

**NATIONAL ENERGY BOARD  
OFFICE NATIONAL DE L'ÉNERGIE**



**Hearing Order RH-001-2012  
Ordonnance d'audience RH-001-2012**

**Trans Mountain Pipeline ULC Part IV Application**

**Demande présentée par Trans Mountain Pipeline ULC aux termes  
de la partie IV de la *Loi sur l'Office national de l'énergie***

**VOLUME 1**

**Hearing held at  
L'audience tenue à**

**National Energy Board  
444 - Seventh Avenue S.W.  
Calgary, Alberta**

**February 12, 2013  
Le 12 février 2013**

**International Reporting Inc.  
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Imprimé au Canada

HEARING ORDER/ORDONNANCE D'AUDIENCE

RH-001-2012

IN THE MATTER OF Trans Mountain Pipeline ULC (Trans Mountain)  
Application Pursuant to Part IV of the *National Energy Board Act* for  
Approval of the Toll Methodology to be applied on an Expanded Trans Mountain  
Pipeline System, if such an expansion is approved (Part IV Application)

**HEARING LOCATION/LIEU DE L'AUDIENCE**

Hearing held in Calgary (Alberta), Tuesday, February 12, 2013

Audience tenue à Calgary (Alberta), mardi, le 12 février 2013

**BOARD PANEL/COMITÉ D'AUDIENCE DE L'OFFICE**

R. George                      Chairman/Président

D. Hamilton                  Member/Membre

A. Scott                        Member/Membre

## **APPEARANCES/COMPARUTIONS**

### **APPLICANT/DEMANDEUR**

Trans Mountain Pipeline ULC

- Mr. Gordon M. Nettleton
- Ms. Terri-Lee Oleniuk
- Mr. Jeremy Barretto

### **INTERVENORS/INTERVENANTS**

#### **Associations**

Canadian Association of Petroleum Producers (CAPP)

- Mr. Nick Schultz

#### **Companies / Compagnies**

BP Canada Energy Trading Company

- Ms. L. Bernette Ho

Canadian Natural Resources Limited

- Mr. Don G. Davies

Canadian Oils Sands Partnership #1

- Ms. L. Bernette Ho

Cenovus Energy Inc.

- Mr. Don G. Davies

Chevron Canada Limited

- Mr. Keith Bergner

Devon Canada Corporation

- Mr. Don G. Davies

Husky Energy Marketing Inc.

- Mr. Don G. Davies

Imperial Oil Limited

- Mr. Don G. Davies

Nexen Marketing

- Ms. L. Bernette Ho

Statoil Canada Ltd.

- Ms. L. Bernette Ho

**APPEARANCES/COMPARUTIONS**  
**(Continued/Suite)**

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**INTERVENORS/INTERVENANTS**

**Companies / Compagnies**

Suncor Energy Marketing Inc. / Suncor Energy Products Partnership (SEMI / SEPP)

- Mr. Bernard J. Roth
- Mr. Barry Zalmanowitz

Total E&P Canada Ltd.

- Mr. Scott Miller
- Ms. Deidre Derworiz
- Mr. Brian Wood

**Governments / Gouvernements**

Alberta Department of Energy

- Mr. Colin King

**National Energy Board/Office national de l'énergie**

- Ms. Christine Beauchemin
- Mr. Kiril Dumanovski

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--- Upon commencing at 8:30 a.m./L'audience débute à 8h30

1. **THE CHAIRMAN:** Bonjour, mesdames et messieurs. My name is Roland George. I am the Chair of the Panel established by the National Energy Board to consider the Application filed by Trans Mountain Pipeline ULC, which I will refer to as Trans Mountain.
2. My fellow Panel Members are, to my right, Mr. David Hamilton, and Ms. Alison Scott to my left.
3. On June 29<sup>th</sup>, 2012, Trans Mountain applied to the National Energy Board pursuant to Part IV of the *National Energy Board Act* for approval of the toll methodology to be applied on an expanded Trans Mountain pipeline system, if such an expansion is approved by the Board.
4. On July 3<sup>rd</sup>, 2012, the Application was updated. On January 10<sup>th</sup>, 2013, Trans Mountain filed revisions to the Application resulting from the completion of Round 3 of its Open Season Process.
5. On September 25<sup>th</sup>, 2012, the Board issued Hearing Order RH-1-2012 setting this Application down for a public hearing, the oral portion of which commences today. We will not be sitting on Family Day, Monday, February 18<sup>th</sup>, and we will not sit past Friday, February 22<sup>nd</sup>.
6. Prior to getting into the specifics of how this hearing will unfold, I would like to provide some safety information.
7. If it is necessary to evacuate this building, we will exit the room using the doors you used to enter the hearing room and then across the hall and slightly to your right. Emergency exit signs will guide you to the nearest stairwell.
8. Please remain calm and exit in an orderly fashion. Once outside, please ensure that your entire group has evacuated the building. The designated muster point is at the east end of the Bank of Montreal Building, on the corner of 7<sup>th</sup> Avenue and 2<sup>nd</sup> Street.
9. Now I would like to introduce you to Board staff who are here today. Seated in front of the Panel is Ms. Sharon Wong, the Board's Regulatory Officer for this proceeding.

