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Canada Energy Regulator
Suite 210
517 Tenth Avenue SW
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Attention: Ramona Sladic, Secretary of the Commission

Dear Ramona Sladic:

Re: File OF-Tolls-Group1-T260-2023-03 01
Trans Mountain Pipeline ULC ("Trans Mountain")
Application for Interim Commencement Date Tolls and Other Related Matters related to the Transportation of Petroleum on the Expanded Trans Mountain Pipeline System
Written Comments in Relation to Information Request No. 1 Responses

In accordance with Process Letter No. 2,[1] in this submission Canadian Natural Resources Limited ("**Canadian Natural**") provides its comments on the information request no. 1 responses ("**IR Responses**").[2] Canadian Natural also provides its position on the Preliminary Decision and its views on the "broader issues" that should be considered as part of the Final Interim Tolls Decision or, in the alternative, when final tolls are adjudicated.[3]

INTRODUCTION

Canadian Natural is fully supportive of the two step process that the Commission has established for adjudicating the Interim Commencement Date Tolls ("**Interim Tolls**"). Canadian Natural respectfully requests that the Commission issue a Preliminary Decision which:

[1] CER Process Letter No. 2 (August 1, 2023) Filing ID: A8R9A8 [**CER Process Letter No. 2**].
[2] Trans Mountain, Response to CER Information Request No. 1 (August 16, 2023), Filing ID: A8S1R3 [**IR Responses**]; Vancouver Fraser Port Authority, Response to CER Information Request No. 1 (August 16, 2023), Filing ID: A8S1X1.
[3] CER Process Letter No. 2 at PDF p. 2.

1. sets the Interim Tolls at the mid-point between the audited 2017 CPCN Fixed Tolls and the Interim Commencement Date Tolls proposed in Trans Mountain's Application (the "**Mid-Point**");[4]
2. orders that the Enhanced Response Regime Cost Recovery Fee ("**ECRF**") will recover amounts owing over 5 years, as originally contemplated;
3. orders that the Gateway Infrastructure Fund 2 ("**GIF2**") will not be included in the Toll Schedule; and,
4. orders that Demurrage Charges are to the account of shippers and charged at a rate of $0.25/m3.

The Commission has confirmed that it will establish a hearing process to consider "broader issues" that arise from the Application prior to issuing a Final Interim Tolls Decision. Canadian Natural submits that, <u>at a minimum</u>, this process must include a review of 1) whether the costs were reasonably and necessarily incurred, and 2) whether costs claimed to be Uncapped Costs have been properly categorized as such ("**Review of Costs**"). This is required because as the Commission has confirmed, it must "ensure that tolls are just and reasonable at all times".[5] A Review of Costs is also required for the reasons recognized by the Commission, namely that: the magnitude of cost increases and the impact on tolls are greater than in other cases; shippers and interested parties have significant concerns with the Application; and, the Interim Tolls will remain in place for approximately 2 years.[6]

Canadian Natural maintains that in addition to a Review of Costs, the unique circumstances in this case require that the Commission consider other issues when issuing a Final Interim Tolls Decision, or in the alternative, when final tolls are adjudicated. As noted by the Commission, this case is distinct from prior cases, in part, because the magnitude of the cost increases are unprecedented and far greater than anyone contemplated when the methodology was approved in RH-001-2012 ("**Approved Methodology**"). This has resulted in an untenable situation. The tolls are too high and will harm the economic competitiveness of Canada's oil industry, and the public interest.

This case is also distinct because Trans Mountain's sole shareholder is the Government of Canada through the Canadian Development Investment Corporation ("**Canada**"). Canada has a relatively unlimited ability to finance the activities of Trans Mountain. It also has public-policy objectives that a corporation does not. The Approved Methodology did not contemplate that the sole shareholder would be motivated by anything other than maximizing its return from the efficient delivery of crude. In this case, however, the sole shareholder obtains benefits from achieving certain policy objectives, including advancing Indigenous reconciliation, environmental protection and positive intergovernmental relations. This unique situation supports a Review of Costs as part of this Interim

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[4] When referring to Mid-Point, Canadian Natural agrees with Trans Mountain's IR Responses 1.4(a) through (c) confirming that the Mid-Point results in an Interim Base Fixed Toll of $8.32 as opposed to a CPCN Cost Estimate of $5.76 and Commencement Date Cost Estimate of $10.88, thereby representing an overall 12% or $3.7 billion reduction in the overall costs underlying the tolls as compared to the Commencement Date Cost Estimate.
[5] CER Process Letter No. 2 at PDF p. 1.
[6] *Ibid* at PDF pp. 1 & 2.

Tolls process. In addition, combined with the unprecedented increase in costs, this justifies a reconsideration of the Approved Methodology, either as part of the Final Interim Tolls process or the final tolls process. Further justifications for revisiting the Approved Methodology are provided beginning at page 15.

Further arguments in support of Canadian Natural's position, including its requested relief in the Preliminary Decision, are embedded within Canadian Natural's comments on the IR Responses provided by Trans Mountain. To the extent we do not address an argument that has been put forward by Trans Mountain in its IR Responses, this does not imply that Canadian Natural agrees with Trans Mountain's submission on that issue.

COMMENTS ON TRANSMOUNTAIN IR RESPONSES

The following are Canadian Natural's comments on Trans Mountain's IR Responses other than IR Responses 1.3, 1.10 and 1.11, for which Canadian Natural has no comments.

1.1 Appropriate level of Uncapped Costs in interim Commencement Date tolls

Contrary to Trans Mountain's assertions, a Review of Costs as part of this Interim Tolls process is not contrary to the Approved Methodology, the FSA or the TSA. The FSA specifically sets out that "Costs and Expenses" are only those that are "reasonably and necessarily incurred" and that "Uncapped Costs" are only those "Costs and Expenses resulting from or relating to" four specific categories.[7] Canadian Natural seeks a Review of Costs so it may test whether the Interim Tolls proposed in the Application are consistent with these requirements.

Trans Mountain states "[i]f 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…" This demonstrates a fundamental misunderstanding by Trans Mountain of what was agreed to. Canadian Natural and other shippers did not agree to pay whatever costs Trans Mountain includes in an application. They only agreed to pay costs that are reasonably and necessarily incurred, and properly categorized as Uncapped Costs.

At no time have shippers waived their rights to seek a Review of Costs by the Commission prior to the establishment of the Interim Tolls. Although the FSA allows for an audit to take place with respect to final tolls, this is irrelevant as it pertains to the Commission's jurisdiction to conduct a Review of Costs prior to establishing the Interim Tolls. There is nothing in the Approved Methodology that suggests no Review of Costs will be undertaken prior to establishing Interim Tolls.

