date Cost Estimate and As-Built Costs and Expenses. Provide specific references.

b) Confirm that Trans Mountain is of the view that if the Commission were to review the reasonableness of the costs underpinning final tolls (i.e., the As-Built Costs and Expenses), this would not unfairly and inappropriately change the methodology approved in RH-001-2012. If not confirmed, explain in detail.

c) Confirm that Trans Mountain is of the view that notwithstanding their FSA audit rights with respect to As-Built Costs and Expenses, committed shippers would not be acting contrary to the FSA or the methodology approved in RH-001-2012 if they were to request that the Commission review the costs underpinning final tolls (i.e. the As-Built Costs and Expenses). If not confirmed, explain in detail, including addressing consistency with the NEB's August 2012 letter.

    c.1) Clarify whether the response to c) would be different if the Commission initiated a review of the costs underpinning final tolls without any request from committed shippers to do so, and committed shippers then challenged or opposed the costs as part of the Commission's review.

Response

a) The NEB did not address its role in reviewing the Commencement Date Cost Estimate or As-Built Costs and Expenses in Decision RH-001-2012. As the NEB indicated in its September 25, 2012 hearing order for the RH-001-2012 proceeding, the level of costs for the Trans Mountain Expansion Project was not relevant to the Board's consideration of Trans Mountain's proposed toll methodology for the Expanded System, and would more appropriately be considered if and when the Board was asked to approve a Part III facility application or an application for final tolls:

> In the Board's view, whether the proposed contract terms and proposed toll methodology should account for full externality costs as well as the tolling treatment of such costs are questions within the scope of this proceeding and are already captured by the List of Issues. However, the level of those costs is not a relevant consideration to the Part IV Application proceeding because the Board is not asked to approve final tolls; the Board is asked to approve a toll methodology. In that regard, the Board notes that the level of those costs will likely be influenced by the design, construction and operation of the expanded Trans Mountain pipeline system which are matters to be examined in a potential future Part III Application. If those costs are found to be required in the toll methodology to be applicable on the expanded Trans Mountain pipeline system, if such an expansion is approved, the level of those costs will be a relevant consideration in the Part III Application **or an application for final tolls** on the expanded Trans Mountain pipeline system.[16]

Similarly, the NEB subsequently stated in Decision RH-001-2012 that "[u]nder the proposed toll methodology, cost information was neither provided nor required."[17]

With respect to the FSA, as noted in reference i), the FSA provides shippers with the right to audit As-Built Costs and Expenses and the Fixed Toll component of the final toll established pursuant to section 3.2(d) of the FSA. The NEB or its successor's[18] role with respect to these costs is contemplated under section 6.1(c)(xii) of the FSA, which requires Trans Mountain to file a tariff with the NEB reflecting the adjusted As-Built Costs and Expenses and adjusted Fixed Toll as determined by the auditor:

> **6.1 Cost and Expense Calculation**
>
> …
>
> (c) Audits of the Costs and Expenses shall, if desired by the Shipper, be conducted in accordance with the following:
>
> …
>
> (viii) the auditor may confirm the As-Built Costs and Expenses and the Fixed Toll, or the auditor may provide an adjusted As-Built Costs and Expenses figure and an adjusted Fixed Toll, which in the auditor's view is reasonable taking into account the formula set out in Section 3.2 and the provision for calculation of Costs and Expenses as set out in this Article 6;
>
> …
>
> (xii) if the auditor provides an adjusted Fixed Toll as contemplated in paragraph (viii) above, the Carrier undertakes to file with the NEB a tariff reflecting such adjusted Firm Service Toll and appropriate adjustments to reflect the adjusted Firm Service Toll and any associated overpayment or underpayment shall be made by Carrier and communicated to Shipper.[19]

The FSA does not contain any other provision directly addressing the NEB or its successor's role in reviewing the Commencement Date Cost Estimate or As-Built Costs and Expenses. Section 12.8(b) of the FSA provides that the NEB or its successor has jurisdiction to hear "all matters relating to the determination of tolls". In Trans Mountain's view, this provision was intended to confirm the Commission's existing jurisdiction to determine tolling matters in accordance with the FSA and applicable laws, but it did not impose any specific role on the NEB or its successor in reviewing the Commencement Date Cost Estimate or As-Built Costs and Expenses.

[16] NEB, RH-001-2012 - Trans Mountain Part IV application Hearing Order, PDF 3 of 28 (September 2012), Filing ID: A3A4F7.
[17] NEB, RH-001-2012 Reasons For Decision, PDF 38 of 54 (May 2013), Filing ID: A51913-1.
[18] Trans Mountain, RH-001-2012 Appendix 7 Final Form of FSA, PDF 9 of 31 (January 2013), Filing ID: A3E7D3.
[19] Trans Mountain, RH-001-2012 Appendix 7 Final Form of FSA, PDF 21 - 22 of 31 (January 2013), Filing ID: A3E7D3.

b) Confirmed, provided that the Commission's review of reasonableness is based on whether the costs were "reasonably and necessarily incurred", as required under the FSA.[20] In Trans Mountain's view, a broader or different consideration of "reasonableness" (i.e., whether it is reasonable for Trans Mountain or shippers to be responsible for certain costs in a manner that would be inconsistent with the toll methodology approved by the RH-001-2012 Decision) would effectively re-assess the toll methodology approved in the RH-001-2012 Decision, which would be unfair and inappropriate for the reasons discussed in reference i).

c) Confirmed.

c.1) Trans Mountain's response to c) would not change in this scenario.

[20] Trans Mountain, RH-001-2012 Appendix 7 Final Form of FSA, PDF 21 of 31 (January 2013), Filing ID: A3E7D3.

1.3 Keeping shippers whole for differences between interim and final tolls

Reference

i) Trans Mountain, Reply Comments, PDF pages 6 and 8 of 14, C25338-1

ii) Trans Mountain, Application, PDF pages 28 and 34 of 145, C24695-2

iii) TD Canada Trust, TD Prime Rate webpage, table titled, "Historical TD Prime Rates", link.

iv) Statistics Canada, Table 10-10-0145-01, Financial market statistics, Chartered bank administered rates - Prime rate, January 2005 to July 2023, link.

v) Trans Mountain, Attachment 3 to the Application, PDF page 13 of 15, C24695-5

Preamble

In reference i), Trans Mountain states: "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." Trans Mountain also indicates that the true up mechanism detailed in its Application will keep shippers whole for any differences between the fixed component of interim and final tolls, stating that, "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."

In reference ii), Trans Mountain indicates that once final tolls are established, the resulting settlement invoices or payments to shippers will include interest at the TD Bank Prime Rate minus 2%. If a shipper is late in paying such invoices, it will be charged interest from the due date at the TD Bank Prime Rate plus 2%. Also, in item (e) under Requested Relief, Trans Mountain requests that the Commission direct that once final tolls are established, Trans Mountain refund or recover amounts in accordance with the Single Settlement Approach outlined in the Application.

Reference iii) provides historical TD Prime Rates back to 28 January 2015. It shows that after a series of increases since March 2022, the TD Bank Prime Rate is currently 7.2%. Prior to July 2022 the TD Bank Prime Rate was below 4%, back to the earliest date shown (January 2015).

Reference iv) provides "the most typical [prime rate] offered by the major Chartered [Canadian] Banks" back to 2005. It aligns with reference iii) for the period shown in reference iii). Prior to January 2015, it shows the prime rate was also below 4% for the period back to December 2008.

Reference v) indicates that Uncapped Cost items include an estimate of the allowance for funds used during construction (**AFUDC**).

Request

a) Indicate how many months after the Commencement Date Trans Mountain expects to file its final tolls if shippers exercise their audit rights with respect to As-Built Costs and Expenses, and if shippers do not exercise their audit rights.

b) Explain whether and why Trans Mountain considers the rate of interest included in settlement invoices or payments to be an important part of ensuring that shippers are kept whole.

c) Indicate whether the TD Bank Prime Rate minus 2% is likely to be materially lower than the cost of capital of (i) Trans Mountain and (ii) its shippers.

d) Discuss the extent to which keeping shippers whole would be achieved by an interest rate included in settlement invoices or payments as proposed by Trans Mountain (i.e. TD Bank Prime Rate minus 2%), versus a rate more reflective of shippers' cost of capital.

e) Discuss the extent to which keeping shippers whole would be achieved by an interest rate included in settlement invoices or payments as proposed by Trans Mountain (i.e. TD Bank Prime Rate minus 2%), versus a rate equal to Trans Mountain's cost of capital.

f) Describe whether under the FSA or Transportation Service Agreement, a cost of capital or rate of return is contemplated and specified for any purposes, and, if so, discuss whether this rate/these rates could and should be used as the interest rate included in settlement invoices or payments.

g) Indicate what rate Trans Mountain uses in calculating AFUDC in its Uncapped Costs, and the basis for this rate. Discuss whether this could and should be used as the interest rate included in settlement invoices or payments, and why or why not.

h) Discuss whether and why the Commission should consider and approve the Single Settlement Approach at the interim tolls stage rather than at the final tolls stage.

i) Confirm whether Trans Mountain's requested relief includes direction respecting the proposed use of TD Bank Prime Rate minus 2% as described in the preamble.

Response

a) Trans Mountain expects that it will file final tolls with the Commission within roughly 15 months after the Commencement Date if the Firm Service Shippers exercise their audit right. Absent an audit, this time period could be shortened by roughly 6-8 months. The key factors that will impact the timing for the filing of final tolls with the Commission are: (1) the length of time for Trans Mountain to determine the final fixed toll component[21]; (2) a shipper audit; and (3) time required to incorporate the findings of the auditor into the final tolls.

   1. Pursuant to Section 3.2(d) of the FSA, Trans Mountain is required to establish the Firm Service Toll to reflect the As-Built Costs and Expenses within ninety (90) days following the first anniversary of the Commencement Date.[22] The amount of time required to establish the Firm Service Toll will largely be dependent on the amount of time required by Trans Mountain to assemble required financial information, such as invoices, in support of the determination of the Firm Service Toll. Trans Mountain estimates that establishing the Firm Service Toll could take roughly 7 - 9 months from the Commencement Date.

   2. The TMEP Shippers may exercise their right under section 6.1(c)(ii) of the FSA to request an audit of the Firm Service Toll Costs and Expenses. If shippers exercise this audit right, shippers must notify Trans Mountain within 30 days of Trans Mountain setting the Firm Service Toll as contemplated in Section 3.2(d) of the FSA. The following factors may impact the length of the audit: the audit scope; audit methods; size of audit team; and resources to support the audit process. Trans Mountain estimates the audit process could last approximately 4 - 6 months.

   3. Once the audit process is complete, Trans Mountain anticipates filing final tolls within approximately two months.

   This timing for final tolls could be expedited with Firm Service Shipper support to advance the commencement of the audit and have it completed in a time frame that would facilitate an earlier determination of final tolls. Trans Mountain is supportive of an early audit process that could shorten the expected timeline between the Commencement Date and the time Trans Mountain expects to file final tolls. Trans Mountain has approached the Firm Service Shippers to discuss the potential to advance the commencement of the audit.

[21] Trans Mountain, RH-001-2012 Appendix 7 Final Form of FSA, PDF 14 of 31 (January 2013), Filing ID: A3E7D3.
[22] Trans Mountain, RH-001-2012 Appendix 7 Final Form of FSA, PDF 15 of 31 (January 2013), Filing ID: A3E7D3.

b) The use of the “kept whole” language in reference i) was intended to acknowledge that the Tolling Differences[23] between the fixed component of the Commencement Date Tolls and the fixed component of the final tolls would be settled.