**Opening remarks  
Chairman**

10. On the right-hand side of the hearing room are Board Counsel, Ms. Christine Beauchemin and Mr. Kiril Dumanovski.
11. Seated next to Board Counsel are Jean-Denis Charlebois -- oh, there you are -- Jeff Toews, Patricia Elhatton-Lake, Craig Rubie, Economic Financial Regulation Specialists; Colette Craig, Market Analyst; Darcie Harding, Hearing Manager; Sharon Zaidi, Assistant Hearing Manager -- oh, in the back. Sorry about that, Sharon.
12. And also in the room are Reny Chakkalalal, Process Advisor, and Brianne Rohovie, Communication Officer.
13. From time to time, an IT specialist may be in the room. The court reporter is seated next to Ms. Wong.
14. The hearing is also being broadcast live from the NEB's website.
15. In respect to the hearing schedule, the Board intends to sit each day this week from 8:30 a.m. until 12:30 p.m., at which point we will break one hour for lunch. We will also take a mid-morning break at approximately 10:30 a.m. for approximately 30 minutes. This afternoon, we will resume at 1:30 p.m. and continue until approximately 3:45 p.m., with a short break as required.
16. During the second week, the Board anticipates that it will sit each day from 8:30 a.m. until 1:30 p.m., with one half-hour break at approximately 11:00 a.m. Sitting hours and breaks may be modified as required.
17. To assist everyone with scheduling, it would be helpful if counsel or party representatives could regularly keep our counsel up to date with their time estimates and discuss any special timing concerns.
18. Following the registration of appearances and preliminary matters, we will proceed with the evidentiary portion of the hearing in the usual fashion.
19. Trans Mountain's witness panel will be presented first. When the cross-examination of that panel is completed, Suncor will present its witness panel, followed by Total's panel. Cross-examination of each panel will proceed in the order in which they appear in the Order of Appearances.
20. Once the evidentiary portion of the hearing has concluded, the Board

**Opening remarks**  
**Chairman**

will proceed to hear final argument. The Board is currently planning on hearing oral argument but, if time runs out, the Board may instruct parties to file written argument.

21. At the back of the room, you will find a number of documents including the List of Parties, the Procedural Update and the Exhibit List. Once registration of appearances takes place, a copy of the Order of Appearances will also be placed at the back of the room.
22. All applications before the Board are to be dealt with as expeditiously as circumstances of fairness may permit. To that end, the Board has provided efficiency guidelines in its procedural update. The Board assumes that the parties are familiar with these guidelines. If not, please familiarize yourself with these guidelines, as the Board may intervene and give you direction on its own motion, as appropriate, if it is of the view that the proceeding is not unfolding in an efficient and fair manner.
23. During this proceeding, the Board will be viewing exhibits electronically on the large screens in the room. As counsel or witnesses refer to a document by its exhibit number, it will be displayed on the screens. To assist with this process, parties are asked to identify each document to which they refer by its exhibit number.
24. If you have not already done so, parties proposing to ask questions of other parties should provide Ms. Wong with the list of documents that they intend to refer to as soon as possible so that those documents may be retrieved quickly and accurately during their cross-examination.
25. The information should include the exhibit numbers, including a sub-letter if that is included on the Exhibit List, and the Adobe page number.
26. We ask that you check the Exhibit List before you register your appearance. If you had filed a document but notice that it does not appear on the Exhibit List, mention when you enter your appearance that you will have a preliminary matter to obtain an exhibit number for that document.
27. If any party has questions with respect to the process or requires any information on hearing-related matters, please speak to Board counsel.

**Registration of Appearances**  
**Ms. Beauchemin**

28. My role as the Chair of the Panel is to ensure that the hearing unfolds in an efficient and respectful manner. The Board expects all parties to show respect and courtesy to each other, Board staff and to the Board.
29. We will now begin with the Registration of Appearances.
30. For those registering today, when your name is called, please come forward and register your appearance. Please state your name and the organization that you represent, if applicable. In addition, please indicate whether you wish to be called upon for cross-examination or for final argument and whether you have any preliminary matters. Any preliminary matters will be addressed following the registration of appearances.
31. Please speak clearly and directly into the microphone at all times. Speaking closer into the microphone is better than further away.
32. Ms. Beauchemin, please proceed with the Registration of Appearances.
33. **MS. BEAUCHEMIN:** Thank you, Mr. Chair.
34. The Applicant, Trans Mountain Pipeline ULC...?
35. **MR. NETTLETON:** Good morning, Mr. Chairman. Good morning, Panel Members.
36. My name is Gordon Nettleton. I appear on behalf of the Applicant, Trans Mountain Pipelines ULC, which I will refer to as well as Trans Mountain. With me is my colleague, Terri-Lee Oleniuk and Jeremy Barretto.
37. We do intend to cross-examine the Suncor and Total panels at this time. We will be keeping Board counsel advised of our timing plans, and I do have one preliminary matter that I would like to speak to following the Registration of Appearances.
38. **THE CHAIRMAN:** Thank you, sir.
39. **MS. BEAUCHEMIN:** The Canadian Association of Petroleum Producers...?

**Registration of Appearances**  
**Ms. Beauchemin**

40.           **MR. SCHULTZ:** Good morning, Mr. Chairman, Members of the Board.
41.           My name is Nick Schultz. I appear on behalf of the Canadian Association of Petroleum Producers.
42.           We have no preliminary matters. We do not have any cross-examination of any party, so do not need to be called for that purpose.
43.           We have filed evidence from Mr. Pinney and have also filed the affidavit adopting that evidence as no party wished to cross-examine Mr. Pinney. So we will not be intending to present Mr. Pinney in the oral portion of the hearing, and we would not propose to make any oral argument but we were intending, assuming that the rules that you establish would permit it, a short written argument but it would be brief and we will file it once you give direction in that regard.
44.           And other than that, as I was saying, we do not need to be called on, Mr. Chairman. And I would intend to actually be elsewhere for the balance of the hearing if that's acceptable to the Board?
45.           Thank you.
46.           **THE CHAIRMAN:** Thank you, sir.
47.           **MS. BEAUCHEMIN:** B.P. Canada Energy Trading Company...?
48.           **MS. HO:** Good morning, Mr. Chairman, Panel Members. My last name is Ho, initials are L.B., appearing for B.P. Canada Energy Trading Company.
49.           I'm also registering an appearance for Canadian Oil Sands Partnership #1, Nexen Marketing and Statoil Canada Limited.
50.           At this point, sir, we do not anticipate having any cross-examination but I will keep Board counsel apprised if that changes. We do expect to enter final argument and we have no preliminary matters, sir.
51.           **MS. BEAUCHEMIN:** Ms. Ho, if called you would like to be called under Statoil?