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[7] Trans Mountain, RH-001-2012, Appendix 7, Final Form of FSA (March 27, 2012), Filing ID: A3E7D3 at section 6.1 (PDF pp. 21-22) and section 1.1 (PDF p. 10), which defines Uncapped Costs as, "Uncapped Costs" means 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.

As the Commission noted, one reason Trans Mountain's Application for Interim Tolls is distinct from other interim toll applications is because of the "magnitude of the cost increases…"[8] Table 3-10 of Trans Mountain's Application sets out some of these cost increases:[9]

Table 3-10: Commencement Date Uncapped Costs Estimate

Commencement Date Uncapped Cost Estimate			
Commencement Date Uncapped Costs (millions of C$)	**Initial Cost Estimate**	**2017 CPCN Cost Estimate**	**Commencement Date Cost Estimate**
Bare Pipe	$529	$427	$580
ROW: Fort Langley to Westridge	$182	$97	$196
Pipeline Construction & Inspection: Coquihalla Summit to Wahleach, Fort Langley to Westridge	$315	$952	$7,411
Consultation and Accommodation	$99	$291	$900
Total Uncapped Costs	**$1,124**	**$1,767**	**$9,087**
Increase in Uncapped Costs from Initial Cost Estimate		$643	$7,963
Increase in Uncapped Costs from 2017 CPCN Cost Estimate			$7,320

"Consultation and Accommodation" increased by 809% from 2012 to 2023.[10] "Pipeline Construction and Inspection" costs increased by 2,253% from 2012 to 2023. Total Uncapped Costs increased by 708% from 2012 to 2023. Despite the fact that under the Approved Methodology these costs are paid entirely by shippers, there has been no detailed explanation for the cost increases provided other than generalized statements regarding floods and the pandemic. The specific explanations offered in the Application for both categories, "Consultation and Accommodation" and "Pipeline Construction and Inspection", only provide summaries of these categories and provide no explanation of why the costs are orders of magnitude higher than previous estimates.[11]

Trans Mountain states that "actual costs have exceeded the 2017 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."[12] The Acts of God are the pandemic, "wildfires and atmospheric river flooding that occurred in 2021".[13] These explanations are unsatisfactory. While these events may explain, in

[8] CER Process Letter 2 at PDF p. 1
[9] Trans Mountain, Attachment 3 Determination of the Fixed Toll Component for the Interim Tolls (June 2023), Filing ID: A8Q6A2 at Table 3-10 (PDF p. 12).
[10] Note: Initial Cost Estimate 2012 / Commencement Date Cost Estimate 2023.
[11] *Ibid* at para 32 (PDF pp. 11 & 12).
[12] IR Responses at IR Response 1.1(a) (PDF p. 5).
[13] *Ibid* at PDF pp. 5 & 6.

part, some of why costs have increased by $23.5 billion or 317% since the 2017 CPCN Cost Estimate, they do not explain more recent cost increases. In February of 2022, Trans Mountain estimated the total project cost to be $21.4 billion taking into account the "impacts of the COVID-19 pandemic and the substantial preliminary impacts of the November 2021 BC floods".[14] However, in just over a year since the 2022 update, costs have increased by another $9.5 billion or 44%. Trans Mountain has not offered a satisfactory explanation for these increases and a Review of Costs is therefore necessary.

Trans Mountain could have taken steps to engage with shippers prior to filing its Application with a view to addressing shippers' concerns regarding unprecedented cost increases. It could have provided more information in its Application or in its IR Responses. It did not do so. Therefore, Trans Mountain should not be permitted to delay the discussion on the substance of unprecedented costs for another two years or more until final tolls are adjudicated.

Finally, it should be noted that there has been no previous review by the Commission or by way of an audit as to whether costs were reasonably and necessarily incurred, and properly categorized. The audit performed in connection with 2017 CPCN Cost Estimate did not assess whether costs were reasonably and necessarily incurred, and properly categorized as between Capped Costs and Uncapped Costs. These issues were not included in the scope of that audit. This further necessitates that a Review of Costs be conducted prior to establishing Final Interim Tolls.

<u>1.2 Forums for reviewing Trans Mountain costs</u>

Trans Mountain states:[15]

> 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.

Therefore, the FSA does not preclude the Commission from conducting a Review of Costs prior to establishing Interim Tolls. The shippers never waived their rights to have the Commission conduct such a review prior to establishing the Interim Tolls. Therefore, although the FSA clearly contemplates that an audit will take place with respect to final tolls, this is irrelevant as it pertains to the Commission's jurisdiction to review the Interim Tolls. Nothing in Article 6.1 "Expansion Costs and

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[14] Trans Mountain, *Trans Mountain Corporation Updates Expansion Project Cost and Schedule* (February 18, 2022), available online: <https://www.transmountain.com/news/2022/trans-mountain-corporation-updates-expansion-project-cost-and-schedule>.
[15] IR Responses at IR Response 1.3(a) (PDF p. 11

Expenses and Audit Rights" of the FSA suggests that the audit rights are a substitution for or intended to streamline the Commission's review of Interim Tolls.

Trans Mountain has suggested that a Review of Costs as part of the Interim Tolls process is inconsistent with past decisions by the National Energy Board ("**Board**") or the Commission. First, as found by the Commission, Trans Mountain's "Application for interim tolls is distinct from prior, and generally less complex, interim tolls applications before the Commission and [the Board]".[16] Second, in cases where proposed interim tolls are contested, the Commission's predecessor has provided an opportunity for review and has also imposed interim tolls below what was requested. In the case of an application from Westcoast Energy Inc. to set interim tolls effective January 1, 2002, the Board approved interim tolls subject to reconsideration following receipt of comments from interested parties on their appropriateness as interim tolls.[17] In doing so, the Board set out a subsequent process to review the appropriateness of the interim tolls.

In the case of the 2010 Canadian Mainline Interim Tolls Application, the Board rejected an application by Enbridge Pipelines Inc. ("**Enbridge**") to include within the Mainline tolls all the costs of the Alberta Clipper Expansion Project, even though the interim tolls were calculated in accordance with the approved methodology. Shippers argued that the large increase in tolls warranted a careful review of the application, that Enbridge had not provided sufficient detailed information, and that "reasonable interim tolls must account for potential disallowances and costs that are subject to shipper disputes."[18] The Board denied Enbridge's Application and instead imposed interim tolls "set at levels no higher than the per unit toll levels forecasted by Enbridge in the OH-4-2007 proceeding."[19] The Board did so, among other reasons, so as to "minimize the toll impacts related to any future applicable adjustments" given that the "determination of final tolls may result in tolls that are either higher or lower than the interim tolls". If the Commission were to do something analogous in this case, the Interim Tolls would be set at the indicative toll levels that were submitted as part of RH-001-2012 or at the level of the CPCN 2017 Cost Estimate. In this case, Canadian Natural seeks Interim Tolls set at the Mid-Point, which is considerably higher than those previous estimates.