The application of interest to the Tolling Difference was to acknowledge the time value of money during the period between the Commencement Date Tolls being paid and the Single Settlement being issued once final tolls have been established. Given that the Tolling Difference could be positive (over collection) or negative (under collection), an interest rate was chosen that would not be punitive to either shippers or Trans Mountain. Compensating either the shippers or Trans Mountain for the carrying costs associated with the over/under payment of tolls is an important concept recognized both by regulatory precedent and financial theory.

TD Bank Prime Rate minus 2% was specifically selected by Trans Mountain as a proxy for the cost of short-term debt as it aligns with the existing treatment of carrying charges on the Westridge Dock Bid Premium that was negotiated with shippers under the current Incentive Toll Settlement (ITS). This rate has been applied in Trans Mountain’s toll applications and approved by the NEB and Commission since 2013. Trans Mountain believes that the genesis of this rate being negotiated with shippers and its subsequent historical familiarity make it a reasonable interest rate to apply to a future true-up.

c) TD Bank Prime Rate minus 2% is lower than Trans Mountain’s long-term cost of capital. Trans Mountain does not know its shippers’ cost of capital with certainty. However, Trans Mountain expects that in general the TD Bank Prime Rate minus 2% is likely lower than its shippers’ long-term costs of capital.

d) and e)

See the response to b) for Trans Mountain’s rationale for applying the TD Bank Prime Rate minus 2%. A higher interest rate would be more reflective of Trans Mountain’s long-term cost of capital and likely the shippers’ long-term cost of capital. However, in Trans Mountain’s view it may be punitive for the party that owes payment, either the shippers or Trans Mountain, given the potential magnitude and duration of the Tolling Difference.

Despite the potential for a lengthy true-up period, this type of payment is considered a short-term payment relative to attracting capital to fund a major long-lived asset. In practice, such a short-term payment is most likely to be funded from a bank credit facility or cash on hand instead of long-term capital and its associated weighted average cost of capital (WACC).

The WACC is the cost of capital for the organization combining both the cost of equity and the cost of long-term debt. This measure is most appropriate when analyzing long-term and larger cash flows such as capital projects, acquisitions, or divestitures. Carrying charges applied to relatively short-term settlement invoices or payments should be reflected by the cost of financing for short-term assets or inventory. TD Bank Prime Rate minus 2% is a more reasonable proxy for short-term borrowing rates of Trans Mountain and its shippers.

f) The Transportation Service Agreement (TSA) and FSA do not specify any cost of capital or rate of return levels that should apply to the under/over collection of the Fixed Toll components between the Commencement Date Tolls and the final tolls. The TSA specifies only that the Prime Rate shall apply as the discount rate to the Net Present Value Acceleration Payment[24] resulting from the termination of the Agreement. The Prime Rate was defined in the TSA as the annual rate of interest announced from time to time by Royal Bank of Canada (or any successor thereof) as

[23] Trans Mountain’s Application at paragraph 103(d) defines a “Tolling Difference” as either a refund or recovery from each Firm Service Shipper and Uncommitted Service Shipper of any difference between the Original Invoice and the associated Adjusted Invoice.

[24] Trans Mountain, RH-001-2012 Appendix 8 Final Form of TSA, PDF 5 of 22 (January 2013), Filing ID: A3E7D4.

its reference rate then in effect for determining the interest rates it will charge on Canadian dollar commercial loans made by Royal Bank of Canada (or any successor thereof) in Canada.[25]

See the response to b) for Trans Mountain's rationale for applying the TD Bank Prime Rate minus 2% to the Tolling Difference.

g) Section 6.1(a) of the FSA outlines the eligible costs to be capitalized in connection with the development and construction of the TMEP, including financing costs. Table 1.3-1 below summarizes the historical capital structure, the debt rate, and the return on equity (ROE) agreed to in Trans Mountain's ITS agreements, which form the basis of calculating AFUDC on the TMEP as specified in the CPCN Cost Estimate:

Table 1.3-1 Historical Financial Parameters

Year	Governing Agreement	Debt/Equity Ratio (%)	Debt Rate	Return on Equity	AFUDC Rate
2013	2013 - 2015 ITS	55/45	5.50%	9.50%	7.30%
2014	2013 - 2015 ITS	55/45	5.50%	9.50%	7.30%
2015	2013 - 2015 ITS	55/45	5.50%	9.50%	7.30%
2016	2016 - 2018 ITS	55/45	5.00%	9.50%	7.03%
2017	2016 - 2018 ITS	55/45	5.00%	9.50%	7.03%
2018	2016 - 2018 ITS	55/45	5.00%	9.50%	7.03%
2019	2019 - 2021 ITS	55/45	5.00%	9.50%	7.03%
2020	2019 - 2021 ITS	55/45	4.50%	9.50%	6.75%
2021	2019 - 2021 ITS	55/45	4.50%	9.50%	6.75%
2022	2022 - 2023 ITS	55/45	4.93%	9.50%	6.99%
2023	2022 - 2023 ITS	55/45	5.50%	9.50%	7.30%

h) See the response to b) for Trans Mountain's rationale for applying the TD Bank Prime Rate minus 2% to the Tolling Difference. Trans Mountain respectfully submits that the Commission should address this question at the interim toll phase so that both shippers and Trans Mountain will have certainty over the nature of the toll true-up mechanism prior to the commencement of nominations and service on the Expanded System. See also the response to 1.5 a) and b.1).

i) Confirmed. See the response to 1.5 a) and b.1). It is important for both shippers and Trans Mountain to be able to account for any interim toll settlement amounts in their books, including carrying charges, as soon as an estimate of the settlement amount is known with some certainty (i.e., in advance of final tolls being determined). Uncertainty about the rate to be used could materially affect the books of either Trans Mountain or the shippers.

[25] Trans Mountain, RH-001-2012 Appendix 8 Final Form of TSA, PDF 8 of 22 (January 2013), Filing ID: A3E7D4.

1.4 Trans Mountain's ability to meet its financial obligations under differing toll levels

Reference

i) Trans Mountain, Reply Comments, PDF page 2 of 14, C25338-1

ii) Trans Mountain, Attachment 3 to the Application, Table 3-11, PDF page 14 of 15, C24695-5

Preamble

In reference i), Trans Mountain indicates, "the patently unreasonable suggestion [by some interested parties] 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 […] would represent an approximately 40% (or $11.7 billion) reduction in the fixed component of the tolls[2] and could cause Trans Mountain to be unable to meet its financial obligations." Footnote 2 reads: "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."

Reference ii) shows that the increase between the 2017 CPCN Uncapped Costs and the Commencement Date Uncapped Costs is $7,320 million and leads to a $5.12 /bbl increase in the Base Fixed Toll.

Request

a) Provide the mid-point between the Uncapped Costs in the CPCN Cost Estimate and the Uncapped Costs in Trans Mountain's Commencement Date Cost Estimate.

b) Provide the Base Fixed Toll that would result from Uncapped Costs equal to the mid-point provided in a) and specify the Capped Costs and Uncapped Costs components of the Base Fixed Tolls.

c) Confirm that setting tolls pursuant to b) would represent an approximately $3.7 billion reduction in the Uncapped Costs underlying the tolls (i.e. half of the $7,320 million change noted in the preamble), no change in the Capped Costs underlying the tolls, and an approximately 12% or $3.7 billion reduction in the overall costs underlying the tolls. If not confirmed, explain in detail, including providing Trans Mountain's full calculations of the reduction in the overall costs underlying the tolls and outlining whether and, if so, why Trans Mountain considers that the amount of Capped Costs underlying the tolls is different with tolls set pursuant to b) versus tolls as proposed in Trans Mountain's Application.

d) Confirm whether tolls as proposed in Trans Mountain's Application "could cause Trans Mountain to be unable to meet its financial obligations." If they could cause this, explain in detail, and discuss how this should factor into the Commission's decision on the Application.

e) Explain in detail and justify whether tolls pursuant to b) "could cause Trans Mountain to be unable to meet its financial obligations", including by providing a detailed comparison with the situation contemplated in d).

f) Provide the minimum Base Fixed Toll at which Trans Mountain does not consider that the toll "could cause Trans Mountain to be unable to meet its financial obligations," along with supporting details to substantiate this.

g) If Trans Mountain does not consider that tolls pursuant to b) align with the suggestion by some interested parties that interim Commencement Date tolls be established at the mid-point between Trans Mountain's applied-for and CPCN Fixed Tolls, explain in detail why not.

Response

a) The mid-point between the Uncapped Costs in the CPCN Cost Estimate and the Uncapped Costs in Trans Mountain's Commencement Date Cost Estimate is shown in Table 1.4-1 below.

Table 1.4-1 Uncapped Fixed Costs

Uncapped Fixed Costs (Millions of C$)	
CPCN Cost Estimate	$1,767.3
Commencement Date Cost Estimate	$9,087.0
Mid-Point	**$5,427.2**

b) The Base Fixed Toll that would result from Uncapped Costs equal to the mid-point provided in a), and the resulting Capped Costs and Uncapped Costs components of the Base Fixed Tolls are shown in Table 1.4-2 below.

Table 1.4-2 Interim Base Fixed Toll

Interim Base Fixed Toll (Edmonton to Burnaby - 15-year term, < 75 kbpd volume commitment)			
(C$/bbl)	**Capped Cost Component**	**Uncapped Cost Component**	**Total Fixed Toll**
CPCN Cost Estimate	$4.40	$1.36	$5.76
Commencement Date Cost Estimate	$4.40	$6.48	$10.88
Mid-Point	**$4.40**	**$3.92**	**$8.32**

c) Confirmed, based on a calculation of 12% based on $3.7 billion/$30.9 billion. However, this proposal would reduce the Uncapped Cost component in the toll by approximately 40%. Please see response to 1.4.g).

d) In Decision RH-001-2012, the NEB considered that the Fair Return Standard "establishes the requirements that must be met by the return allowed to a utility"[26]. The NEB set out the following three (3) requirements that must be met:

- be comparable to the return available from the application of the invested capital to other enterprises of like risk (comparable investment requirement);
- enables the financial integrity of the regulated enterprise to be maintained (financial integrity requirement); and
- permits incremental capital to be attracted to the enterprise on reasonable terms and conditions (capital attraction requirement).

[26] NEB, RH-001-2012 Reasons For Decision, PDF 10 of 54 (May 2013), Filing ID: A51913-1.

In the Decision, the NEB was satisfied that the requirements of the Fair Return Standard had been met in the context of the applied-for toll methodology because “Trans Mountain believes that it has a reasonable opportunity to recover its cost of capital under the proposed toll methodology.” As discussed below, setting tolls based on the significant and arbitrary reduction to the uncapped costs, as reflected in the mid-point tolls shown in b) above, would cause Trans Mountain to be unable to meet its financial obligations and significantly impair its ability to attract capital on reasonable terms. This scenario would represent a fundamental departure from the Fair Return Standard discussed above as well as the basis on which Trans Mountain was entitled to rely on in establishing its tolls.

Trans Mountain defines “financial obligations” as the ability for the revenue generated from tolls to pay Trans Mountain’s operating expenses, capital projects, service debt (interest and principal), and a reasonable return to equity holders. Meeting these basic requirements allows Trans Mountain to obtain funding as required from the equity and debt capital markets. Trans Mountain’s obligations are greater than a simple solvency threshold. To maintain long-term financial viability, Trans Mountain has a social obligation under regulation to maintain strong pipeline integrity, and safety practices. To reinvest capital to assure reliable and safe service, Trans Mountain must be able to raise debt and equity capital and return that capital with an appropriate return to Trans Mountain’s investors.