**Registration of Appearances**  
**Ms. Beauchemin**

52. **MS. HO:** Sure. I like where that appears in the order appearances much more than B.P. Thanks.
53. **MS. BEAUCHEMIN:** The Canadian Natural Resources Limited...?
54. **MR. DAVIES:** Good morning, Mr. Chairman, Panel Members.
55. My name is Don Davies; I'm appearing for Canadian Natural Resources Limited.
56. If I may, Mr. Chairman, let me also while I'm up, enter appearances on behalf of the following companies: Cenovus Energy Inc., Devon Canada Corporation, Husky Energy Marketing Inc. and Imperial Oil Limited.
57. We do not intend to conduct cross-examination. I'll speak to Board counsel should we decide to present argument, and we have no preliminary matters.
58. Thank you.
59. **THE CHAIRMAN:** Thank you.
60. **MS. BEAUCHEMIN:** Chevron Canada Limited...?
61. **MR. BERGNER:** Good morning, Mr. Chair, Board Members.
62. My name is Keith Bergner, appearing today for both Chevron Canada Limited and Chevron Canada Resources.
63. We would ask to be called for cross-examination of the Trans Mountain panel. We do plan to present final argument and we have no preliminary matters.
64. Thank you.
65. **THE CHAIRMAN:** Thank you.
66. **MS. BEAUCHEMIN:** Flint Hills Resources...?

**Registration of Appearances**  
**Ms. Beauchemin**

--- (No answer/Aucune réponse)

67. **MS. BEAUCHEMIN:** Phillips 66 Canada ULC...?

--- (No answer/Aucune réponse)

68. **MS. BEAUCHEMIN:** Plains Midstream Canada...?

--- (No answer/Aucune réponse)

69. **MS. BEAUCHEMIN:** Suncor Energy Marketing Inc./Suncor Energy Products Partnership...?

70. **MR. ROTH:** Good morning, Mr. Chairman, Members of the Board.

71. B. Roth, R-O-T-H, and B. Zalmanowitz, Z-A-L-M-A-N-O-W-I-T-Z, for Suncor.

72. Mr. Chairman, Suncor will be cross-examining the Trans Mountain panel. That cross-examination will be conducted by both Mr. Zalmanowitz and myself.

73. We've ordered the cross-examination to deal with the Trans Mountain panel's scheduling issues. So I will first conduct the cross-examination of the Suncor Company witnesses, along with a few questions for Mr. Reed and Mr. Kelly. Mr. Zalmanowitz will mainly be cross-examining the -- Dr. Schink.

74. We will -- would like to make argument, if it's oral and obviously if we run out of time, written.

75. And I do have one brief preliminary matter that I think has been controversial and I could probably just put it on the record now if that's acceptable or I can come back up later.

76. **THE CHAIRMAN:** We'll finish the appearances.

77. **MR. ROTH:** Thank you, sir.

78. **MS. BEAUCHEMIN:** Total E&P Canada Ltd. ...?

**Registration of Appearances**  
**Ms. Beauchemin**

79. **MR. MILLER:** Morning -- good morning, Mr. Chair, Panel.
80. My name is Scott Miller; I'm here to enter an appearance on behalf of Total. With me as well is Deirdre Derworiz. She will be appearing on Total's behalf and Mr. Brian Wood is assisting us as well.
81. Sir, Total intends to cross the Trans Mountain panel. We would like to be called for the cross-examination and we intend to enter argument as well.
82. Sir, with respect to preliminary matters, I am seeking an indulgence and an understanding in that, due to a timing change at another hearing, I'm required to be both here and in front of the ERCB over the next two weeks.
83. I think we haven't managed quite well but if I'm not here please don't take it as a lack of interest or concern with respect to this hearing. I just would like you to understand that we have pressures with respect to other forums as well.
84. Thank you.
85. **THE CHAIRMAN:** Thank you, sir.
86. **MS. BEAUCHEMIN:** The Alberta Department of Energy...?
87. **MR. KING:** Good morning, Mr. Chair, Panel Members.
88. My name is Colin King; I'm legal counsel with the Government of Alberta Department of Energy.
89. We need not be called upon for cross-examination but we may provide final argument and we have no preliminary matters.
90. Thank you.
91. **THE CHAIRMAN:** Thank you.
92. **MS. BEAUCHEMIN:** The British Columbia Ministry of Energy, Mines and Natural Gas...?

--- (No answer/Aucune réponse)

93. **MS. BEAUCHEMIN:** And for the Board, to my left, Board counsel, Kiril Dumanovski. I am Christine Beauchemin, also Board counsel. We have no preliminary matters.
94. We have limited cross of TMPL as it stands. I can inform Applicant counsel that we will not have questions for Mr. Anderson or Dr. Lessard which should help with the schedule conflicts.
95. We reserve the right to ask questions of Suncor and Total as questions may arise.
96. I believe this brings us back to Mr. Nettleton who had a preliminary matter.
97. **MR. NETTLETON:** Thank you, Ms. Beauchemin.
98. Mr. Chairman, just on a timing update, as you can see Dr. Lessard is not yet with us. Dr. Lessard is from Boston, Massachusetts, and as you know that they've been experiencing some weather issues. We do anticipate Dr. Lessard coming -- arriving today.
99. I will keep the Board apprised. His appearance is hopefully scheduled for tomorrow, the 13<sup>th</sup>, and part day on the 14<sup>th</sup> if necessary.
100. With respect to Mr. Anderson's availability, I've been advised that he has had a scheduling change and is available, if necessary, on the 14<sup>th</sup> as well.
101. So there is further opportunity for Mr. Anderson to stick around and enjoy the fun.
102. **THE CHAIRMAN:** Thank you. We understand it is Canadian winter and one of our Board Members is stuck out east also. So we totally understand the situation.
103. **MS. BEAUCHEMIN:** I believe the only preliminary left was Mr. Roth, for Suncor.
104. **MR. ROTH:** Sir, like Mr. Nettleton, it's a witness availability matter.