<u>1.4 Trans Mountain’s ability to meet its financial obligations under differing toll levels</u>

Trans Mountain states that "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."[20] Canadian Natural disagrees with this assertion.

First, setting the Interim Tolls at the Mid-Point is not arbitrary. Trans Mountain states that costs have increased from the 2017 CPCN Estimate in part because of the pandemic, floods and wildfires. This is why Canadian Natural has not insisted on the Interim Tolls being set at the level of the 2017 CPCN

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[16] CER Process Letter 2 at PDF p. 1.
[17] NEB Order TGI-3-2001, as summarized in NEB Decision and Order, Westcoast Energy Inc Settlement for 2002 and 2003 Tolls, (September 2002), Filing ID: A06482-1.
[18] NEB Letter to Enbridge Pipelines Inc., NEB Tariff No. 303, 2010 Canadian Mainline Interim Tolls Application (March 31, 2010), Filing ID: A1S3X6 at PDF p. 3.
[19] *Ibid* at PDF p. 4.
[20] IR Responses at IR Response 1.4(d) (PDF p. 20).

Cost Estimate. However, even after taking into account these unforeseen challenges, Trans Mountain in 2022 predicted the project costs would be $21.4 billion. In addition, the Mid-Point tolls are based on Uncapped Fixed Costs of $5.4 billion which represents a 207% increase from the 2017 CPCN Cost Estimate. This is notably higher than most of the cost overrun percentages provided by Trans Mountain in Table 1.1-3.[21] Accordingly, the Mid-Point tolls are not arbitrary and are instead reasonably approximated based on past Trans Mountain estimates, taking into account unexpected events, and cost overruns of other projects.

Trans Mountain has not considered the long-term ramifications of setting Interim Tolls too high, which may occur without a comprehensive Review of Costs. High tolls during the initial operational phase could be detrimental, as this period is crucial for establishing Canadian market share and securing global partners. Interim Tolls that are too high, because the underlying costs have not been reviewed, may cause long-term and irreversible harm to the Canadian oil industry, and the public interest. A true-up process when final tolls are adjudicated in two years will not mitigate this harm. Therefore, it is entirely appropriate to establish the Interim Tolls at the Mid-Point until such time as a Review of Costs can be completed.

Second, Trans Mountain's assertion that setting the interim tolls at the Mid-Point, on a short-term basis, would disrupt its financial stability is misleading. As confirmed by Trans Mountain, the Mid-Point Interim Tolls represent an overall 12% or $3.7 billion reduction in the overall costs underlying the tolls as compared to the Commencement Date Cost Estimate and this assumes they are implemented until final tolls are adjudicated, which is not what Canadian Natural is proposing. Trans Mountain's financial obligations are much more significantly impacted by the Approved Methodology. Specifically, Capped Costs increased by $16.17 billion or 286%. This significantly outweighs any impacts resulting from Canadian Natural's proposal that Interim Tolls be temporarily established at the Mid-Point.

Trans Mountain's own analysis demonstrates that using As Filed Tolls, it will only achieve a return on equity of between 1.1 percent (1.1%) and 3 percent (3%).[22] This is not competitive based on Trans Mountain's own evidence in RH-001-2012:[23]

> Trans Mountain stated that it made an investment decision based on a return on investment that was acceptable, taking into account the cash flow generated by the negotiated tolls that were agreed to by Trans Mountain and Firm Service Shippers. The investment decision criteria included a targeted unlevered internal rate of return in the typical range of 12 percent (12%) to 15 percent (15%).

Therefore, Trans Mountain's assertion that temporarily setting interim tolls at the Mid-Point represents "a fundamental departure from the Fair Return Standard" is disingenuous.[24] Trans Mountain's own analysis shows that even using As Filed Tolls, the comparable investment

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[21] *Ibid* IR Response 1.4(c), Table 1.1-3 (PDF p. 9).
[22] Under the Existing Capitalization Scenario in in IR Response 1.4(d), Table 1.4-3 (PDF p. 23).
[23] NEB, RH-001-2012, Reasons for Decision, (May 2013) Filing ID: A51913-1 at p. 23 (PDF p. 35).
[24] IR Responses at IR Response 1.4(d) (PDF p. 20).

requirement is not met. It is not the shippers' request for Mid-Point tolls and a Review of Costs that brings into question whether the Fair Return Standard is still met; instead, it is the significant and unprecedented increase in costs that does so.

The financial analysis provided by Trans Mountain relies on untested assumptions and lacks a sensitivity analysis. For instance, Trans Mountain's analysis relies on an assumption regarding Uncommitted volumes. Trans Mountain, when discussing the Mid-Point tolls, cautions that financial results will be "compounded further if the less predictable spot volumes of 144,000 barrels per day are removed"[25] This caution is misplaced. The reality is it's more plausible that these volumes will be realized if Mid-Point tolls are implemented rather than the higher, proposed tolls. Trans Mountain's static analysis fails to consider this. Given that these spot volumes could contribute to approximately $650 million in annual revenue – over 20% of the total projected revenue – this oversight is significant.

Trans Mountain's model, and related assertions regarding its ability to provide shareholder dividends and a return on equity, should also be given little weight because these issues are not relevant given the Approved Methodology. In RH-001-2012 it states:[26]

> The Board notes that the proposed toll methodology is not based on cost of service. The applied-for toll methodology is essentially a negotiated agreement allocating risk among parties, which includes gives and takes. Based on the record of this proceeding, <u>the Board was not persuaded that return on equity is a relevant factor in the context of the bilateral negotiations that occurred during the Open Season process</u>, which the Board found to be appropriate and that resulted in the proposed TSA and FSA. A number of economic cycles can be expected to occur over the life of the Expanded System and, the supply and market dynamics of oil transportation to the west coast may change during this time. These cycles and changes will affect the risks and rewards encountered by Trans Mountain. <u>As a result, the approval of the proposed toll methodology will result in a wide range of possible returns for Trans Mountain.</u> Ultimately, the actual return on equity for the Expanded System will depend on how Trans Mountain manages the circumstances and risks of the pipeline over the contract periods.
>
> [<u>Emphasis</u> Added.]

Trans Mountain could have sought a toll structure that guaranteed a certain return on equity, but it did not do so. Trans Mountain's assertions regarding re-capitalization of short-term debt, dividend payments, and returns for Trans Mountain's shareholder are all irrelevant to whether the Interim Tolls should be set at the Mid-Point. Trans Mountain is not a cost of service pipeline for which the company's recapitalization efforts are a relevant consideration. In addition, because its sole

[25] *Ibid* at IR Response 1.4(e) (PDF p. 22).
[26] NEB, RH-001-2012, Reasons for Decision, (May 2013) Filing ID: A51913-1 at p. 26 (PDF p. 38) [emphasis added].

shareholder is the federal government, Trans Mountain is not bound by the normal financial obligations or commercial constraints of other industry companies. In this regard, Trans Mountain has adopted an overly-broad and misleading definition of "financial obligations".