To illustrate the relative impact of the applied for Commencement Date Tolls compared to the posited mid-point toll proposed by certain shippers, Trans Mountain is providing various forecast scenarios of its projected financial results, cash flow as represented by Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) in comparison to its debt obligations, and residual cash flow available to equity holders (if any). The analysis contained in this section also compares book returns on equity, common leverage measures, dividends, and coverage of debt service (a measure of basic solvency) under a variety of scenarios. Currently, Trans Mountain’s capitalization is largely reliant on debt and equity provided by its owner and a third-party revolving credit facility guaranteed by Trans Mountain’s ultimate owner. The current capital structure relies heavily on relatively short-term debt financing with more permanent financing not determined at this time. Given the transitory nature of the current capital structure, a recapitalization of Trans Mountain is also presented.

A recapitalization of Trans Mountain is assumed to take place during 2024. The recapitalization is assumed to reduce overall debt leverage in-line with Trans Mountain’s historic capital structure of 45% equity and 55% debt. Existing short-term facilities will be paid-off and legacy government funded debt will be replaced with market debt. This debt bears an assumed interest rate of approximately 6.5%. The debt is assumed to be amortized (paid back) on a straight-line basis over 25 years. The overall debt re-issuance is approximately $19 billion. Significant equity of approximately $6 billion is required as part of the recapitalization.

As a practical matter: (1) issuing the quantum of debt illustrated in the recapitalization will take several quarters and likely would be a series of bullet maturities and revolving credit facilities that mimic a rateably amortizing debt issuance; (2) the equity raise or recapitalization is enormous and may not be achievable from third-parties at a reasonable cost if uncertainties are present; and (3) leverage metrics are high relative to peer companies making future capital raises potentially challenging. Ultimately, a recapitalization transaction for Trans Mountain will have as one objective the attainment of a stand-alone investment grade credit rating.

The financial measures illustrated in the recapitalization cases are not indicative of an investment grade credit rating viewed in isolation. Qualitative measures are also considered in the ratings process and can raise a company’s rating from what would otherwise be the case on financial measures alone. Trans Mountain believes its qualitative data is supportive of an investment grade rating (e.g., contract length, quality of customers, markets, supply basin outlook, and global demand). Nonetheless, the recapitalization scenarios may require more equity and less debt capital than indicated to achieve an investment grade credit rating. Under the mid-point toll case, financial metrics are significantly weaker than the as-filed case and well below investment grade metrics.

It is also important to highlight, the ultimate owner of Trans Mountain (the Government of Canada) has indicated it does not intend to be a long-term owner of Trans Mountain and its intention is to divest of Trans Mountain. As such, continued funding from Canada is not assumed in this illustration.

The cases presented include:

1) Continuing existing capitalization for 2024-2026, under as-filed tolls;
2) Recapitalizing Trans Mountain in 2024-2026, under as-filed tolls;
3) Continuing existing capitalization for 2024-2026, under mid-point tolls; and,
4) Recapitalizing Trans Mountain in 2024-2026, under mid-point tolls.

These four cases are presented in Table 1.4-3. The cases start by illustrating the adjustments in Trans Mountain's Proforma Consolidated Statements of Income in moving from the 2023-2027 Corporate Plan Summary (2023 Corporate Plan) and adjusting for the as-filed tolls as per the Application. The 2023 Corporate Plan is used as a basis for analysis given it is a public document filed in early 2023 and approved by Trans Mountain's owner and the Treasury Board of Canada as part of Trans Mountain's direct owner's corporate plan.

Under the assumptions as provided in the 2023 Corporate Plan and the as-filed tolls, Trans Mountain expects to meet its financial obligations in the years of operations illustrated, and would expect that to continue to be the case over the entire contract term. Common key measures are summarized in Table 1.4-3 including book ROE, debt to EBITDA, as well as other measures. EBITDA, which is essentially cash revenue minus cash operating expenses, is compared to expected debt service payments for interest and repayment of debt principal (sometimes referred to as Debt Service Coverage Ratio or "DSCR"). A ratio of 1 to 1 means EBITDA equals debt service and the enterprise is just covering its debt obligations. Under the as-filed tolls, Trans Mountain's first year ratio in this illustration is near 1.0x, so there is minimal cushion available for variability in operating costs, capital expenditures, and/or returns to the equity holder. In the short-term this is acceptable especially since 2024 is a transitional year with the Expanded System beginning operations, balance sheet construction payables are settled, and as a result the metric strengthens in 2025 and 2026. The data presented in Table 1.4-3 also shows results under a case where Trans Mountain recapitalizes the entity. In either instance, the as-filed tolls are producing results that provide sufficient revenues for Trans Mountain to meet its financial obligations. In contrast, Trans Mountain cannot meet its collective financial obligations under the mid-point case, as shown in Table 1.4-3.

Debt repayment is an important consideration in the scenarios. Before debt repayment is provided in the scenarios, Trans Mountain has assumed working capital deficiencies are corrected by funding construction and contractor retainage accounts payable to contractors in 2024. These payables will need to be addressed during the first year of operations and existing debt will be repaid over 25 years in equal installments beginning in 2025.

Interest expense is calculated using interest rates representative of current rates to illustrate Trans Mountain's interest obligations. All illustrations assume Trans Mountain is moving its contract volumes in 2024-2026 and incremental spot barrels resulting in 96% capacity utilization, consistent with Trans Mountain's 2023 Corporate Plan. If only the contract volumes were to move, the resulting financial performance and coverage of interest and debt repayment would be weaker in each of the scenarios.

While logistically challenging, the as-filed tolls cases (with or without recapitalization) are outcomes that Trans Mountain believes can support capital markets activity to refinance debt, and potentially issue equity after commencement of operations. Trans Mountain is able to meet its financial obligations. As discussed in e), a mid-point scenario has a significantly worse and unsustainable outcome.

e) In a circumstance where tolls are set pursuant to b) (i.e., the mid-point of Uncapped Costs), Trans Mountain would be unable to meet its financial obligations during the years illustrated. The negative results of the mid-point scenarios presented would be compounded further if the less predictable spot volumes of 144,000 barrels per day are removed. On every measure the financial results and resulting return and leverage ratios are weaker, Return on Equity is negative or 0% in each year, no dividends are provided to the equity holders, leverage metrics are stressed and the ability of Trans Mountain to refinance its balance sheet in a cost-effective manner is doubtful. Credit measures are stressed, for example, the EBITDA to financial obligations (or DSCR) hovers around 0.7x in 2024 to 2026 without a recapitalization and 0.8 to 1.0x with a recapitalization. Trans Mountain would be under significant financial stress, and it would need to borrow money to service its debt obligations.

f) Given Trans Mountain's current financial structure, the as-filed tolls approximate a breakeven point for Trans Mountain's ability to meet its financial obligations in the first years of operations, plus a margin for variability of expenses and uncertainty regarding spot volumes, excluding a reasonable return on equity. A combination of a reduction in the as-filed tolls and increased expenses could impact Trans Mountain's ability to meet its financial obligations in the first year of operations. As illustrated in the as-filed tolls cases, and with 96% utilization of capacity, Trans Mountain's financial projections are indicative of a sustainable business. Cash flows are sufficient to initially service debt obligations of the enterprise and to allow for returning capital to equity holders beginning in 2025.

   Under the mid-point scenario, financial measures would deteriorate significantly. Trans Mountain would not cover its financial obligations in 2024 - 2026 and absent spot volumes, the ratios would be weaker. Distributing dividends for shareholders would not be possible, return on equity would be negative or zero and leverage metrics would be significantly weaker. The Ratio of EBITDA to financial obligations would be poor despite the benefits of the recapitalization of Trans Mountain assumed in the case which lowers the debt quantum in the capital structure and thus the related financial obligations. A recapitalization scenario for Trans Mountain would be very difficult if not impossible to execute under the mid-point toll scenario.

Table 1.4-3 Trans Mountain Financial Ratios Table

As Filed Tolls (C$Bln)	2024 as Per Corporate Plan	Existing Capitalization 2024[1,2]	Existing Capitalization 2025	Existing Capitalization 2026	Recapitalization at 45% equity 55% debt 2024[1,2]	Recapitalization at 45% equity 55% debt 2025	Recapitalization at 45% equity 55% debt 2026
Total Revenues	**3.0**	**3.1**	**3.2**	**3.3**	**3.1**	**3.2**	**3.3**
Expenses							
Pipeline operating costs	0.3	0.3	0.4	0.4	0.3	0.4	0.4
Depreciation and amortization	0.8	0.8	0.8	0.8	0.8	0.8	0.8
Salaries and benefits	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Taxes, other than income taxes	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Administration	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Expenses	1.4	1.4	1.4	1.4	1.4	1.4	1.4
Operating income	**1.6**	**1.7**	**1.8**	**1.9**	**1.7**	**1.8**	**1.9**
Interest expense, net of capitalized	(1.3)	(1.6)	(1.5)	(1.5)	(1.4)	(1.2)	(1.1)
Tax recovery (expense)	(0.1)	(0.0)	(0.1)	(0.1)	(0.1)	(0.1)	(0.2)
Net income	**0.3**	**0.1**	**0.2**	**0.3**	**0.2**	**0.5**	**0.5**
EBITDA (Operating income plus depreciation)	**2.4**	**2.5**	**2.6**	**2.7**	**2.5**	**2.6**	**2.7**
Dividends[3]	0.0	0.0	0.0	0.2	0.0	0.6	0.8
Debt Repayment (Issue)[4]	1.0	0.6	1.0	1.0	1.0	0.7	0.7
TMEP & Sustaining Capital	0.6	0.4	0.1	0.1	0.4	0.1	0.1
Total Debt	23.8	24.1	23.1	22.1	18.4	17.7	17.0
Total Equity	9.4	9.2	9.4	9.5	14.8	14.7	14.5
Total Capitalization	**33.2**	**33.3**	**32.5**	**31.6**	**33.3**	**32.4**	**31.4**
Debt to Capitalization	72%	72%	71%	70%	55%	55%	54%
Debt to EBITDA	9.83x	9.54x	8.94x	8.33x	7.31x	6.85x	6.38x
Funds from Operations (FFO) to Debt	10.2%	10.5%	11.2%	12.0%	13.7%	14.6%	15.7%
EBITDA / Financial (DSCR)[5]	1.05x	0.97x	1.01x	1.07x	1.04x	1.31x	1.38x
Return on Equity	2.8%	1.1%	2.0%	3.0%	1.6%	3.1%	3.8%