- Dr. Waverman, due to scheduling issues, can only be with us until the end of the day on Tuesday of next week.
105. I don't think, the way this hearing is going, that that should be a problem. I know that Mr. Nettleton had suggested his cross-examination might extend into next week. Obviously it would be our preference to get our witnesses off the stand before the Family Day long weekend.
106. But Dr. Waverman is available all day Tuesday and I think that should accommodate Mr. Nettleton's cross-examination should it have to extend into next week.
107. **MR. NETTLETON:** Well, Mr. Chairman, as you can well imagine, our focus has not been on cross-examination yet, it's been on the presentation of the case.
108. The expectation, quite frankly, has been that we would be consuming this week for the presentation and cross-examination of our witnesses. And next week would be for the purposes of cross-examining the other panels that are appearing in this proceeding and having the benefit of the weekend to prepare with our witnesses for that activity.
109. I guess we'll see how things go but if Mr. Waverman is only available -- and I've learned this today -- until the end of day Tuesday, we will probably need some indulgences of the Board so that I can consult with my witnesses while they're sworn and under oath.
110. **THE CHAIRMAN:** Certainly. And if Board counsels could -- if counsel could talk with Board counsel at a break or something to -- to see if there are any existing issues once you've talked.
111. **MS. BEAUCHEMIN:** Mr. Nettleton, I believe you're up.
112. **MR. NETTLETON:** Thank you, Ms. Beauchemin and Panel Members.
113. It is indeed a great pleasure to introduce to you the panel that will be speaking to the evidence that Trans Mountain Pipeline has sponsored in this proceeding.

**Trans Mountain Pipeline ULC Panel  
Examination by Mr. Nettleton**

114. The panel is comprised of a talented bunch. Seated closest to -- to Mr. Hamilton is Mr. Schink or Dr. Schink. Dr. Schink is the Managing Director of Navigant Economics who is a leading world-wide economic consulting firm.
115. This is Dr. Schink's first time testifying before the National Energy Board although he has sponsored evidence but not made it to the oral portion. So this is a -- indeed an opportunity for Dr. Schink to -- to be here with us today.
116. Seated beside Dr. Schink is Mr. John Reed. Mr. Reed is the Chairman and Chief Executive Officer of Concentric Energy Advisors. Mr. Reed is a well-known witness before this Board, having appeared in many important toll proceedings.
117. With a -- seated beside Mr. Reed is Mr. Scott Stoness. Mr. Stoness is the Vice-President of Finance and Regulatory Affairs for Kinder Morgan Canada.
118. Beside Mr. Stoness is Mr. Ian Anderson. Mr. Anderson is the President of Kinder Morgan Canada. Beside Mr. Anderson is Mr. Rinne. Mr. Rinne is the Senior Director of Business Development for Kinder Morgan Canada, and beside Mr. Rinne is Mr. Kevin MacFarlane. Mr. MacFarlane has responsibility for Shippers Services and is the Director of Shippers Services for Kinder Morgan Canada.
119. In the second row we have Mr. Steven Kelly. Mr. Kelly is the Vice-President of IHS Inc. which is a leading world-wide consulting firm providing energy forecasting services to industry.
120. And finally, with us today is Mr. Greg Hill, and Mr. Hill is the Senior Director of Major Projects for Kinder Morgan Canada, having responsibility for the proposed expansion should it proceed.
121. Mr. -- Dr. Lessard will be joining us. His name plate is there; his seat is empty. But I intend to introduce him when he arrives and have him sworn at that time if I could.
122. To assist with the quantity of evidence, Mr. Chairman, and to make this matter go as efficiently as possible, I have put together a list of exhibits that each of the witnesses is responsible for. I would propose to circulate that now, and it will no doubt make the adoption of the evidence much quicker.

**Trans Mountain Pipeline ULC Panel  
Examination by Mr. Nettleton**

123.                   So if I could distribute that now with your leave I will.

124.                   **THE CHAIRMAN:** Go ahead.

--- (A short pause/Courte pause)

**--- EXAMINATION BY/INTERROGATOIRE PAR MR. NETTLETON:**

125.                   **MR. NETTLETON:** Gentlemen, I have put together the -- the chart and shown -- given a copy of it to you. It shows the exhibits or a series of exhibits with your names associated with -- with those series of exhibits. Do you have that chart before you?

126.                   Mr. -- starting with you Mr. Schink.

127.                   **DR. SCHINK:** Yes I do.

128.                   **MR. NETTLETON:** Mr. Reed?

129.                   **MR. REED:** Yes.

130.                   **MR. NETTLETON:** Mr. Stoness? Mr. Stoness?

131.                   **MR. STONESS:** Yes.

132.                   **MR. NETTLETON:** Mr. Anderson?

133.                   **MR. ANDERSON:** Yes I do.

134.                   **MR. NETTLETON:** Mr. Rinne?

135.                   **MR. RINNE:** Yes.

136.                   **MR. NETTLETON:** Mr. MacFarlane?

137.                   **MR. MacFARLANE:** Yes.

138.                   **MR. NETTLETON:** Mr. Kelly?