In any event, Trans Mountain has failed to provide definitive evidence of its actual and required financial obligations, the applicable thresholds, and its ability to meet those financial obligations. Trans Mountain has not provided any sort of sensitivity analysis and refused to provide the Commission "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".[27] Finally, there is no evidence that the safe and reliable operation of the Expanded System will be adversely affected by setting the Interim Tolls at the Mid-Point on a temporary basis.

Shippers also have financial obligations that are impacted by the tolls for the Expanded System. To the extent that Trans Mountain's shareholder equity and debt servicing obligations are in any way considered by the Commission as justification to accept the costs underlying the applied for Interim Tolls without further review, Canadian Natural respectfully submits that shippers' shareholder equity and ability to re-invest is equally as important. Indeed, this is entirely consistent with the application of the public interest by the Commission and its predecessor in tolling matters, which can include consideration of netbacks and royalties; viability of Canadian producers; and tax revenues.[28] The shippers have similar financial obligations to Trans Mountain that are adversely impacted if the Commission imposes higher than reasonable tolls because it assumes, without review, that all the costs put forward by Trans Mountain were reasonably and necessarily incurred, and properly categorized.

1.5 Requests for relief on a final basis in the Application

Canadian Natural submits that any tolls or components approved as part of the Commission's Preliminary Decision or Final Interim Tolls Decision are subject to being revisited when the Commission considers final tolls. Canadian Natural's agreement to certain components being approved on an interim basis is expressly subject to its right to challenge one or more of those components when final tolls are being adjudicated. This reservation is consistent with Canadian Natural's position that the Approved Methodology may be revisited during the final tolls process. Subject to this caveat, Canadian Natural does not object to the Commission granting, in the Preliminary Decision, the relief requested by Trans Mountain in its IR Response 1.5, Table 1.5-1, other than with respect to the ECRF, GIF2, and the Demurrage Charges.

[27] See Commission IR Request No. 1 to Trans Mountain (August 1, 2023), Filing ID: A8R9C0 at IR Request 1.4(f) (PDF p. 7) and Trans Mountain's IR Responses, IR Response 1.4 (f) (PDF p. 22), which does not provide a minimum Base Fixed Toll and instead refers to the potential for increased expenses.
[28] CER, Reasons for Decision – Enbridge Pipeline Inc. – Canadian Mainline Contracting, RH-001-2020 (November 2021), Filing ID: A7Y9R1 at p 13 (pdf 26) and at Appendix I, p. 136 (pdf 149).

1.6 Enhanced Response Regime Cost Recovery Fee

Trans Mountain seeks to collect from Westridge Shippers amounts owing in respect of the ECRF over three years, despite it having been originally contemplated that this would be done over five years.[29] Canadian Natural opposes this request. It is inconsistent with the approved methodology and unjustified in any event.

At the time of Trans Mountain's application in respect of the Bulk Oil Cargo Fee and the resulting decision[30], the estimate of the costs of the TMEP Bulk Oil Cargo Fee were significantly lower than what has materialized today. These costs have increased from an estimate of between $75 and $100 million to $179 million.[31] Notably, no shippers took issue with the proposal for the collection period to not exceed five years. At the time, shippers would have considered the estimated costs in order to determine the impact that the collection period would have on tolls in order to determine whether to support or object to any element in Trans Mountain's application.

Given the significant cost increases, Trans Mountain now seeks to compound the cost to shippers by shortening the recovery period from the originally contemplated 5 years to 3, without justification. Canadian Natural submits that changed circumstances warrant a re-consideration of the collection period to a period greater than five years and that this is an issue to be determined if and when the Approved Methodology is revisited. In the meantime, we submit that the Preliminary Decision should stipulate a recovery period of 5 years, as previously contemplated.

1.7 Gateway Infrastructure Charge 2

Trans Mountain asserts that the GIF2 falls with 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" ("**Expanded System Rules & Regulations**").

In section 8 of the Expanded System Rules & Regulations, the shipper is obligated to pay all charges or costs that are "provided for in [the] Tariff or otherwise lawfully due to the Carrier relating to the transportation of the Shipper's Petroleum by the Carrier."[32] In Canadian Natural's view, the GIF2 cannot be passed through to shippers pursuant to section 8 of the Expanded System Rules & Regulations, as it does not relate to the transportation of the shipper's petroleum by the Carrier. That is, the GIF2 relates to port activities and does not relate to transportation on the Expanded System.

Furthermore, if the GIF2 was to be included as a charge or cost "lawfully due to the carrier" under section 8, then it would attract the robust remedies for failure to pay under section 8, including the accrual of interest; the suspension of further receipt of petroleum; the termination of the contract for

[29] Trans Mountain, Alternative Funding Mechanism for TMEP BOCF application (November 2015), Filing ID: A74368-1 at PDF p. 4.
[30] NEB, Letter and Order TO-001-2016 to Trans Mountain regarding the alternate funding mechanism for the TMEP bulk oil cargo fee, (January 19, 2016), Filing ID: A75224-1.
[31] *Ibid* at p. 2 (PDF p. 2) references Trans Mountain's statements that the amount of funding of Western Canada Marine Shippers through the TMEP BOCF was in the range of $75 million to $100 million; In Trans Mountain, Attachment 2, Toll Calculation Schedules (June 2023), Filing ID: A8Q6A1 at Schedule 5.6 of the Variable Toll Component for the Interim Commencement Date Tolls (PDF p. 23), the Enhanced Response Regime Cost Recovery opening balance for 2024 is stated at $178.864 million.
[32] Trans Mountain, Appendix 10 Final form of the Rules and Regulations (March 27, 2012), Filing ID: A2U4U7 at s. 8.2 (PDF p. 10). Trans Mountain, Petroleum Tariff Rules and Regulations Governing the Transportation of Petroleum (Revised January 10, 2013), filing ID: A3E7D6 at s. 8.2 (PDF p. 9).

service; and/or the Carrier having a lien on all petroleum in its possession belonging to the shipper. Conversely, the Vancouver Fraser Port Authority is expressly permitted to fix the interest rate that it charges on overdue fees pursuant to section 49(2) of the *Canada Marine Act*, which it has done in its Fee Document. As such, including the GIF2 in tolls would result in overlapping and/or conflicting provisions as between the two independent regimes administered under the *Canada Marine Act* and *Canadian Energy Regulator Act*. As such, it is more reasonable to interpret the Expanded System Rules & Regulations as not applicable to the GIF2 , and instead, recognize the Vancouver Fraser Port Authority's jurisdiction under the *Canada Marine Act* to determine all matters relevant to GIF2.