Mid-Point Tolls (C$Bln)	2024 as Per Corporate Plan	Existing Capitalization 2024[1,2]	Existing Capitalization 2025	Existing Capitalization 2026	Recapitalization at 45% equity 55% debt 2024[1,2]	Recapitalization at 45% equity 55% debt 2025	Recapitalization at 45% equity 55% debt 2026
Total Revenues	**3.0**	**2.5**	**2.5**	**2.6**	**2.5**	**2.5**	**2.6**
Expenses							
Pipeline operating costs	0.3	0.3	0.4	0.4	0.3	0.4	0.4
Depreciation and amortization	0.8	0.8	0.8	0.8	0.8	0.8	0.8
Salaries and benefits	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Taxes, other than income taxes	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Administration	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Expenses	1.4	1.4	1.4	1.4	1.4	1.4	1.4
Operating income	**1.6**	**1.1**	**1.1**	**1.2**	**1.1**	**1.1**	**1.2**
Interest expense, net of capitalized	(1.3)	(1.6)	(1.6)	(1.6)	(1.4)	(1.2)	(1.2)
Tax recovery (expense)	(0.1)	0.1	0.1	0.1	0.1	0.0	0.0
Net income	**0.3**	**(0.4)**	**(0.4)**	**(0.3)**	**(0.3)**	**(0.1)**	**(0.0)**
EBITDA (Operating income plus depreciation)	**2.4**	**1.9**	**1.9**	**2.0**	**1.9**	**1.9**	**2.0**
Dividends[3]	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Debt Repayment (Issue)[4]	1.0	0.0	0.2	0.4	1.0	0.6	0.8
TMEP & Sustaining Capital	0.6	0.4	0.1	0.1	0.4	0.1	0.1
Total Debt	23.8	24.6	24.4	24.0	19.0	18.4	17.6
Total Equity	9.4	8.7	8.3	8.0	14.3	14.2	14.2
Total Capitalization	**33.2**	**33.3**	**32.8**	**32.1**	**33.3**	**32.6**	**31.8**
Debt to Capitalization	72%	74%	75%	75%	57%	56%	55%
Debt to EBITDA	9.83x	13.20x	12.78x	12.20x	10.17x	9.61x	8.94x
Funds from Operations (FFO) to Debt	10.2%	7.6%	7.8%	8.2%	9.8%	10.4%	11.2%
EBITDA / Financial Obligations (DSCR)[5]	1.05x	0.65x	0.67x	0.69x	0.77x	0.84x	0.99x
Return on Equity	2.8%	-4.7%	-4.4%	-3.9%	-1.9%	-0.6%	0.0%

Notes:
1) 2024 includes capital spending to complete restoration for TMEP construction and requires additional borrowings.
2) 2024 debt repayment reflects restructuring re-alignment of working capital post construction.
3) Dividends have been assumed in the event cash/cash equivalents/restricted cash aggregated to more than $200mln.
4) 2025/2026 debt repayment reflects 1/25 of 2024Y/E debt and adjusted for any additional borrowings required to maintain a positive cash balance.
5) Financial obligations reflect debt repayments, interest expense and maintenance/capex.
6) The financial information presented reflects the consolidated financial information for Trans Mountain Corporation and its subsidiaries Trans Mountain Pipeline ULC, Trans Mountain Pipeline L.P., Trans Mountain Canada Inc. and Trans Mountain Pipeline (Puget Sound) LLC.

g) While certain shippers' submissions were unclear regarding the specific interim toll level they were advocating for, the mid-point tolls shown in b) align with suggestions of certain intervenors that tolls be established at the mid-point between the Uncapped Costs in the CPCN Cost Estimate and the Uncapped Costs in the Commencement Date Cost Estimate. This proposal would reduce Trans Mountain's applied-for Uncapped Cost component by approximately 40%, (i.e., $3.7 billion/$9.1 billion), would reduce Trans Mountain's applied-for total fixed toll by approximately 24%, (i.e., ($6.48/bbl-$3.92/bbl)/ $10.88/bbl), and for the reasons discussed above would not allow Trans Mountain to meet its financial obligations.

1.5 Requests for relief on a final basis in the Application

Reference

Trans Mountain, Application, PDF page 34 of 145, C24695-2

Preamble

In the reference, Trans Mountain requests that the Commission approve "the implementation on a final basis of the charges, fees and penalties as shown in Sections IV and V of the Toll Schedule (Attachment 1) to this Application and the Demurrage Charge shown in Section VI of the Toll Schedule […]." [emphasis added]

Request

a) Provide a numbered list of each of the elements in the Application for which Trans Mountain requests Commission approval on a final basis.

b) For each of the elements listed in a), describe:

b.1) The rationale for why it should be approved on a final rather than interim basis at this time.

b.2) The negative consequences, if any, of it being approved on an interim rather than final basis at this time.

c) Confirm whether in requesting final approval of the Demurrage Charge, Trans Mountain is requesting that the Commission also approve on a final basis the treatment of the revenues resulting from the Demurrage Charge – whether to Trans Mountain's or shippers' account. If this approval is being sought on a final basis, describe:

c.1) The rationale for why the revenue treatment should be approved on a final rather than interim basis at this time.

c.2) The negative consequences, if any, of the Commission waiting to decide on the revenue treatment on a final basis until after the hearing process mentioned in the Commission's Process Letter No. 2 or until after Trans Mountain applies for approval of final tolls on the Trans Mountain Expanded System.

Response

a) Table 1.5-1 below identifies the components of the Application for which Trans Mountain requests Commission approval on a final basis.

Table 1.5-1 Components for which Trans Mountain Requests Commission Approval on a Final Basis

Item No.	Toll Element	Description/Reference	Regulatory Approval	Components for which Relief is Requested on a Final Basis	Not Contested by Shippers
1	Demurrage Charge	Approved as part of the RH-001-2012 Decision (A3E7D6 PDF 9 of 16, approved by TO-004-2013), and subsequently included in the Rules & Regulations (Rule 7.8 [C23061-3 PDF 13 of 22], approved by C24509). The negotiated toll methodology approved in RH-001-2012 does not have any provision regarding the return of Demurrage Charge revenues to shippers. See the response to 1.8 for details.	Order TO-004-2013 Commission Letter C24509	i. Toll Level ii. Treatment of Revenues	
2	Petroleum Loss Allowance Percentages (PLAPs)	Approved as part of the RH-001-2012 Decision (A3E7D6 PDF 11 of 16, approved by TO-004-2013), and subsequently approved as part of the Rules & Regulations (Rule 11.4 [C23061-3 PDF 15 of 22], approved by C24509).	Order TO-004-2013 Commission Letter C24509	i. Level of Loss Allowance Percentages	✓
3	Westridge Dock Bid Premium	Approved as part of the RH-001-2012 Decision (A3E7D6 PDF 9 of 16, approved by TO-004-2013), and subsequently approved as part of the Rules & Regulations (Rule 7.7 [C23061-3 PDF 13 of 22]).	Order TO-004-2013 Commission Letter C24509	i. Inclusion within Toll Schedule	✓
4	Enhanced Response Regime Cost Recovery Fee (ECRF)	See the response to 1.6 for details.	Order TO-001-2016	i. Inclusion within the Variable Toll ii. Collection Period	
5	Bulk Oil Cargo Fee(s) (BOCF)	First included in Tariff No. 42 (approved by Board Order TOI-2-96), and included in all subsequent Toll Schedules including Tariff No. 113 (C23858-4 PDF 5 of 6) that is currently in effect for the Trans Mountain pipeline (approved by Commission Order TO-001-2023).	Order TOI-2-96 Order TO-001-2023	i. Inclusion within Toll Schedule	✓
6	Capital Asset & Loan Fee(s) (CALF)	First approved in Tariff No. 72 (approved by Board Order TOI-2-2008), and all subsequent Toll Schedules including Tariff No. 113 (C23858-4 PDF 5 of 6) which is currently in effect for the Trans Mountain pipeline (approved by Commission Order TO-001-2023).	Order TOI-2-2008 Order TO-001-2023	i. Inclusion within Toll Schedule	✓
7	Indigenous Consultation and Accommodation Costs (ICAC) as a new Variable Toll component	See Trans Mountain Application, Section VI.A, PDF 19 to 20 of 145, C24695-2 for details.	-	i. Inclusion of ICAC incurred post-Commencement Date + 30 days within Variable Toll	✓
8	Gateway Infrastructure Fee 2 (GIF2)	See the response to 1.7 for details.	-	i. Inclusion within Toll Schedule	
9	Single Settlement Approach	See the response to 1.3 h) for details.	-	i. Methodology ii. Interest rate applied	✓

b) Trans Mountain is requesting that the Commission approve on a final basis each of the components specified in the table above under the heading "Components for which Relief is Requested on a Final Basis".

Certain components of the numbered toll elements above have already been considered and approved by prior NEB or CER decisions, as indicated in the table above.

In Trans Mountain's view, all information that is needed to determine on a final basis whether the above components are just and reasonable is contained in the Application (as supplemented by Trans Mountain's responses to the Commission's Information Requests).

Trans Mountain is requesting final approval for the items listed above under the column "Components for which Relief is Requested on a Final Basis" in order to provide more certainty with respect to the toll elements. Having these components approved on a final basis will avoid the need to "true-up" any differences between interim and final tolls for these elements and also 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. Given that no new information relevant to the appropriateness of these components will be available at the time of Trans Mountain's final tolls filing, Trans Mountain respectfully submits that reconsidering these components at a later date would be unnecessary and inefficient.

Specifically with respect to the BOCF, CALF and GIF2, these are fees determined by third parties. As such Trans Mountain is required to collect these charges from shippers and remit funds to the respective organization (e.g., Western Canada Marine Response Corporation [WCMRC] and the Vancouver Fraser Port Authority [VFPA]). Once these fees have been remitted, the funds are no longer in Trans Mountain's account and therefore not available for future adjustment. See the response to 1.7 for additional details regarding GIF2.

c) Confirmed. Trans Mountain is requesting final approval for Demurrage Charge revenues to be for Trans Mountain's account. Please see the response b) above and Item 1 in the Table above regarding the Demurrage Charges.

c.1) See the responses to a) and b).

c.2) See the response to b).

1.6 Enhanced Response Regime Cost Recovery Fee

Reference

i) Trans Mountain, Attachment 2 to the Application, Schedule 5.6, PDF page 23 of 38, C24695-4

ii) Trans Mountain, Attachment 4 to the Application, PDF pages 3 and 7-8 of 13, C24695-6

iii) Trans Mountain, 30 November 2016 application for approval of alternative funding mechanism for TMEP bulk oil cargo fee, PDF pages 4-5 of 8, A74368-1

iv) NEB, 19 January 2016 letter and Order TO-001-2016 to Trans Mountain regarding the alternate funding mechanism for the TMEP bulk oil cargo fee, A75224-1

Preamble

In references i) and ii), Trans Mountain indicates that to establish the Enhanced Response Regime Cost Recovery Fee (**ECRF**), it proposes to collect the balance of the "Due from Westridge Shippers" account (related to TMEP bulk oil cargo fees) over three years, and to reconcile any remaining funds in the fourth year. Trans Mountain indicates that in its consultations, some participants expressed a preference for Trans Mountain to recover the balance over five years.

In reference iii), Trans Mountain indicates that in the event that TMEP proceeds:

> "the period for collecting the uncollected balance in the Due from Westridge Shippers account shall not exceed five (5) years", and
>
> "At least annually, the amount collected […] will be compared to the balance in the Due from Westridge Shippers account to assess the progress towards full recovery of the balance. If Trans Mountain considers that an adjustment to the fixed amount is necessary in order to ensure full recovery of the balance, such adjustment will occur in coordination with shippers, taking into account the circumstances at the time and with due consideration for the maximum five (5) year collection period."

Reference iv) is the NEB's decision related to the reference iii).

Request

a) Compare the degree to which Trans Mountain's proposal and an alternative recovery over five years (where adjustments to the fixed amount, if necessary, are made during the five years) align with the NEB's 2016 decision in reference iv) [and, as applicable, Trans Mountain's 2015 application in reference iii)] and other more recent pertinent NEB or Commission decisions, if any, related to this matter.

b) Explain why Trans Mountain proposes to recover the balance in the Due from Westridge Shippers account over three years, and to reconcile any remaining funds in the fourth year, rather than recover the balance over the maximum five years described in reference iii), and making adjustments to the fixed amount if necessary during the five years (rather than using an extra year to reconcile).

c) Provide the ECRF if Trans Mountain were to recover the balance over five years, making adjustments to the fixed amount if necessary during the five years (rather than using an extra year to reconcile).