**Trans Mountain Pipeline ULC Panel  
Examination by Mr. Nettleton**

139.           **MR. KELLY:** Yes.
140.           **MR. NETTLETON:** And Mr. Hill?
141.           **MR. HILL:** Yes.
142.           **MR. NETTLETON:** And starting with you, Mr. Stoness, as one of the company witnesses can you confirm that the list of exhibits associated with your name were prepared by you or under your direction and control?
143.           **MR. STONESS:** Yes.
144.           **MR. NETTLETON:** And you do have any changes or corrections to make to any of those exhibits?
145.           **MR. STONESS:** I have one errata.
146.           **MR. NETTLETON:** Could you explain that?
147.           **MR. STONESS:** CAPP 1.3, pages 1 and pages 2. We -- on -- there's a schedule B of FSA in the middle of that document on the -- where it says -- column marked "Fixed", we did not decrease the -- the amount there by 10 cents or the proration of 10 cents.
148.           In the document that we provided on January 10<sup>th</sup>, this correction which is highlighted starting at the top 309 is now reduced by the prorated 10 cents.
149.           Obviously -- sorry, and obviously the total changes from there.
150.           **MR. NETTLETON:** All right. And do you have -- have you prepared a -- a revision to that appendix, sir?
151.           **MR. STONESS:** Yes I have.
152.           **MR. NETTLETON:** All right.
153.           And Mr. Chairman, I'm wondering just for -- for sake of ease we -- we've made copies of the changes because its -- it changes every number on the table.

**Trans Mountain Pipeline ULC Panel  
Examination by Mr. Nettleton**

154. So perhaps it would be easiest if we distribute that and have that marked as an exhibit in this proceeding.
155. **THE CHAIRMAN:** Madame Wong.
156. **MR. NETTLETON:** Thank you, Mr. Stoness.
157. And with those corrections, are those exhibits that are associated with the -- with the company's witnesses and your name in particular, accurate to the best of your knowledge and belief?
158. **MR. ANDERSON:** Yes.
159. **MR. NETTLETON:** And do you therefore adopt these exhibits as your evidence and the evidence of Trans Mountain Pipeline ULC in this proceeding?
160. **MR. ANDERSON:** Yes.
161. **MR. NETTLETON:** Thank you.
162. **THE REGULATORY OFFICER:** Mr. Nettleton, pardon me.
163. **MR. NETTLETON:** Yes.
164. **THE REGULATORY OFFICER:** The exhibit number for the worksheet summary will be B21.
- EXHIBIT NO./PIÈCE No. B21:**
- Trans Mountain Expansion Worksheet Summary*
165. **MR. NETTLETON:** B21.
166. And just for the record, Mr. Chairman, the changes which Mr. Stoness was referring to are found at Exhibit B16-7. That's the exhibit that would be changing.
167. Messrs. Anderson, Rinne and Hill and MacFarlane, you are each

**Trans Mountain Pipeline ULC Panel  
Examination by Mr. Nettleton**

appearing as company witnesses in this proceeding; correct?

168.           **MR. ANDERSON:** That's correct.
169.           **MR. RINNE:** Yes.
170.           **MR. HILL:** Yes.
171.           **MR. MacFARLANE:** Yes.
172.           **MR. NETTLETON:** And can each of you confirm that the exhibit shown in the chart beside your names are ones that were prepared in whole or in part by you or under your direction and control?
173.           Mr. Anderson?
174.           **MR. ANDERSON:** Yes I can.
175.           **MR. NETTLETON:** Mr. Rinne?
176.           **MR. RINNE:** Yes.
177.           **MR. NETTLETON:** Mr. MacFarlane?
178.           **MR. MacFARLANE:** Yes.
179.           **MR. NETTLETON:** And Mr. Hill?
180.           **MR. HILL:** Yes.
181.           **MR. NETTLETON:** Starting with you, Mr. Anderson, do you have any corrections or changes to make to any of these exhibits?
182.           **MR. ANDERSON:** No.
183.           **MR. NETTLETON:** Mr. Rinne?
184.           **MR. RINNE:** No.
185.           **MR. NETTLETON:** Mr. MacFarlane?

**Trans Mountain Pipeline ULC Panel  
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186. **MR. MacFARLANE:** No.
187. **MR. NETTLETON:** And Mr. Hill?
188. **MR. HILL:** No.
189. **MR. NETTLETON:** And therefore, gentlemen, is it your understanding that the exhibits therefore are accurate to the -- to the best of your knowledge and belief?
190. Mr. Anderson?
191. **MR. ANDERSON:** Yes.
192. **MR. NETTLETON:** Mr. Rinne?
193. **MR. RINNE:** Yes.
194. **MR. NETTLETON:** Mr. MacFarlane?
195. **MR. MacFARLANE:** Yes.
196. **MR. NETTLETON:** And Mr. Hill?
197. **MR. HILL:** Yes.
198. **MR. NETTLETON:** And gentlemen, do you therefore adopt these exhibits as your evidence in this proceeding?
199. Mr. Anderson?
200. **MR. ANDERSON:** Yes.
201. **MR. NETTLETON:** Mr. Rinne?
202. **MR. RINNE:** Yes.
203. **MR. NETTLETON:** Mr. MacFarlane?

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204. **MR. MacFARLANE:** Yes.

205. **MR. NETTLETON:** And Mr. Hill?

206. **MR. HILL:** Yes.

207. **MR. NETTLETON:** Thank you.

208. I have to pause. It just occurred to me, Mr. Chairman, that these witnesses haven't been sworn.

--- (Laughter/Rires)

209. **THE CHAIRMAN:** Thank you, sir. Something -- sometimes obvious gets missed.

210. **MR. NETTLETON:** Efficiencies, I thought I was doing a great job at making this process efficient, but then I just realized; so we'll try again.

211. **THE CHAIRMAN:** Okay.

**GEORGE SCHINK: Sworn**

**JOHN REED: Sworn**

**SCOTT STONESS: Sworn**

**IAN ANDERSON: Sworn**

**NORMAN RINNE: Sworn**

**KEVIN MacFARLANE: Sworn**

**GREGORY HILL: Sworn**

**STEVEN KELLY: Sworn**

212. **THE CHAIRMAN:** Mr. Nettleton, just for efficiency, if you could ask your witnesses to adopt what they kind of adopted previously, so we don't have to go through that again?

213. **MR. NETTLETON:** I'm on it.