Attached as Appendix A is Canadian Natural's comments to the IR Responses of the Vancouver Fraser Port Authority ("**VFPA**"). Canadian Natural will be pursuing the issues raised in its comments directly with the VFPA. The comments demonstrate that the VFPA carries out its own consultation processes with numerous stakeholders impacted by port operations and not just petroleum producers. These consultations are focused on matters outside of the Commission's expertise and on subject-matters that are outside of the Commission's jurisdiction to adjudicate. These all constitute additional reasons why the GIF2 should not be within the Toll Schedule as requested by Trans Mountain.

Finally, we note that until recently, Trans Mountain was of the view that the GIF2 should be collected from shippers directly. In its letter to the VFPA dated April 13, 2021, attached as Appendix B, Trans Mountain stated as follows:

> Due to the regulated nature of our tariff and toll process for Trans Mountain, it is not feasible for Trans Mountain to collect GIF2022 fees from our shippers for remittance to the port. As such, subject to further discussions with our shippers, it is Trans Mountain's view that the fee collection method proposed for non-containerized cargo would be most appropriate (we refer to Section 1.1.2 of the Fee Language document).

Trans Mountain has not explained its change in position since 2021. In any event, we maintain that consistent with Trans Mountain's expressed position in 2021, the GIF2 should not be included within the Toll Schedule.

<u>1.8 Demurrage Revenues to Trans Mountain's Account</u>

Trans Mountain dismisses the historical practice of Demurrage Charges being to the account of shippers on the existing Trans Mountain Pipeline on the basis that the practice was agreed to in the context of the 2006-2010 ITS. As such, Trans Mountain argues that the historical allocation of Demurrage Charges was not negotiated in isolation and was part of a package deal balancing various factors between Trans Mountain and shippers.

Trans Mountain then goes on to incorrectly and inappropriately claim that the risk allocation in the FSA suggests that Demurrage Charges should to the account of Trans Mountain because 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 revenue associated with throughput or delivery restrictions."[33] Canadian Natural disagrees. Contrary to Trans Mountain's assertion that it is "fully exposed", shippers are entitled to 50 percent (50%) of all Fixed Toll revenue collected from Uncommitted Shippers on volumes shipped in excess of 85 percent (85%) of Available Capacity.[34]

Canadian Natural submits that Demurrage Charges should be allocated to the shippers' account and be standardized at a rate of $0.25/m3 in accordance with the existing Trans Mountain Tariff No. 114. Decision RH-001-2012, the FSA and the TSA do not contemplate the allocation of Demurrage Charges. Just because Trans Mountain bears some of the risk associated with Uncommitted Toll revenue does not suggest that Demurrage Charges should be used to mitigate Trans Mountain's risk. Trans Mountain is a sophisticated party that agreed to assume some risk associated with Uncommitted Toll revenue, and as such, any mitigation of such risk would change the agreed-to and approved tolling methodology approved in Decision RH-001-2012. Furthermore, at the time shippers entered into the TSAs, shippers would have had a legitimate expectation, given the absence of Trans Mountain indicating otherwise, that the currently approved practice of allocating Demurrage Charges to the account of shippers as set out in the 2006-2010 ITS would be maintained.

In Canadian Natural's view, allocating the Demurrage Charge to Trans Mountain's account would simply result in a windfall for Trans Mountain. Further, such allocation would result in a perverse incentive where Trans Mountain would be financially rewarded in circumstances where its own actions caused events that resulted in Demurrage Charges. Trans Mountain has not addressed why it would be appropriate for Trans Mountain to be financially rewarded where its own actions resulted in shippers paying Demurrage Charges, or situations that arise by no fault of the shipper. An example is where weather conditions and resulting operational issues at the port facility cause delay. In addition, pursuant to the Expanded System Rules & Regulations, it is Trans Mountain that has the discretion to assign Load Windows to shippers.[35] The Expanded System Rules & Regulations also give Trans Mountain the sole discretion to determine if a Late Lifting should be granted.[36] Demurrage Charges must be to the shippers' account to ensure that this discretion is exercised solely with a view to maximizing the operational efficiency of the Expanded System as opposed to generating Demurrage Charges.

Additionally, Trans Mountain has provided no financial data or justification in relation to its proposed Demurrage Charge of $0.75/m3 per day pro rata, which translates to between $65,560 and $67,760/day for light crude and between $60,450 and $65,770/day for heavy crude. As such, Canadian Natural submits that the Commission should deny the requested Demurrage Charge and, consistent with the methodology in the 2006-2010 ITS, order Demurrage Charges be to the account of shippers and charged at a rate of $0.25/m3.

[33] IR Responses at IR Response 1.8(a) & 1.8(a.1) (PDF p. 34).
[34] NEB, RH-001-2012, Reasons for Decision, (May 2013) Filing ID: A51913-1 at p. 22 (PDF p. 34).
[35] Trans Mountain, Revisions to Expanded System Rules, Attachment 1, Clean Rules and Regulations (January 27, 2023) Filing ID: A8K0T4, at Rule 21.5 (PDF p. 20).
[36] *Ibid* at Rule 21.11 (PDF p. 20).

1.9 Timing of the Commission's Decision

In June, Trans Mountain claimed that it required a decision on its Application by September 14, 2023. To address this, the Commission established a process incorporating a Preliminary Decision and a Final Interim Tolls Decision. However, Trans Mountain has now, with little if any explanation for its change in position, advised that a "Decision by the Commission in the fall of 2023 will likely have minimal impact on the Commencement Date."[37] Nevertheless, the Commission's Interim Tolls two-step process should still be implemented because it allows for a timely Preliminary Decision that will ensure the Commencement Date is not impacted by tolls issues. It also allows for the Commission to subsequently conduct a Review of Costs.

We submit that a process can be implemented that will result in a Final Interim Tolls Decision in Q1 or Q2 of 2024. An illustration of how this process could unfold is as follows:

Process Step	Responsible Participant	Deadline
Issuance of Preliminary Decision	Commission	September or October 2023
Issuance of Hearing Order for Final Interim Tolls	Commission	Early October, 2023
Filing of Costs Information	Trans Mountain	November 1, 2023
Information Requests	Commission and Intervenors	November 30, 2023
Responses to Information Requests	Trans Mountain	December 22, 2023
Sufficiency of Information Requests Process	All Parties	Through until January 26, 2024
Additional Responses to Information Requests, if necessary	Trans Mountain	February 9, 2024

[37] IR Responses at IR Response 1.9(b) (PDF p. 38).