Response

a) As shown in the Preamble above regarding the duration of the collection period, Trans Mountain's application[27] specified that "the period for collecting the uncollected balance in the Due from Westridge Shippers account shall not exceed five (5) years…". In that regard, Trans Mountain's proposal to recover the balance in the Due from Westridge Shippers account "over a 3-year period with a 1 year true-up",[28] and the alternative recovery suggested in this request, would both align with the NEB's 2016 decision in reference iv).

No other pertinent NEB or Commission decisions related to this matter were identified.

b) Trans Mountain's 2015 application in reference iii) specified that effective on the Commencement Date of the Expanded System, "the accumulation of the financing cost on the balance in the Due from Westridge Shippers account will cease".[29] In other words, Trans Mountain will no longer be able to include financing costs in the Due from Westridge Shippers account starting on the Commencement Date for the Expanded System. For that reason, the longer the period is for Trans Mountain to recover the full balance in the Due from Westridge Shippers account (i.e., collection period), the longer that Trans Mountain will be required to carry these costs at its expense.

Given that the 2015 application in reference iii) provided a "maximum" collection period of five years, Trans Mountain could have proposed to recover funds over a single year or less to minimize its financial exposure. However, Trans Mountain has proposed a 3+1 year collection period which it considers to be a reasonable collection period that aligns with the NEB's 2016 decision and that takes into consideration the interests of both shippers and Trans Mountain.

c) Table 1.6-1 below provides the ECRF calculated using the 3+1 year collection period proposed in the application,[30] and using a 5-year amortization period, with all other assumptions from the application remaining unchanged.

Table 1.6-1 Estimated ECRF Calculations

($000's) unless otherwise indicated	**ECRF as proposed [3-year amortization period]**	**Alternative ECRF [5-year amortization period]**
Due from Westridge Shippers Deferral Account Balance[31]	$178,864	$178,864
Amortization in Years	3	5
Annual Collection Amount	$59,621	$35,773
Forecasted Westridge Volumes (000 of m^3)	32,877 m^3	32,877 m^3
ECRF Unit Surcharge	$1.81/$m^3$ $0.29/bbl	$1.09/$m^3$ $0.17/bbl

[27] Trans Mountain, Alternative Funding Mechanism for TMEP BOCF application, PDF 4 of 8 (November 2015), Filing ID: A74368-1.
[28] Trans Mountain, Application For Interim Commencement Date Tolls Attachment 4, PDF 7 of 13 (June 2023), Filing ID: C24695-6.
[29] Trans Mountain, Alternative Funding Mechanism for TMEP BOCF application, PDF 4 of 8 (November 2015), Filing ID: A74368-1.
[30] Trans Mountain, Application For Interim Commencement Date Tolls Attachment 2, PDF 23 of 38 (June 2023), Filing ID: C24695-4. The 3+1 year collection period is based on a 3-year amortization period, with any remaining positive or negative amount being accounted for in the fourth year.
[31] Table 1.6-1 reflects estimated closing balance for 2023; to be trued-up once final costs are known.

1.7 Gateway Infrastructure Charge 2 (GIF2)

Reference

i) Trans Mountain, Application for Interim Commencement Date Tolls on the Trans Mountain Expanded System, Attachment 5 - Summary of Other Charges Fees and Penalties, Gateway Infrastructure Fee 2, PDF pages 4-5 of 7, C24695-7

ii) Vancouver Fraser Port Authority (**VFPA**), Registration to Participate, PDF pages 3-5 of 6, C25104

iii) National Energy Board (**NEB**), Letter and Order TGI-004-2011 to TransCanada PipeLines Limited - Application for Approval of Mainline Interim 2012 Tolls, PDF page 1 of 3, A2J6K9

iv) NEB, RH-001-2012 – Reasons for Decision- Trans Mountain Part IV Application, A51913

Preamble

In reference i), Trans Mountain states that all petroleum loaded over the Westridge Terminal may be subject to the VFPA Gateway Infrastructure Fee 2 (**GIF2**) as published on the VFPA website. The VFPA has requested that Trans Mountain collect and remit the GIF2 fee to the VFPA commencing 1 January 2024 when the fee comes into effect for port users of the Westridge Terminal. Trans Mountain also indicates that section 51 of the Canada Marine Act S.C. 1998, c. 10 (**CMA**) gives the port the authority to levy or amend fees payable by port users.

Reference ii) states that Trans Mountain leases land from the VFPA and functions as a terminal operator. It also indicates that the VFPA collects the GIF2 directly from terminal operators, such as Trans Mountain. The VFPA also administers a similar fee called the Gateway Infrastructure Fee ("GIF1") which is collected in the same manner. Reference ii) also states that the GIF2 is a tonnage/volume-based fee imposed by the VFPA pursuant to section 49 of the CMA on port users.

In reference iii), the NEB stated: "In light of the limited filings in an application to set or amend interim tolls, absent compelling evidence to the contrary, interim tolls are normally established in a manner that aligns with the [NEB]'s most recent decision which relates to a company's final tolls".

Reference iv) provides the decision for the most recent Trans Mountain Expanded System tolling methodology approved by the NEB or Commission.

Request

a) Considering that the VFPA is currently charging a similar fee (GIF1) to other terminal operators, explain why Trans Mountain shippers (specifically those that use the Westridge Terminal) are being charged the GIF2 starting on 1 January 2024. In doing so address, at minimum, the following:

   a.1) Explain why Trans Mountain shippers were not previously charged any type of gateway infrastructure fee, including GIF1.

   a.2) Explain what triggers the GIF2 to be applicable to the Westridge Terminal and thus, Trans Mountain's shippers, as of 1 January 2024.

   a.3) Provide additional details on the purpose of GIF2, including the type of infrastructure projects it relates to, and the rationale for passing the cost on to Trans Mountain's shippers.

   a.4) Whether exemptions from the GIF2 apply to any users of the port infrastructure.

b) Considering that the CMA, in references i) and ii), provides the VFPA the authority to impose the GIF2 on port users, including Trans Mountain's shippers, explain:

b.1) The legal rationale Trans Mountain is relying on to include the GIF2 as a charge in the interim tolls.

b.2) Whether, and if so how, the GIF2 falls within the jurisdiction of the Canada Energy Regulator (CER) or the Canadian Energy Regulator Act.

c) Considering the NEB interim tolls decision quoted in reference iii) and given that there are outstanding shipper concerns regarding GIF2, explain whether, and if so, how adding in the new GIF2 charge is consistent with the Commission or NEB's most recent relevant decision which relates to Trans Mountain's final tolls.

Response

a)

a.1) Trans Mountain understands that the VFPA has five (5) Trade Areas.[32] The GIF1 was set by the VFPA to be applicable to the North Shore, South Shore, and Roberts Bank Trade Areas only[33]. Since the Westridge Marine Terminal is located outside of these trade areas, shippers using the Westridge Marine Terminal are not charged the GIF1.

a.2) Trans Mountain understands that the VFPA identified thirteen (13) common-use infrastructure projects to improve the overall fluidity of the Vancouver gateway. For these projects, the VFPA established the GIF2 using a cost recovery mechanism similar to that already in place for the GIF1. The VFPA allocated costs related to the GIF2 projects across all five (5) Trade Areas, including the Second Narrows East Terminals.[34] The Westridge Marine Terminal is in the Second Narrows East Terminals Trade Area, and as such the VFPA has made the GIF2 applicable to all Westridge shippers, including any Trans Mountain marine shippers.

The VFPA commenced collection of the GIF2 on January 1, 2023. However, as stated in the VFPA's Fee Document effective January 1, 2023[35] (VFPA 2023 Fee Document), the collection of the GIF2 from the Second Narrows East Terminals Trade Area, which includes the Westridge Marine Terminal, was deferred until January 1, 2024.

a.3) Please see the response to a.2) above. Based on Trans Mountain's understanding, the projects supported by GIF2 are the thirteen (13) projects mentioned in the response to a.2). Please refer to VFPA's guidance document "Summary of cost-benefit/impact analysis, projects and initiatives to be cost recovered through GIF2022" which provides additional detail and rationale regarding the GIF2.[36] Trans Mountain considers the VFPA to be best positioned to describe the purpose of the GIF2 and the rationale for passing on to shippers the costs of infrastructure projects included in the GIF2.

As noted in the VFPA 2023 Fee Document, effective January 1, 2023 the "Gateway Infrastructure Fee for non-containerized cargo is payable by the owner of the cargo based on cargo tonnage loaded to or unloaded from a vessel over the wharf".[37] With respect of the

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[32] The five Trade Areas are: North Shore Trade Area, South Shore Trade Area, Roberts Bank Trade Area, Second Narrows East Terminals and Fraser River Trade Area, as shown in the VFPA 2023 Fee Document - Effective January 1, 2023 (PDF 14 of 40): https://www.portvancouver.com/wp-content/uploads/2023/01/2023-01-01-Fee-Document-for-2023-2023-04-27-2.1.1-updated.pdf (Accessed August 2, 2023). Westridge Marine Terminal is part of Second Narrows East Terminals area.

[33] VFPA 2023 Fee Document - Effective January 1, 2023 (PDF 12 of 40): https://www.portvancouver.com/wp-content/uploads/2023/01/2023-01-01-Fee-Document-for-2023-2023-04-27-2.1.1-updated.pdf (Accessed August 2, 2023).

[34] VFPA Update to industry: Gateway Infrastructure Fee 2022 (GIF2022), dated December 9, 2020: https://www.portvancouver.com/wp-content/uploads/2020/11/GIF2022-Update-to-Industry-December-9-2020-web.pdf (Accessed August 2, 2023).

[35] VFPA Fee Document - Effective January 1, 2023 (PDF 14 of 40): https://www.portvancouver.com/wp-content/uploads/2023/01/2023-01-01-Fee-Document-for-2023-2023-04-27-2.1.1-updated.pdf (Accessed August 2, 2023).

[36] Summary of cost-benefit/impact analyses, Projects and initiatives to be cost recovered through GIF2022, dated November 2020 (PDF 4 of 155): https://www.portvancouver.com/wp-content/uploads/2020/11/GIF2022-Cost-Benefit-Impact-Analysis-November-2020.pdf (Accessed August 4, 2023).

[37] VFPA 2023 Fee Document - Effective January 1, 2023 (PDF 14 of 40): https://www.portvancouver.com/wp-content/uploads/2023/01/2023-01-01-Fee-Document-for-2023-2023-04-27-2.1.1-updated.pdf (Accessed August 2, 2023).

Westridge Marine Terminal, it is Trans Mountain's understanding that the GIF2 would apply to all shippers whose products (crude or refined oils) are handled at the Terminal, including Trans Mountain shippers. See the response to b.1) for additional details.

a.4) Trans Mountain is not aware of any users that are exempt from the GIF2. However, according to the VFPA 2023 Fee Document posted to the VFPA website[38] the following are exempt from paying the GIF2:

(a) Ship's stores and bunker fuel used solely by a vessel that is loading or unloading goods;

(b) Repair materials, lining or ballast delivered to and for the sole use of a vessel that is loading or unloading goods; or

(c) Empty containers.

b)

b.1) Section 4.1.11 of the VFPA 2023 Fee Document states:

> All fees and charges are payable directly to the Port Authority or to the assigned operator of the Port Authority property at which the vessel, cargo, containers or goods are handled or passengers have transited. <u>The operator of the Port Authority property collects the fees on behalf of the Port Authority.</u> [Emphasis added]

Trans Mountain leases property from the VFPA on which the Westridge Marine Terminal is located. Trans Mountain's lease with the VFPA requires Trans Mountain to "abide by any and all rules, regulations, by-laws, notices and directions" of the VFPA, which includes the VFPA 2023 Fee Document.