214. Dr. Schink, starting with you, prior to you being sworn we exchanged questions and answers. Are any of the answers that you previously provided ones that you wish to change?

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215.           **DR. SCHINK:** No, I do not.
216.           **MR. NETTLETON:** If I were to ask you, Mr. Reed, the same question, what would your answer be?
217.           **MR. REED:** No changes, thank you.
218.           **MR. NETTLETON:** Mr. Stoness?
219.           **MR. STONESS:** No changes.
220.           **MR. NETTLETON:** Mr. Anderson?
221.           **MR. ANDERSON:** No changes.
222.           **MR. NETTLETON:** Mr. Rinne?
223.           **MR. RINNE:** No changes.
224.           **MR. NETTLETON:** Mr. MacFarlane?
225.           **MR. MacFARLANE:** No changes.
226.           **MR. NETTLETON:** Mr. Kelly? I don't believe we got to you.
227.           And Mr. Hill?
228.           **MR. HILL:** No changes.
229.           **MR. NETTLETON:** Thank you.
230.           Now then, back to where we were. Mr. Reed, Dr. Schink and Mr. Kelly, do you have a copy of the chart and, perhaps Madam Chair, we should -- or Madam Clerk, we should mark the chart as an exhibit as well.
231.           **THE REGULATORY OFFICER:** That will be Exhibit B22.

**--- EXHIBIT NO./PIÈCE No. B22:**

*Trans Mountain Witness Panel - Adoption of Exhibits*

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232.           **MR. NETTLETON:** Yes. So Mr. Reed, Dr. Schink, and Mr. Kelly, do you have before you Exhibit B22?

233.           **DR. SCHINK:** Yes.

234.           **MR. REED:** Yes.

235.           **MR. KELLY:** Yes.

236.           **MR. NETTLETON:** And with respect to the exhibits that are shown beside each of your names, can each of you confirm that those exhibits were prepared by you or under your direction and control? Mr. Schink?

237.           **DR. SCHINK:** Yes.

238.           **MR. NETTLETON:** Mr. Reed?

239.           **MR. REED:** Yes.

240.           **MR. NETTLETON:** Mr. Kelly?

241.           **MR. KELLY:** Yes.

242.           **MR. NETTLETON:** And starting with you, Dr. Schink, do you have any corrections or changes you seek to make to any of the exhibits?

243.           **DR. SCHINK:** Yes, I have three.

244.           **MR. NETTLETON:** And could you please explain those?

245.           **DR. SCHINK:** These are essentially changes I thought confused what I was saying; so I thought it was important to make.

246.           The first is in B15-8 which is my revised Appendix B. It's on Adobe page 11 and it's footnote 11, and if I could just get there for a moment. It's -- oh I'm sorry; it's Adobe page 11, but it's footnote 26. I apologize.

247.           There is a phrase in the third line of that that reads "performed capacity". It should read "effective capacity".

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248. The next is in my reply evidence which is B18-4. It is Adobe page 23 and it is footnote 44. There is a reference back to my revised direct evidence and the reference there is paragraph 18. It should be paragraph 16.

249. And the third is in also my reply evidence B18-4, at Adobe page 43, which is a question and it's in Question 71. And this question got somehow very garbled in typing. On the first line there is a phrase "analysis is" and it should read "analysis, which is". On the second line, there is a phrase "electricity industry" which should read "electricity industry, should be applied here". Those are my three changes.

250. **MR. NETTLETON:** Thank you, Dr. Schink.

251. And with those changes, are the exhibits shown beside your name accurate to the best of your knowledge and belief?

252. **DR. SCHINK:** Yes, they are.

253. **MR. NETTLETON:** And do you therefore adopt the evidence as your evidence in this proceeding?

254. **DR. SCHINK:** Yes.

255. **MR. NETTLETON:** Thank you.

256. And Mr. Reed, do you have any changes or corrections to make to the exhibits that are associated with your name on Exhibit B22?

257. **MR. REED:** No, I do not.

258. **MR. NETTLETON:** Thank you. And do you therefore -- is the -- are those exhibits therefore accurate to the best of your knowledge and belief?

259. **MR. REED:** Yes.

260. **MR. NETTLETON:** And do you therefore adopt that evidence as your evidence in this proceeding?

261. **MR. REED:** Yes, I do.

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262. **MR. NETTLETON:** Thank you.

263. And Mr. Kelly, do you have any changes or corrections to make to the exhibits associated with your name found on B22?

264. **MR. KELLY:** Yes, I have one update.

265. **MR. NETTLETON:** Okay, can you go ahead and explain that?

266. **MR. KELLY:** Yes, on -- this is Exhibit 18-5, Table 1, on page 9 of 16. I'm -- I'm sorry I don't have the Adobe reference, but it is the only table in my reply evidence.

267. In the last line of that table, which refers to the Trans Mountain expansion, the -- yes, sorry.

268. In the last line of Table 1 on page 9, there's a reference of "450,000 barrels a day", that should be updated to "90,000 barrels a day".

269. **MR. NETTLETON:** Thank you, Mr. Kelly. And taking those corrections into account, is the evidence -- the exhibits that are associated beside your name in Exhibit B22 accurate to the best of your knowledge and belief?

270. **MR. KELLY:** Yes, they are.

271. **MR. NETTLETON:** And do you therefore adopt that evidence as your evidence in this proceeding?

272. **MR. KELLY:** I do.

273. **MR. NETTLETON:** Thank you.

274. And with that, Mr. Chairman, Panel Members, this panel is now available for cross-examination.

275. **THE CHAIRMAN:** Thank you.

276. **MS. BEAUCHEMIN:** Mr. Bergner, for Chevron?

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**--- EXAMINATION BY/INTERROGATOIRE PAR MR. BERGNER:**

277.               **MR. BERGNER:** Good morning, Mr. Chair, Panel Members. Good morning witnesses.