Process Step	Responsible Participant	Deadline
Intervenors' Submission for Hearing	Intervenors	February 23, 2024
Applicant Submission for Hearing	Trans Mountain	March 8, 2024
Hearing	All parties	Late March or early April, 2024
Written or Oral Argument	All parties	Mid to end of April, 2024

As indicated above, Canadian Natural is committed to engaging with Trans Mountain to facilitate an efficient exchange of information to narrow the scope of determinations needed to be made by the Commission as part of the Final Interim Tolls Decision. Therefore, provided Trans Mountain is prepared to work constructively with shippers to facilitate a review of whether costs were reasonably and necessarily incurred, and properly categorized, these timelines may be condensed further. There is nothing preventing Trans Mountain from working directly with shippers during the Interim Tolls process to narrow the scope of issues that will be subject to the Review of Costs.

A Final Interim Tolls Decision may be issued in early Q2 of 2024, thereby substantially addressing the concerns Trans Mountain has raised with the establishment of Interim Tolls at the Mid-Point on an interim basis. Trans Mountain maintains that the Commencement Date will be late in Q1 2024. However, this remains uncertain as evidenced by: Trans Mountain's recent filing of an Application for Deviation which will require a hearing to take place on September 14 and 15, 2023,[38] and; Trans Mountain's previous predictions of a Commencement Date having not materialized.[39] Although Canadian Natural hopes for an earlier Commencement Date, unfortunately, it is probable that the Commencement Date will be delayed into Q2 or later in 2024. It is possible, depending on the eventual Commencement Date, that the Interim Tolls levied will never be based on the Mid-Point because a Final Interim Tolls Decision may be issued prior to the true Commencement Date. In any event, Interim Tolls will only be based on the Mid-Point for a limited time and will be subsequently based on what has been determined to be costs that were reasonably and necessarily incurred and properly

[38] CER, Letter to Trans Mountain re Segment 5.3 Pipsell Area – Oral hearing information and revised schedule (August 30, 2023), Filing ID: A8S3R3.
[39] Trans Mountain, "Trans Mountain Corporation Updates Expansion Project Cost and Schedule" (February 18, 2022), available online: <https://www.transmountain.com/news/2022/trans-mountain-corporation-updates-expansion-project-cost-and-schedule>, in which Trans Mountain claimed mechanical completion would "occur in the third quarter of 2023". The Application now states this will occur "by end of 2023"; See, Tans Mountain, Application for Approval of Interim Commencement Date Tolls and other Matters Related to the Transportation of Petroleum on the Expanded Trans Mountain Pipeline System (June 1, 2023), Filing ID: A8Q5Z9 at para 5 (PDF p. 4 of 145); pursuant to Section 67 of the Traffic, Tolls and Tariffs provisions in Part 3 of the Canada. Similarly, in Trans Mountain, "Trans Mountain Corporation Provides Update on the Expansion Project" (March 10, 2023), available online: <https://www.transmountain.com/news/2023/trans-mountain-corporation-provides-update-on-the-expansion-project>, where Trans Mountain advised that "[c]onstruction of the Project is close to 80 per cent complete, with mechanical completion expected to occur at the end of 2023, and the pipeline will be in service in the first quarter of 2024."

categorized, as they should be. This substantially addresses the concerns raised by Trans Mountain regarding the impact of establishing the Interim Tolls at the Mid-Point.

THE APPROVED METHODOLOGY MUST BE REVISITED

Canadian Natural respectfully requests that the hearing process for the Final Interim Tolls Decision, or in the alternative, the process established for final tolls, include consideration of whether the Approved Methodology should be varied. As acknowledged by Trans Mountain, the Commission's predecessor has stated there are times when this will be necessary.[40] In this case there are several *prima facie* justifications for revisiting the Approved Methodology:

1. Unprecedented increase in costs and tolls: The cost increases underpinning the proposed tolls are unprecedented. In its IR Response, Trans Mountain refers to other projects that have exceeded estimates by between 103% and 263%.[41] However, the Trans Mountain Project cost overruns are higher than these other cases by orders of magnitude. Since Trans Mountain's 2012 estimate, Project costs have increased by over $25.5 billion or 472%. Since Trans Mountain's 2017 CPCN Estimate, Project costs have increased by $23.5 billion or 317%.[42]

   Even though the Approved Methodology capped certain costs for the purposes of establishing tolls, the unprecedented cost increases have nevertheless resulted in tolls that are higher than anyone would have predicted in 2012. Trans Mountain's proposed Interim Base Fixed Toll is $10.88/bbl compared to $5.76/bbl at the time of the 2017 CPCN Cost Estimate and $4.33/bbl at the time RH-001-2012 was adjudicated, increases of 89% and 151%, respectively.[43] Therefore, we submit that the proposed tolls have been inflated to the point of adversely and materially impacting Canadian Natural, the economic competitiveness of Canada's oil industry, and the public interest. On this basis, the Approved Methodology must be reviewed when final tolls are adjudicated or before.

2. Unreasonable escalation rate: In 2017, shippers confirmed their support for the project and thereby confirmed agreement with the 2.5% escalation rate on the fixed component of the toll. At that time, the project was estimated to cost $7.418 billion, with a total Base Fixed Toll of $5.76 per barrel. The 20-year exit toll was then projected to be $9.21 per barrel. Today, the 20-year exit toll will be $17.39 per barrel. Canadian Natural’s agreement (and we presume all shippers’ agreement) to the escalation rate was based on the understanding that project costs would remain within the +15%/-10% accuracy of the CPCN Cost Estimate. Since the CPCN, the total project cost has increased from $7.418 to $30.907 billion (+317%) and the Uncapped Costs have increased from $1.767 to $9.087 billion (+414%). The compounding effect on the toll escalation is unreasonable and results in a form of penalty to shippers and a $6.358 billion windfall revenue for Trans Mountain over 20 years. The intent of the toll escalation was to

[40] Trans Mountain, Reply to Comments from Interested Parties (June 30, 2023), Filing ID: A8R3X0 at p. 4.
[41] IR Responses at IR Response 1.1, Table 1.1-3 (PDF p. 9).
[42] Trans Mountain, Attachment 2, Toll Calculation Schedules (June 2023), Filing ID: A8Q6A1 at Schedule 4.1, Table 2: Project Cost Estimates (PDF p. 12).
[43] *Ibid* at PDF p. 15; Trans Mountain, Application for Approval of the Transportation Service and Toll Methodology for the Expanded Tans Mountain Pipeline System (RH-001-2012), Tab C – Toll Structure (June 29, 2012) Filing ID: A2U4S7 at Table 2, Schedule B: Indicative Firm Service Tolls (PDF p. 3)

keep the Carrier whole on maintenance and operating costs for 1,300 km of pipeline shipping 890,000 bpd. The capacity of the pipeline has not changed but the 'keep-whole' mechanism on maintenance and operating costs has increased by 89% to an unreasonable and unnecessary amount.