The VFPA has directed that Trans Mountain collect the GIF2 from its Westridge shippers and remit those amounts to the VFPA. A copy of a letter from VFPA to Trans Mountain in which it made this direction is attached as Attachment 1. This letter was provided to Trans Mountain's Marine Shippers on June 12, 2023.

b.2) The GIF2 that the VFPA has directed that Trans Mountain collect on its behalf is not a component of the Fixed Toll or the Variable Toll applied for in the Application. The GIF2 is referenced in Section V of the Toll Schedule – Additional Charges Applicable to Petroleum Loaded Over the Westridge Marine Terminal.

The Rules & Regulations set out the terms and conditions for service on the Expanded System. Pursuant to Section 8.1 of the Rules & Regulations, Trans Mountain is required to issue invoices to Shippers that detail charges payable to the Carrier pursuant to the Tariff as well as "any other charges for which the Shipper is liable".[39] Trans Mountain considers that the GIF2 falls within the jurisdiction of the Commission as it is a term and condition of service pursuant to Section 8.1 of the Rules & Regulations for the Expanded System. Trans Mountain's remittance of GIF2 to the VFPA is not dissimilar to the manner by which Trans Mountain collects via invoices to shippers and remits Goods and Services Tax (GST) to the government on a routine basis.

c) The Rules & Regulations discussed in b.2) were approved by the Commission on May 16, 2023.

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[38] VFPA 2023 Fee Document - Effective January 1, 2023 (PDF 14 - 15 of 40): https://www.portvancouver.com/wp-content/uploads/2023/01/2023-01-01-Fee-Document-for-2023-2023-04-27-2.1.1-updated.pdf (Accessed August 2, 2023).
[39] Rules & Regulations, PDF 13 of 22, Filing ID: C23061-3, approved by Commission Letter, Filing ID: C24509-1.

1.8 Demurrage Revenues to Trans Mountain's Account

Reference

i) Trans Mountain, Application for Interim Commencement Date Tolls on the Trans Mountain Expanded System, Attachment 5 - Summary of Other Charges Fees and Penalties, PDF page 7 of 7, C24695-7

ii) National Energy Board (**NEB**), Letter and Order TGI-004-2011 to TransCanada PipeLines Limited - Application for Approval of Mainline Interim 2012 Tolls, PDF page 1 of 3, A2J6K9

Preamble

In reference i), Trans Mountain indicates that under the 2022-2023 Incentive Toll Settlement (**ITS**), Trans Mountain and its shippers agreed that during the term of the ITS, collections of demurrage charges would be refunded to shippers balancing off other negotiated items. Trans Mountain also indicates that, once service on the Trans Mountain Expanded System commences, the collection of demurrage charges will be to Trans Mountain's account.

In reference ii), the NEB stated: "In light of the limited filings in an application to set or amend interim tolls, absent compelling evidence to the contrary, interim tolls are normally established in a manner that aligns with the [NEB]'s most recent decision which relates to a company's final tolls".

Request

(a) Explain whether Trans Mountain's proposed methodology for the treatment of the demurrage charge revenues was approved in the RH-001-2012 Decision or any other NEB or Commission decision.

a.1) If the proposed methodology was not approved, explain why the Commission should accept this change from the current treatment of the revenues at interim tolls, considering the NEB's statement in reference ii).

(b) Describe exactly how Trans Mountain currently refunds the demurrage charges revenues to its shippers (e.g. the mechanism through which the refund occurred in 2023 final tolls).

(c) For the purpose of interim tolls, if the Commission determines that the demurrage charge revenues should be returned to shippers, confirm whether Trans Mountain will apply the same treatment as in b) above.

c.1) If the treatment would not be consistent with b) above, describe how Trans Mountain would propose to refund these revenues to shippers.

Response

a) and a.1)

Historically, any revenue sharing arrangements that Trans Mountain and its shippers have negotiated have explicitly been addressed in agreements or settlements. There is no provision in the FSA that was approved by the NEB in the RH-001-2012 Decision that addresses or requires that Trans Mountain share any collected Demurrage Charges.

Demurrage has been charged on the Trans Mountain pipeline system since its inception. The Demurrage Charge is imposed on Shippers that fail to remove, or have removed, petroleum from the Mainline System or from the custody of the Carrier. Failure to remove the petroleum can have significant negative consequences to the operations of the Trans Mountain pipeline system and/or other shippers.

Trans Mountain and its shippers negotiated the 2006-2010 ITS which addressed the treatment of Demurrage Charges[40] as part of a broader negotiation between Trans Mountain and its shippers[41]. The Memorandum of Understanding (MOU) that set out the principal terms and conditions for the 2006-2010 ITS between Trans Mountain and the shippers, as represented by the Canadian Association of Petroleum Producers, stated:

> This MOU has been reached on a negotiated basis to provide an overall settlement for the determination of tolls on the Trans Mountain Pipeline system. This settlement is to be viewed as a whole and that no component of either this MOU or the 2006 ITS is to be construed as representing the position of either Party other than as part of the overall negotiated settlement. <u>No element of this MOU or the 2006 ITS will be considered as being acceptable to either Party in isolation from all other aspects of the settlement and will not operate to the prejudice of the position of either Party in the future or other proceedings</u>. [42] [Emphasis added]

The treatment of Demurrage Charges was not negotiated in isolation. The treatment was negotiated between sophisticated commercial parties as part of a package deal balancing various factors between Trans Mountain and shippers.

The subsequent negotiated tolling agreements, up to and including the 2022-2023 ITS currently in effect, have continued to contain explicit language stating, or calculations showing, that Demurrage Charge revenues were to the account of the shippers rather than to Trans Mountain's account.[43] Like the 2006-2010 ITS, this was one element of a package of gives and takes negotiated between Trans Mountain and its shippers.

In contrast, the FSA and its schedules which set out the toll methodology for the Expanded System do not contain any language stating that Demurrage Charge revenues be returned to shippers rather than to Trans Mountain's account. Furthermore, unlike the sharing of fixed toll revenues collected from Uncommitted Shippers[44] on the Expanded System pursuant to section 3.2 of Schedule C to the FSA and TSA, no mechanism was established for the return of Demurrage Charge revenues to shippers, further illustrating that the concept of returning Demurrage Charge revenues to shippers was not included in the Expanded System toll methodology framework.

Demurrage Charge revenues to Trans Mountain's account also aligns with the fundamental risk allocation between shippers and Trans Mountain associated with the negotiated toll methodology approved for the Expanded System.

Under the Expanded System toll methodology approved in the RH-001-2012 Decision, Trans Mountain will bear the majority of the financial risk resulting from Demurrage events caused by shippers as it will be fully exposed to any lost Uncommitted Toll[45] revenue associated with throughput or delivery restrictions.

Under a cost of service tolling methodology, such as the one outlined in the 2006-2010 ITS and all subsequent toll settlements governing the existing Trans Mountain pipeline system, shippers bear the majority of the financial risk associated with Demurrage events caused by shippers as any financial impact due to reduced throughput or deliveries can be recovered by Trans Mountain through increased tolls to shippers in the subsequent year. As such, Trans Mountain and shippers negotiated that Demurrage Charge revenues would be to the shippers' account in exchange for other gives and takes as part of broader negotiations between Trans Mountain and its shippers.

[40] The 2006-2010 ITS specified that a deferral account be established for Demurrage Charges, and that the balance of the account "be used to adjust tolls".
[41] Trans Mountain, 2006-2010 ITS application, PDF 10 of 27, Filing ID: A0W5C2, approved by Board Order, Filing ID: TO-06-2006.
[42] Trans Mountain, 2006-2010 ITS application, PDF 12 of 27, Filing ID: A0W5C2.
[43] Trans Mountain, 2022-2023 ITS application, PDF 23 of 85, Filing ID: C16395-3.
[44] Rules & Regulations, PDF 8 of 22, Filing ID: C23061-3, approved by Commission Letter, Filing ID: C24509-1.
[45] Rules & Regulations, PDF 8 of 22, Filing ID: C23061-3, approved by Commission Letter, Filing ID: C24509-1.

b) Pursuant to Section 13(f) of the 2022-2023 ITS,[46] any collected Demurrage Charges are refunded to Shippers as a credit to the revenue requirement during the final toll process.[47]

c) and c.1)

Not confirmed. There is no mechanism in the approved toll methodology to refund the Demurrage Charge revenue to shippers. If Trans Mountain was required to refund the Demurrage Charge revenues to shippers, one means of doing so would be to create a new variable toll element, similar to those for Spot Revenue Sharing and Westridge Dock Bid Premium refunds, through which Demurrage Charge revenues could be refunded to shippers as a credit.

[46] Trans Mountain, 2022-2023 ITS application, PDF 23 of 85, Filing ID: C16395-3.
[47] Trans Mountain, application for 2023 final tolls, PDF 18 of 45, Filing ID: C23858-3.

1.9 Timing of the Commission's Decision

Reference

i) Trans Mountain, Application, Para. 7 and 114, PDF pages 5 and 30 of 145, C24695-2

ii) Trans Mountain, Reply Comments, PDF pages 2, 11 and 12 of 14, C25338-1

iii) CNRL, Response to CER Process Letter No.1, PDF page 3 of 9, C25062-1

iv) Cenovus, Letter of Comment, PDF page 3 of 4, C25084-1

v) Trans Mountain, TMEP FSA, PDF pages 14-15 of 31, A3E7D3

Preamble

In reference i), Trans Mountain states that a Commission decision on the Application by 14 September 2023 is expected to provide sufficient time for Trans Mountain to satisfy any Commission directions and file the CER-approved interim tolls at least three months prior to the Commencement Date. A filing date of early fourth quarter will ensure shippers have sufficient notice of the tolls that will be in effect for service on the Trans Mountain Expanded System prior to first nominations, which may need to be submitted as early as mid-December. This critical market information will ensure that shippers and market participants can finalize negotiations and conclude necessary supply, market, and operational arrangements in time for nominations on the Trans Mountain Expanded System. This will provide critical commercial and regulatory certainty for Trans Mountain, Shippers, and industry.

In reference ii), Trans Mountain provides timeline estimates associated with the "wet commissioning" process. Trans Mountain states that nominations for line fill are likely 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 15 September 2023. The 14 September 2023 date was chosen to accommodate various steps that must occur after the approval of interim tolls. Trans Mountain states that any delay in the Commission's decision on the Application beyond 14 September 2023 could jeopardize the in-service date for the TMEP.

The Commission notes that no shippers commented in support of the need for a decision by 14 September 2023. For example, in reference iii), CNRL states that Commencement Date tolls need only be established thirty days prior to the Commencement Date, and not three months as requested by Trans Mountain. And in reference iv), Cenovus states that it does not believe that the Application needs to be approved by 14 September 2023 and that the issuance of a decision by 1 November 2023 is a sufficient amount of time for industry participants to manage the upcoming in-service of the Trans Mountain Expanded System in the first quarter of 2024.

In reference v), section 3.2(c) states: "Not less than thirty (30) days before the Commencement Date, [Trans Mountain] will deliver the Commencement Date Cost Estimate together with a commencement date toll." Section 3(e)(ii) indicates that Trans Mountain shall deliver to shippers "a notice of adjustment pursuant to Section 3.2(c) […] within thirty (30) days of the Commencement Date, together with the Commencement Date Cost Estimate containing a breakdown of the Capped Costs and Uncapped Costs."