278.               Some of you we met before; Mr. Stoness, Mr. Rinne, Mr. Kelly. For those of you I haven't met, my name is Keith Bergner and it's my privilege today to ask questions on behalf of Chevron Canada Limited and Chevron Canada Resources. And I'll be referring to those two entities collectively as "Chevron" or specifying, as the case may be.

279.               The first questions I have for you, unfortunately, are not terribly exciting as cross-examination goes but I simply want to ensure we share a common factual understanding and so I'll -- we'll start with some easy ones.

280.               Can you confirm, please -- and Mr. Stoness perhaps these are for you -- that Chevron Canada Limited's Burnaby Refinery is connected to the Trans Mountain pipeline?

281.               **MR. STONESS:** Yes.

282.               **MR. BERGNER:** Thank you.

283.               And the Trans Mountain pipeline delivers both crude oil and isooctane to the Burnaby Refinery; correct?

284.               **MR. STONESS:** Yes.

285.               **MR. BERGNER:** Can you also confirm that Chevron Canada Resources, a crude oil producer, is a shipper to the Westridge dock?

286.               **MR. MacFARLANE:** I can confirm that.

287.               **MR. BERGNER:** Thank you.

288.               And so collectively, Chevron is both a land and dock shipper; correct?

289.               **MR. MacFARLANE:** That's correct.

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290. **MR. BERGNER:** Thank you.

291. In terms of the volumes shipped by Chevron, are you able to confirm that crude oil deliveries to the Chevron Burnaby Refinery, on the basis of monthly nominations, are quantities up to a maximum of approximately 57,000 barrels per day? Excuse me.

292. **MR. MacFARLANE:** I'm sorry. That was just the crude?

293. **MR. BERGNER:** Yes, just the crude.

294. **MR. MacFARLANE:** I can't confirm that. I'm not aware. It was up to 57,000 barrels a day?

295. **MR. BERGNER:** Yes.

296. Is anyone else on the panel able to confirm the volumes shipped on your pipeline?

--- (A short pause/Courte pause)

297. **MR. BERGNER:** If it assists, I'm not looking for precision in the number. I'm trying to get an order of magnitude number around the crude oil shipped.

298. **MR. MacFARLANE:** My understanding is that the capacity of the refinery is about 55,000 barrels a day. I'm not sure of the maximum delivery we have achieved to that refinery.

299. **MR. BERGNER:** Thank you.

300. And the isooctane shipments delivered by the Trans Mountain pipeline to the Burnaby Refinery, are you able to confirm those are a maximum of approximately 17,000 barrels per day, with an average of approximately 12,000 barrels per day? Is that consistent with your understanding?

301. **MR. MacFARLANE:** My understanding is that the capacity is around the 12,000 barrels a day. I'm not aware of the 17,000 barrel a day figure.

302. **MR. BERGNER:** So when you say the capacity, that's the -- 12,000

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- barrels per day was the average shipments of isooctane to the Burnaby Refinery; correct?
303.           **MR. MacFARLANE:** I can't confirm that, either. That would possibly be the maximum barrels per day within a month. I can't confirm the average over a period of time, no.
304.           **MR. BERGNER:** So we've covered crude, we've covered isooctane. I'd like to talk about trans mix.
305.           And first, just to define the term -- well, first let me establish this. The Trans Mountain pipeline moves a variety of products in batches; correct?
306.           **MR. MacFARLANE:** That is correct.
307.           **MR. BERGNER:** And when you move crude oil and refined product in batches, at the interface you get what is called trans mix, a slight mixing of those two. Correct?
308.           **MR. MacFARLANE:** Yeah. We refer to trans mix as the material between the interface of refined products and crude.
309.           **MR. BERGNER:** Thank you.
310.           And are you able to confirm that a majority, if not all, of the trans mix created by delivery of different products to British Columbia is ultimately delivered to the Burnaby Refinery?
311.           **MR. MacFARLANE:** My understanding is that it is all delivered to the Burnaby Refinery.
312.           **MR. BERGNER:** Thank you.
313.           And so collectively, with Chevron Canada Limited's deliveries to the Burnaby Refinery of crude, isooctane and trans mix and Chevron Canada Resources deliveries of crude to the Westridge dock, are you able to confirm that, on the existing pipeline, Chevron is one of the largest shippers on the currently existing Trans Mountain system?
314.           **MR. MacFARLANE:** It is one of the largest, yes.

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315. **MR. BERGNER:** Thank you.

316. And would it be fair to say that Trans Mountain views Chevron as a valuable long-term customer for transportation service on the pipeline?

317. **MR. MacFARLANE:** It does.

318. **MR. BERGNER:** Thank you.

319. Turning to the proposed toll application, Trans Mountain, during the open season, offered terms of only 15 and 20 years for firm transportation service. Correct?

320. **MR. RINNE:** That's correct.

321. **MR. BERGNER:** Thank you.

322. And if I could ask the Regulatory Officer to call up Exhibit B16-5. That's the Trans Mountain response to Information Request 1.2 from Chevron. Thank you. And it's page 4 of 27.

323. And I'm referring to the first -- the response to the first information request, and that response reads:

*“Trans Mountain received inquiries and was approached by shippers about shorter [...] [contract terms] during and following the initial rounds of the Open Season. Trans Mountain did not alter its commercial offering to include shorter [...] [contract terms].”*

324. Do you see that?

325. **MR. RINNE:** Yes.

326. **MR. BERGNER:** So am I to understand from that that you were asked whether you were willing to provide shorter terms and you said no; correct?

327. **MR. RINNE:** The response is clear. We were asked about shorter and longer terms and, as qualification for that, we had one company asking for

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shorter terms and one company asking for longer terms. The vast majority of the shippers were comfortable with the terms that were offered in 15 and 20 years.

328. **MR. BERGNER:** Thank you.

329. Trans Mountain held an open season in 2006; correct?

330. **MR. RINNE:** That's correct.