3. Unreasonable debt levels: At the time of the 2017 CPCN Cost Estimate, it was calculated that the Carrier's debt was up to 60% of the total project cost or $4.451 billion. The project debt has increased to some $18.544 billion, an increase of $14.093 billion. This significant increase in debt levels will result in increases to debt servicing costs. The Approved Methodology failed to account for orders of magnitude increases such as these and it is unreasonable for the shippers to be responsible for all these costs as suggested by Trans Mountain.

4. Futures Scenario: In *Canada's Energy Future 2023: Energy Supply and Demand Projections to 2050* ("**EF2023**"), the Commission considered how oil and gas production will change if net-zero greenhouse gas emissions are achieved by 2050. The EF2023 proposed three scenarios where: (1) Canada and the rest of the world reduce emissions enough to limit global warming to 1.5 Celsius; (2) Canada achieves net-zero emissions by 2050; and (3) limited actions are taken in Canada beyond the measures currently in place. Should the Commission's oil price outlooks in the EF2023 forecast be realized, Trans Mountain's exit toll for heavy crude in 2043 will account for approximately 50% under scenario 1, 23% under scenario 2 and 19% under scenario 3, of the respective international benchmarks. While the risks of an accelerated transition to net-zero is universal to the oil and gas industry, the significantly higher tolls and long-term commitment to them will heavily constrain shippers' ability to penetrate global markets.

There are additional reasons why the Approved Methodology should be revisited. Canadian Natural reserves the right to raise those and propose other modifications to the Approved Methodology at the appropriate juncture.

CONCLUSION

In conclusion, on behalf of Canadian Natural, we respectfully request that the Commission:

1. issue a Preliminary Decision which establishes the Interim Tolls at the Mid-Point and denies Trans Mountain's request for approval of the ECRF, GIF 2 and the Demurrage Charges, as set out herein, and;

2. establish a hearing process that, at a minimum, includes a Review of Costs prior to issuing a Final Interim Tolls Decision.

We submit that the above can be done without risk to the Commencement Date and will ensure that the Interim Tolls are appropriate pending adjudication of the final tolls. This proposed Interim Tolls process is consistent with the Approved Methodology. To the extent the Commission is of the view that the Approved Methodology should be re-assessed as part of this Interim Tolls process as opposed to when final tolls are adjudicated, Canadian Natural is supportive of such a Final Interim Tolls process.

Yours truly,

BENNETT JONES LLP

Martin Ignasiak, KC

Encl.
cc: Trans Mountain Pipeline ULC
Registered Intervenors

Appendix A

File OF-Tolls-Group1-T260-03 01
Written Comments in Relation to Information Request No. 1 Responses of the Vancouver Fraser Port Authority ("VFPA")

Canadian Natural Resources Limited ("**Canadian Natural**") provides the following comments on the information request no. 1 responses ("**IR Responses**") of the Vancouver Fraser Port Authority ("**VFPA**").

Introduction

With respect to the Interim Commencement Date Tolls ("**Interim Tolls**"), Canadian Natural submits that VFPA's Gateway Infrastructure Fee 2 ("**GIF2**") is not within the jurisdiction of the Commission to include in tolls and outside of the bounds of the *Canadian Energy Regulator Act*. Also see Canadian Natural's responses to Trans Mountain in respect of GIF2.

Further, in this submission Canadian Natural raises concerns with VFPA's consultation process and allocation methodology in respect of the GIF2. To the extent Canadian Natural does not address an argument put forward by VFPA, this does not imply that Canadian Natural agrees with VFPA's submission on that issue.

Absence of Oil & Gas Representation

The Gateway Infrastructure Program Advisory Committee ("**GIPAC**") lacks representation from the oil and gas industry and the TMX Shippers subject to the GIF2 were not included nor invited to participate in the GIF2 consultation process. While Trans Mountain was part of the direct discussions with regards to the GIF2, Trans Mountain is not a TMX Shipper and will not be charged the GIF2. As such, Trans Mountain could not properly represent the interests of Canadian Natural to VFPA.

Use of Outdated Study Assumptions

Canadian Natural is concerned with the use of outdated data in the GIF2 supporting study, particularly as it pertains to forecasts of rail and vessel volumes. Canadian Natural requests that updated data be incorporated into the supporting study to reflect more recent and current developments. Canadian Natural also seeks information on the implementation and impacts of recommendations from the Second Narrows Bridge Capacity Analysis by Mott MacDonald in December 2019. If the study recommendations were not adopted, Canadian Natural requests the rationale for this decision.

GIF2 Fairness Concerns

Canadian Natural is concerned with the overall fairness of GIF2 cost recovery. Westridge vessels are bound by port Movement Restricted Area ("**MRA**") rules and, with an anticipated 360 vessels per year, do not directly add to rail demand or benefit from GIF2 projects. In the first year of service, the Westridge Terminal is forecasted to account for 20 million of the anticipated 30 million metric tonnes of total volume East of the Second Narrows Bridge ("**SNB**"). As a result, the TMX Shippers will be forced to effectively pay for two thirds of the cost allocation (~$17.3 million of the $26 million) while all MRA traffic contributes no more than 14% of the SNB utilization.

<u>Contributions to Rail Demand & Benefits from GIF2 Projects</u>

The VFPA states that the principal projects which relate to Trans Mountain can be seen on table 6 of the *Cost-Benefit Impact Analysis Summary* on page 6 in the column for costs related to the Terminal East of the Second Narrows Rail Bridge and includes the following:

1. The Pitt Meadows Road and Rail Improvements Project;
2. The Kingsway Avenue Overpass;
3. The Pitt River Road and Colony Farm Road Rail Overpasses Project;
4. The Thornton Rail Tunnel Ventilation Upgrades;
5. The Rail Corridor Improvements and Holdom Road Overpass;
6. The Glen Valley Double Tracking; and
7. The GTCF Technical Analysis and Engagement.[1]

As previously noted, vessels performing loading operations at Westridge are bound by MRA rules and do not directly contribute to rail demand or benefit from the rail related projects included in the GIF2. Furthermore, all infrastructure and upgrades for Westridge have been fully funded by Trans Mountain without any financial funding from the VFPA.

As the VFPA has stated that the above noted projects are "generally aimed at increasing capacity and reducing bottlenecks at terminals" and that GIF2 "was designed to fund additional infrastructure projects designed to improve the transportation of goods through the port",[2] Canadian Natural requests the VFPA specifically demonstrate the anticipated benefits TMX Shippers will see as a direct result of the GIF2 payment.