Request

a) Describe in detail the degree of risk that the Commencement Date may be delayed if the Commission does not decide on the applied for interim Commencement Date tolls by 14 September 2023. To the extent possible, quantify this risk and how the risk changes each week that passes after the requested decision date of 14 September 2023. As part of your response, discuss whether – and why or why not – a delay in the Commission's decision beyond 14 September 2023 would most likely correspond to an equal delay in the Commencement Date.

b) Discuss the degree to which the Commencement Date is at risk of being delayed beyond January 2024 due to factors unrelated to the timing of the Commission's decision on interim

Commencement Date tolls. Compare this to the risk that it would be delayed if the Commission's decision were later than 14 September 2023. As part of this, assuming a Commission decision is reached by 14 September 2023, to the extent possible, quantify the likelihood of a Commencement Date in January 2024 as compared to the likelihood of a Commencement Date after January 2024. Also, discuss how far in advance Trans Mountain is likely to have certainty around the Commencement Date.

c) Regarding critical commercial and regulatory certainty, discuss the following:

c.1) Whether Trans Mountain is suggesting that the Commencement Date could be delayed because shippers do not have certainty regarding the interim Commencement Date tolls in advance of line fill nominations. If so, discuss why. In the response, address the fact that: shippers have contracted for approximately 80 percent of the Trans Mountain Expanded System's capacity and are subject to take-or-pay arrangements; interim tolls provide less certainty than final tolls because interim tolls are subject to retroactive adjustments; and comment letters from shippers do not support the need for a Commission decision on interim Commencement Date tolls by 14 September 2023.

c.2) Whether Trans Mountain is aware of any current or prospective shippers that are unable or unwilling to nominate volumes for line fill or otherwise if interim Commencement Date tolls are not known in advance of the 15 September 2023 nomination deadline. If so, describe:

(i) the magnitude of these prospective volumes relative to the capacity of the Trans Mountain Expanded System; and

(ii) the impact to Trans Mountain's ability to complete the line fill process.

c.3) Whether it is possible to complete the line fill process without interim Commencement Date toll certainty by 14 September 2023, and if so, provide the latest date on which the interim tolls could be approved without running a reasonable risk of delaying the Commencement Date.

d) In light of the FSA timelines noted in the preamble, discuss why a Commission decision on the Application around 1 December 2023 would not be sufficient and most consistent with the FSA. Discuss whether, and if so to what extent, steps in reference ii) would have been accounted for by Trans Mountain and shippers when determining the FSA timing.

Response:

a) In its Application, Trans Mountain requested a Commission decision on the Commencement Date Tolls by September 14, 2023. This date was selected as Trans Mountain considered that a decision by this date would (i) provide toll information to shippers in advance of line fill nominations and (ii) provide a sufficient period of time within which Trans Mountain could complete a number of required steps after interim tolls are approved and before the Commencement Date, without risking a delay to the Commencement Date.

While certain Firm Service Shippers have expressed the view that they do not need to have Commission-approved interim tolls in advance of submitting or tendering their line fill nominations, Trans Mountain still has requirements that need to be completed after the interim tolls are approved by the Commission and before those tolls can be provided to shippers under section 3.2(c) of the FSA. These requirements include satisfying any conditions in the Commission's approval of the Commencement Date Tolls, and updating Trans Mountain's nominations system to reflect the Commission-approved tolls. As discussed below in d), the FSA requires that Trans Mountain provide its Firm Service Shippers with the Commencement Date Tolls "not less than thirty (30) days before the Commencement Date". As such, the steps that Trans Mountain needs to take to comply with Commission conditions and make updates to its nominations system must occur prior to thirty (30) days before the Commencement Date.

While the timing of the Commencement Date remains uncertain, and Trans Mountain cannot complete any detailed quantification of risks based on the timing of that date, Trans Mountain anticipates that a Commission decision a minimum of sixty (60) days in advance of the Commencement Date would allow a sufficient amount of time for Trans Mountain to meet its obligations under the FSA and would result in a relatively low risk of directly causing a delay in the Commencement Date.

b) There are many factors impacting the Commencement Date that are unrelated to the timing of the Commission's decision on Commencement Date Tolls. As with all projects of this size, risks to the schedule will continue to exist until construction and wet commissioning is completed. These risks fall into a variety of categories including:

   i. Known risks to mechanical completion including progress, productivity, technical challenges, or the failure of a major trenchless crossing or tunnelling project.

      - Examples of these known risks include critical path execution items such as the Jacko Lake Micro-tunnel in Spread 5A and the Mountain 3 tunnel boring in Spread 5B.

   ii. Unexpected problems or delays in the wet commissioning, or start-up process.

   iii. Delay in obtaining regulatory approvals or permits related to remaining construction or commissioning activities.

   iv. Exogenous factors including Acts of God, such as severe weather or wildfires.

The risk of a delay in the Commencement Date due to delays in mechanical completion, commissioning or start-up would not be impacted by the timing of the Commission's decision on Commencement Date Tolls. While there remains uncertainty inherent in the outstanding construction and commissioning activities, based on the current range of possible mechanical completion dates, it is likely that the Commencement Date will occur later in Q1 2024.

The achievement of mechanical completion will provide greater certainty around the Commencement Date, recognizing there will still be timing risks in the commissioning and start-up processes. Trans Mountain continues to use all reasonable efforts to achieve mechanical completion as early as possible. A Decision by the Commission in the fall of 2023 will likely have minimal impact on the Commencement Date.

c)

c.1) Trans Mountain is not suggesting that the Commencement Date would be delayed because shippers do not have certainty in advance of nominating or tendering line fill nominations. As noted in the response to a), Trans Mountain believes it would be desirable, but not essential, for shippers to have such certainty in advance of procuring and tendering line fill. The actual Commencement Date will not be impacted if shippers nominate and tender the necessary line fill in accordance with Trans Mountain's commissioning schedule, regardless of the timing of the Commission's decision.

c.2) Trans Mountain has not surveyed its current or prospective shippers but is not aware of any Firm Service Shippers that are unable or unwilling to nominate and tender volumes for line fill.

c.3) As noted in its responses to a) and c.1), a Commission decision on the Commencement Date Tolls is not required under the FSA or TSA prior to the deadline for shippers to submit nominations for line fill. Firm Service Shippers are obligated under the Rules & Regulations to nominate line fill regardless of whether Commencement Date Tolls have been approved by the Commission at that time. As discussed in a), a Commission decision at least sixty (60) days in advance of the Commencement Date should be sufficient to avoid having the Commission's decision on Commencement Date Tolls directly delay the Commencement

Date (assuming shippers provide line fill regardless of the timing of the Commission's decision).

d) As noted in the preamble, section 3.2(c) of the FSA requires Trans Mountain to deliver the Commencement Date Tolls to shippers not less than thirty (30) days in advance of the Commencement Date. Trans Mountain is not precluded from providing the Commencement Date Tolls to shippers more than thirty (30) days in advance of the Commencement Date.

The FSA does not expressly address whether approval of the Commencement Date Tolls by the NEB or its successor would occur before or after the toll is provided to shippers under section 3.2(c) (i.e., whether Trans Mountain would be providing the applied-for toll or the approved toll to shippers). However, based on the surrounding circumstances at the time the FSA was negotiated, Trans Mountain interprets section 3.2(c) of the FSA to apply to the Commencement Date Tolls approved by the NEB (or its successor) and delivered to shippers. Otherwise, Trans Mountain and shippers would have assumed the risk that the NEB's regulatory review of the Commencement Date Tolls was not completed within thirty (30) days, thereby causing the NEB's approval of the Commencement Date Tolls to directly delay the Commencement Date, which is not what the parties objectively intended.

While Trans Mountain does not believe the detailed steps discussed in reference ii) would have been understood by the parties when they negotiated section 3.2(c) (as such details had not yet been developed), the parties would have understood that additional time would be needed following NEB approval of the Commencement Date Tolls for Trans Mountain to comply with any conditions of that approval and complete administrative steps to have that toll reflected in its nomination system prior delivering the Commencement Date Tolls to shippers in accordance with section 3.2(c) of the FSA.

Further, the parties would have understood that shipper nominations would be required in advance of the Commencement Date, and that pipeline nominations are typically due the month prior to the month of transportation. As such, Trans Mountain interprets the 30-day requirement in section 3.2(c) to contemplate that the approved Commencement Date Tolls would be provided to shippers prior to the date that they were required to submit nominations for service under the Expanded System, which would have been roughly thirty (30) days prior to the Commencement Date.

For the reasons discussed in references i) and ii), and the reasons set out above, Trans Mountain's view is that Commission approval of the Commencement Date Tolls prior to the date that shippers are required to submit nominations for service under the Expanded System would be consistent with section 3.2(c) of the FSA. However, even if certain shippers are correct that they do not need to have Commission-approved interim tolls in advance of submitting or tendering their line fill nominations, Trans Mountain respectfully submits that Commission approval of the Commencement Date Tolls is still required at least sixty (60) days prior to the Commencement Date, for the reasons discussed in a) above.

1.10 Requested Amendment to Order TO-004-2013

Reference

i) Trans Mountain, Application, Para. 118-122, PDF pages 31 and 32 of 145, C24695-2

ii) NEB, Order TO-004-2013, PDF pages 1-4 of 4, A51914-1

Preamble

In reference i), Trans Mountain states that TO-004-2013 specifies that the approved toll methodology for the Trans Mountain Expanded System and the implementation of firm transportation service on up to 80% of the Trans Mountain Expanded System's nominal capacity, shall come into force if and when the Trans Mountain Expanded System's facilities are placed into service.

Trans Mountain requests that the Commission amend Order TO-004-2013 such that it shall come into force on the date that Trans Mountain makes its administrative filing of the interim tolls following the CER's approval of them. The filing of the interim tolls is currently anticipated to be made at least three months prior to the Commencement Date. Trans Mountain states that the requested adjustment to the wording of Order TO-004-2013 will provide commercial and regulatory certainty that the Order will be "in force in advance of first nominations of petroleum to the Expanded System".

Reference ii) is NEB Order TO-004-2013.

Request

a) Clarify whether "in force in advance of first nominations of petroleum to the Expanded System" in reference i) is intended to include or exclude nominations for line fill.

b) Explain in more detail why the Order should come into force in advance of the Trans Mountain Expanded System being placed into service.

   b.1) Discuss the impact to shippers and Trans Mountain should Order TO-004-2013 come into force without the requested amendments. Consider the impacts on line fill completion, committed and uncommitted shippers on the Trans Mountain Expanded System, and tolls charged.

c) Given that Order TO-004-2013 gives effect to a new service offering, including firm service on up to 80% of the Trans Mountain Expanded System's nominal capacity as well as a new tolling methodology, discuss the impact to shippers should the Order be amended to come into force prior to the Commencement Date of the Trans Mountain Expanded System. Consider the impacts to shippers on the current system, as well as committed and uncommitted shippers on the Trans Mountain Expanded system.

   c.1) Discuss the impacts if the order comes into force only one nomination cycle prior to the Commencement Date rather than at least three months prior to the Commencement Date as requested by Trans Mountain.

d) If Order TO-004-2013 comes into force prior to the Commencement Date of the Trans Mountain Expanded System, discuss whether line fill nominations and nominations for transportation on the existing system (Line 1) are to be treated and handled separately under separate tolls and Toll Order(s), or under the same tolls and Toll Order(s). Confirm which tolls and Toll Order(s) would apply to these two nomination categories and provide justification.

   d.1) Discuss how this would change if the requested amendment is not approved.

Response

a) In reference i), “in force in advance of first nominations of petroleum to the Expanded System” is not intended to include nominations for line fill.

b - d)

Please see the response to 1.9.a). Trans Mountain is requesting that the Order come into force in advance of the Expanded System being placed into service to provide certainty to Trans Mountain, shippers, and the market that nominations for transportation services on the Expanded System can be submitted by shippers and accepted by Trans Mountain in advance of the Expanded System being placed into service.

Stated otherwise, the request is being made to provide required clarity that shippers and Trans Mountain do not need to wait until the Commencement Date before submitting and accepting nominations in accordance with the approvals granted by the Order for transportation service on the Expanded System. For example, a Firm Service Shipper would be able to submit a nomination for transportation of firm volumes on the Expanded System in accordance with its TSA before the facilities are placed in service, and Trans Mountain would have the authority under the Order to offer or provide that service, and to accept nominations for Firm Service on up to 80% of the nominal capacity of the pipeline.

For these reasons, Trans Mountain is requesting that the Order come into force at the same time that Trans Mountain’s administrative filing of its interim tolls is made with the Commission. Trans Mountain respectfully submits that this approach will ensure that all market participants have required certainty and have the best possible information required in advance of the first nomination date for the Expanded System to make informed decisions regarding nominations. This will also ensure that Trans Mountain has the authority under the Order to accept those nominations.

Trans Mountain is not requesting that the Order and the approvals granted therein apply to service on the existing system or that it apply to nominations for service on the existing system. The Order expressly states that it is for firm and uncommitted services on the Expanded System - not the existing system. Accordingly, the services approved under the Order could only be provided once the Expanded System is placed into service. For these reasons, prior to the Expanded System being placed into service, Trans Mountain does not consider that a change to the date on which the Order comes into force as Trans Mountain is requesting would have any impact on line fill completion, existing system shippers, Firm Service Shippers or Uncommitted Shippers on the Expanded System or tolls charged.[48]

[48] Tolls on the Trans Mountain pipeline are charged upon delivery, and not receipt.

1.11 Line Fill Process

Reference

i) Trans Mountain, Application, Para. 112 and 113, PDF pages 29 and 30 of 145, C24695-2

ii) Trans Mountain, Reply Comments, PDF page 12 of 14, C25338-1

Preamble

In reference i), Trans Mountain states that a Commission decision on the Application by 14 September 2023, would ensure that Interim Commencement Date Tolls are on file with the Commission in advance of first nomination of petroleum to the Trans Mountain Expanded System, which are due to be submitted to Trans Mountain by 13 December 2023, for January 2024 shipments on the Trans Mountain Expanded System.

In reference ii), Trans Mountain states that line fill 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. If the Commencement Date occurs in January 2024, this means that nominations would be due on 15 September 2023.

Request

a) Describe the process for shippers to nominate line fill. Discuss how this compares to the normal monthly nominations process and explain any differences.

b) For the following shipper categories, discuss which are required to nominate line fill. Also discuss which are not required, but are given the opportunity to, nominate line fill:

b.1) Committed shippers under the Trans Mountain Expanded System.

b.2) Uncommitted shippers under the Trans Mountain Expanded System.

b.3) Existing shippers on the current (pre-expansion) system.

c) Confirm whether shippers retain ownership of the petroleum supplied for line fill. If they do not, explain.

d) Discuss the impacts on shipments on the existing system (Line 1) during the line fill process, if any.

e) Discuss whether it is necessary to have line fill nominations according to the usual monthly deadlines given that line fill may not be delivered in the month following the nomination.

f) Discuss whether, and if so, to what extent, it would be possible to shorten the 6-week period pre-wet commissioning.

Response

a) The process for shippers to nominate line fill on the Expanded System is similar to that for nominating petroleum on the current system, the primary difference being that shippers nominating line fill will identify the nominated volumes as Expanded System volumes. Shippers provide Trans Mountain with all nominations in accordance with its Rules & Regulations.

b)

b.1) Firm Service Shippers on the Expanded System will be required to nominate line fill to enable wet commissioning in accordance with the Rules & Regulations.

b.2) Trans Mountain does not currently anticipate it will require line fill for wet commissioning from Uncommitted Shippers, although Uncommitted Shippers who would like heavy crude deliveries from the Expanded System in the first month of delivery would be provided the opportunity. Note that deliveries off the Expanded System in the first month of operation may be limited to volumes nominated as line fill in the prior months.

b.3) Existing shippers on the current system that wish to nominate on the Expanded System will either be Firm Service Shippers or Uncommitted Shippers. See response to b.1) and b.2).

c) Confirmed.

d) The existing system will be impacted primarily by two activities during the line fill process:

(i) Wet commissioning activities for TMEP facilities must be completed prior to wet commissioning activities for the TMEP pipeline which will require use of Line 1 capacity to transit the necessary volumes for wet commissioning of the TMEP facilities. This will reduce capacity for delivering off the existing system prior to the Commencement Date.

(ii) The existing system is currently utilizing two sections of larger diameter (30" to 36”) pipe that will be transitioned to Line 2 for Expanded System operations. Line 1 will utilize re-activated smaller diameter (24") pipe in those sections. A shutdown of the existing system will be required to complete the tie-ins of two sections of pipe.

e) For the following reasons, it is necessary to have line fill nominations according to the usual monthly deadlines to mitigate the risk of line fill tender disruptions or delays that could impact the wet commissioning timeline and therefore the Commencement Date:

i) The wet commissioning process for TMEP must occur concurrently with the existing operations of the Trans Mountain Edmonton Terminal and its connected third-party terminals and feeder pipelines (“Upstream Facilities”). The Edmonton Terminal is comprised of both existing and new TMEP facilities, the operation of which must be integrated during commissioning.

ii) The usual monthly nomination deadline follows an industry standard process driven by the Canadian crude trading cycle and the Crude Oil Logistics Committee Calendar. It is through this process that most crude supply and pipeline capacity is secured and allocated by producers, shippers, and transporters. Trans Mountain and the Upstream Facilities utilize this calendar and associated deadlines to schedule and implement all tenders and deliveries and will continue to do so after the Commencement Date.

iii) Establishing a nomination, verification, scheduling, and tender process for line fill volume that is separate and distinct from the process for all other activity on the existing system and the Upstream Facilities would be burdensome and create supply and scheduling complexity for shippers, Upstream Facilities, and Trans Mountain. Failure to effectively coordinate between shippers nominating line fill, Upstream Facilities, current system users, and Trans Mountain could result in supply and delivery disruptions, potentially impacting the (i) wet commissioning process which could delay the Commencement Date if insufficient line fill is tendered to facilitate the completion of wet commissioning activities; and (ii) users of the existing system and the Upstream Facilities.

As Trans Mountain stated in reference ii), the wet commissioning process is expected to take approximately seven weeks to complete. Line fill tenders would be requested over several months in advance of and during the wet commissioning process. The fact that line fill tenders may not be delivered to shippers in the month following nomination (i.e., delivery of line fill volumes to shippers will not occur until after the Commencement Date) is not sufficient reasoning to change the line fill nomination timing from the industry standard cycle due to the risks identified above.

f) For the following reasons, Trans Mountain does not believe it is possible to shorten the timeline for requiring line fill nominations approximately six weeks prior to the start of wet commissioning:

  i) Trans Mountain requires custody of a portion of the line fill in advance of the start of wet commissioning. For that line fill volume to be efficiently tendered to Trans Mountain with a low risk of supply disruption it would be nominated on the 15th of the month prior to tender and then rateably tendered in the following month, which would be the month prior to the start of wet commissioning.

  ii) To compress this timeline would require the creation of a separate nomination/verification/planning process outside of the normal industry practice potentially resulting in the risks discussed in the response to 1.11 e). Potential problems with shippers' abilities to secure non-ratable crude supply, Upstream Facility scheduling and delivery, and the receipt of such non-ratable tenders by Trans Mountain could impact not only the line fill delivery and wet commissioning process (and therefore delay the Commencement Date), but could also impact Trans Mountain's existing system shippers, Upstream Facility operations, and receipts from and deliveries to third-party facilities at the Edmonton Terminal.

Attachment 1

VFPA Letter to Trans Mountain

May 30, 2023

Mr. Bikram Kanjilal
Director, Burnaby and Westridge Terminals
Trans Mountain
Ste 2700, 300 5th Avenue SW
Calgary, AB T2P 5J2

Dear Bikram:

Re: Collection of Gateway Infrastructure Fee 2 (GIF2)

We write in response to your request that Vancouver Fraser Port Authority (**"VFPA"**) confirm that:

I. VFPA has the legal authority to establish and collect GIF2;
II. VFPA has directed Trans Mountain to remit GIF2 as invoiced, (subject to the appeals process as reflected in the VFPA fee schedule as posted on its website (the "Fee Document"); and,
III. Trans Mountain must comply with the direction specified in Item II.

I. VFPA has legal authority to establish and collect GIF2

VFPA has the authority to establish and collect GIF2 pursuant to section 49(1) of the *Canada Marine Act*, SC 1998, c 10.

Pursuant to section 49(1), a port authority, such as VFPA, may fix fees to be charged in respect of:

a. ships, vehicles, aircraft and persons coming into or using the port;

b. goods loaded on ships, unloaded from ships or transshipped 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.

GIF2 falls squarely within the language of paragraphs (a) to (c) of section 49(1). This was confirmed by the Federal Court in *Shipping Federation of Canada v. Vancouver Fraser Port Authority*, 2012 FC 301 in relation to the original Gateway Infrastructure Fee.

II. VFPA directs Trans Mountain to remit GIF2 as invoiced, (subject to the appeals process as reflected in the VFPA Fee Document)

The Fee Document provides that the "Owner" of the goods is required to pay GIF2. The term *"Owner"* in the Fee Document is defined expressly to include *"the carrier of goods to, upon, over or from Port Authority property"*. The Fee Document further defines "*Carrier*" as "*a party engaged in the transport of cargo, containers, and/or passengers."*

In addition, terminal operators within VFPA's jurisdiction are required to remit fees in accordance with the process specified in the Fee Document. Trans Mountain is a listed terminal under Schedule "D", "Second Narrows East Terminals" of the Fee Document.

Finally, Section 4.1.11 and 4.1.12 of the Fee Document states:

> *"4.1.11. Charges Payable to Whom*
> *All fees and charges are payable directly to the Port Authority or to the assigned operator of the Port Authority property at which the vessel, cargo, containers or goods are handled or passengers have transited. The operator of the Port Authority property collects the fees on behalf of the Port Authority.*
>
> *4.1.12. Payment of Fees*
> *(a) The fees prescribed herein are due and owing by the owner to the Port Authority (or party shown on the invoice), within 30 days of the invoice date and are in addition to any other fees that may be owing to the Port Authority or which are prescribed by any other Port Authority by-law or notice."*
>
> *As a result of the above-cited provisions, VFPA has the authority to require Trans Mountain to remit GIF2 as invoiced and it has so directed.*

III. Trans Mountain is under compulsion to comply with the direction as outlined in Item II.

In accordance with Section 4.1.8 of the Fee Document:

> *"4.1.8 "Use of Port Deemed Acceptance*
> *The Fee Document is binding upon any person entering the Port Authority's jurisdiction or using Port Authority property regardless of their knowledge. Entrance or use constitutes complete acceptance of the Fee Document, its revisions or supplements and the terms and conditions set forth therein."*

In addition to the requirements in its Fee Document, VFPA's lease with Trans Mountain (section 8.2) requires that Trans Mountain abide by all rules, regulations, by-laws and directions of the VFPA. More specifically, Trans Mountain must abide by all fees established by the VFPA pursuant to the VFPA Fee Document.

We trust these confirmations clarify VFPA's authority to establish and collect GIF2 in accordance with its Fee Document.

Regarding your inquiry respecting anticipated GIF2 rates for 2024, please be advised that we continue to work on this request and we will endeavour to respond as soon as practical.

Yours truly,

Katherine Bamford
Director, Customer Engagement
Vancouver Fraser Port Authority

cc Mark Gustafson, Vice President, Legal, Risk & Compliance, Vancouver Fraser Port Authority