[1] IR Response a.3 (pdf 3-4).
[2] IR Response a.3 (pdf 2 and 4)

Appendix B

Katherine Bamford
Director, Business Development
Vancouver Fraser Port Authority
100 The Pointe, 999 Canada Place
Vancouver, British Columbia
V6C 3T4
Sent via email c/o: Commercial_Enquiries@portvancouver.com

April 13, 2021

RE: GIF 2022 Industry Consultation - Fee Language

Dear Katherine,

Thank you for inviting comment from industry into the proposed GIF2022 fee language. We appreciate the strong relationship between our two organizations.

Trans Mountain has long supported efforts by the Vancouver Fraser Port Authority (port authority) to enhance the Port of Vancouver's safety and productivity. As Canada's largest port, continued investment into infrastructure including marine waterways and marine infrastructure, along with necessary process improvements are strategic imperatives for the benefit of all industry. This positions Canada to continuously enhance the trade of goods and natural resources with nations worldwide and thrive in a Blue Economy. Trans Mountain is currently undertaking a major upgrade to our facilities and pipeline system; and we have committed major investments to marine safety, marine spill response and environmental protections. The upgrade of the Westridge Marine Terminal is, in our belief, the largest to date within the Port of Vancouver and one that will provide significant long-term benefits to Canada.

Trans Mountain is supportive of infrastructure investment in the manner proposed by the GIF2022; and the three principles by which the fee is allocated: fairness, effectiveness and efficiency. The financial leverage provided by the GIF2022 to draw two million dollars for every million dollars invested by industry (including VFPA) provides good opportunities to accelerate the global competitiveness of the Port and port users. However, Trans Mountain seeks clarification on the types of projects that are to be funded and provides comments on the GIF2022 within the same context.

Fairness

We acknowledge the port authority's efforts to manage the application of the GIF2022 to different port trade areas in an equitable manner and the differences in tonnage fees proposed. Nevertheless, Trans Mountain and Trans Mountain shippers would desire to see any fee contribution from our terminal be commensurate with benefits to operations conducted at the Westridge Marine Terminal.

Though “East of Second Narrows” is not qualified as a trade area in the GIF2022 *per se,* we note the unique fee structure proposed for this area and request your advice on whether the new fee structure would be applicable to cargo oil handled at the Westridge Marine Terminal. As the port authority is aware, all infrastructure and upgrades for the Westridge Marine Terminal have been wholly funded by Trans Mountain and the facility, being a pipeline facility, does not depend on other port infrastructure except access to port waterways. If the fee is applicable to cargo oil handled at Westridge we seek assistance from the port authority to provide suitable background and rationale to discuss with our shippers who would be keen to understand the future benefits accruing from the port authority’s initiatives.

In this regard, we would appreciate a forecasted total amount that would be paid by Trans Mountain shippers taking into consideration the significant increase in throughput resulting from the expected in-service date of the Trans Mountain Expansion Project in late 2022. Trans Mountain expects throughput at the Westridge Marine Terminal will increase from approximately 2 million tonnes in 2022 to approximately 20 million tonnes in 2023, and in later years potentially reach over 30 million tonnes, subject to global demand for Canada’s oil resources.

Furthermore, if oil terminals are to be included in the GIF2022, we request the port to consider having more representation from the oil and gas sector on the GIF advisory committee. The Canadian Association of Petroleum Producers (CAPP), and/or the Canadian Energy Pipeline Association (CEPA) would be appropriate industry representatives to consider.

Effectiveness

We note the list of projects as currently outlined in GIF2022 is absent of safety and infrastructure improvements to the marine waterways of the Port. As a pipeline operator, as mentioned above, we have our own infrastructure in place to bring oil transported by our pipeline to tidewater. Our interest is to see future infrastructure development projects that focus on further improvements to safety, fluidity and consistency of marine traffic within the inlet, including traffic from terminals such as ours that are located east of the Second Narrows.

As we advocate in a previous letter to the VFPA in response to the potential for the introduction of a traffic management system in the Port of Vancouver (May 15, 2020, attached), an integrated approach to vessel management across the port authority’s jurisdiction would help to protect the current high standard of marine safety, and at the same time reduce complexities and bottlenecks in vessel traffic movement through improvement of procedures, waterways, and port infrastructure.

Efficiency

As stated in our May 15 letter, Trans Mountain has a history of encouraging and supporting many safe shipping initiatives that benefit the safety, sustainability, and efficiency of the local marine network. Although we do not own or operate any of the ships that call at our facility, we have taken an active interest in marine safety and the port authority processes that contribute to the exemplary safety record of this region. We have supported through active participation and financial contributions to achieve safety improvements, such as the process kicked off by the port authority in 2008 that led to the creation of the Movement Restricted Area at Second Narrows (now TCZ-2).

Safety remains our priority, but with a strong regime in place we are interested to pursue new opportunities for improved efficiency of vessel transit through the port. Trans Mountain would like to continue engagement with the port authority to identify means to reduce bottlenecks and address conflicts of waterway use so that the Port of Vancouver, and the terminals within it, can remain competitive and commercially functional at a global scale.

Recovery of GIF2022

Trans Mountain appreciates the port authority's decision to defer the implementation of this fee by a year, from 2021 to 2022, in recognition of the impact of the COVID-19 pandemic on industry. Once we have received the necessary clarification to our comments above, it is our intention to engage with our pipeline shippers to plan and prepare for the GIF2022 implementation next year.

Due to the regulated nature of our tariff and toll process for Trans Mountain, it is not feasible for Trans Mountain to collect GIF2022 fees from our shippers for remittance to the port. As such, subject to further discussions with our shippers, it is Trans Mountain's view that the fee collection method proposed for non-containerized cargo would be most appropriate (we refer to Section 1.1.2 of the Fee Language document).

We look forward to receiving more information to convey to pipeline shippers about implementation of the proposed GIF2022 fee. Trans Mountain is grateful for all opportunities to engage with the port authority on items of mutual interest and in continuing to support the port authority on all aspects of safety and efficiency improvement initiatives.

Please reach out to me and/or my colleague Stephanie Snider, Manager of Marine Engagement (stephanie_snider@transmountain.com) as needed if you have any questions about our feedback, or if you would like to meet with us.

Sincerely,

Bikramjit Kanjilal
Director, Burnaby and Westridge Terminals
Trans Mountain

Attach. /

- Letter from Trans Mountain to VFPA (May 15, 2020) RE: Options and Feasibility Analysis for potential Vessel Traffic Management systems in the Port of Vancouver
- Proposed updates to pg. 4 of the GIF2022 Fee Language document

cc.
Peter Xotta, Vice President, Planning and Operations, Vancouver Fraser Port Authority