331. **MR. BERGNER:** And in the 2006 open season, are you able to confirm that Trans Mountain did offer terms shorter than 15 years?

332. **MR. RINNE:** I can confirm that we offered terms shorter than 15 years. I'll just qualify that by saying it was an entirely different project, much smaller in scope and capital exposure and risks across the parties.

333. **MR. BERGNER:** Thank you.

334. And just so we're clear, the 2006 open season, of course, did not proceed because Trans Mountain, in its view, received insufficient support. Is that correct?

335. **MR. RINNE:** That's correct. We were looking for approximately 340,000 barrels of capacity and entered just around 200 when it was finished.

336. **MR. BERGNER:** Thank you.

337. Trans Mountain, in this Application, has proposed a price differential between the 15-year service and the 20-year service; correct? A 10 percent difference.

338. **MR. RINNE:** That's correct. The 20 years are discounted by 10 percent from the 15-year toll.

339. **MR. BERGNER:** Thanks.

340. And am I correct in understanding that Trans Mountain's justification for the price differential is that a shorter term, the 15-year term, carries different risk, greater risk, and that this can be addressed through a pricing mechanism?

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341. **MR. STONESS:** Sorry. Can you repeat that question?
342. **MR. BERGNER:** Is the justification for the price differential between 15-year service and 20-year service -- is the justification that the shorter-term service carries a greater risk than -- and that this greater risk can be addressed through a pricing mechanism?
343. **MR. STONESS:** I don't know that I would agree with that. Let me express it a little bit different than that.
344. In order to financially underpin the project, we required long-term contracts. So the best contracts that we have for underpinning a long project were longer, and once you established the longer contracts, that required you to have a higher price on the shorter ones in order for them to be attractive to the shippers.
345. **MR. BERGNER:** So do you view the 15-year and 20-year as carrying equal risk or is the 20-year more -- give you more comfort?
346. **MR. STONESS:** I think you're asking the question from the perspective of the shippers?
347. **MR. BERGNER:** No, from your perspective.
348. **MR. STONESS:** Yes, it is more risky to the pipeline to have shorter contracts than larger contracts.
349. **MR. BERGNER:** Right. And you've priced that in by having a price differential between the 15-year and 20-year service, 15-year carrying a higher price?
350. **MR. STONESS:** It's partly that and partly what I said before.
351. **MR. BERGNER:** Thank you. You've also proposed a toll or a price for the -- what you call the uncommitted capacity, the common carriage capacity and that's 10 percent above the 15-year term; correct?
352. **MR. STONESS:** That is true.
353. **MR. BERGNER:** Now, wouldn't you agree that a shorter term contract -- say a 5-year, a 10-year contract would carry less risk than uncommitted

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capacity on a monthly nomination system?

354. **MR. STONESS:** No, I would not.

355. **MR. BERGNER:** And why is that?

356. **MR. STONESS:** The design required long-term financial underpinning. Had we moved to a shorter contract, we would have had to have a higher price in order to be -- have the equal amount of confidence on funding of the project.

357. **MR. BERGNER:** Right, but perhaps you missed an aspect of my question. I was asking as between uncommitted capacity, monthly nominations and a 5 or 10-year contract, I'm suggesting the 5 or 10-year contract carries less risk for you than a monthly nomination system.

358. **MR. STONESS:** I'm struggling with the word "risk", but it is true that the 5-year contract is more desirable from the perspective of financing the project.

359. **MR. BERGNER:** Thank you. And that's a 5-year term that you did manage to price in the 2006 open season; correct?

360. **MR. STONESS:** That is correct.

361. **MR. BERGNER:** Thank you.

362. **MR. STONESS:** And let me just add the reason that we didn't offer the 5-year contract was that had we offered the 5-year contract, we would have had a challenge -- two challenges. One of them is that we're setting aside 20 percent of our capacity for spot, do you add more capacity to that tranche or do you leave it at 20 percent. And then if you leave it at 20 percent, do you have to recover more from that 5-year contract in order to match the risk.

363. So we were struggling with the design to offer an attractive rate to shippers and financially underpin the project.

364. **MR. BERGNER:** Right. We'll get to the 20/80 split in a moment. I want to stay with the pricing.

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365. Let's come at it this way. Trans Mountain has -- you've referred to the investment made in the new system and the size of it, you're proposing to build another 590,000 barrels per day of additional capacity; correct?
366. **MR. STONESS:** That is correct.
367. **MR. BERGNER:** And you've accepted firm service commitments for 708,000 barrels per day of capacity; correct?
368. **MR. STONESS:** Approximately, correct.
369. **MR. BERGNER:** And that is -- I work with words, not numbers, but by my calculation that's 118,000 barrels per day of firm service commitments in addition to the capacity you're proposing to build. You've accepted firm service commitments for a greater volume than the additional volume you're proposing to build; correct?
370. **MR. STONESS:** That's correct. The new design had 708 committed and the old design had approximately 500.
371. **MR. BERGNER:** Right. I'm not comparing the old and the new, I'm comparing the -- what you're proposing now to the existing capacity and you're -- you've got firm service commitments of 708 ---
372. **MR. RINNE:** Approximately 180,000 barrels a day of spot, is that the math you were trying to get to?
373. **MR. BERGNER:** No.
374. **MR. RINNE:** No? Okay.
375. **MR. BERGNER:** Seven hundred and eight thousand (708,000) barrels per day of firm service commitments that you've accepted and what you're proposing to build is new incremental capacity of 590,000. And I'm simply putting to you the proposition that your firm service commitments are greater than the volume you're proposing to build -- 708 is bigger than 590.
376. **MR. RINNE:** Your math is correct.
377. **MR. BERGNER:** Thank you. And so the firm service commitments

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you're proposing to do under 15 and 20-year terms include approximately 118,000 barrels per day of the existing capacity, correct?

378. If my math was correct, I think that follows.

379. **MR. STONESS:** Your math is right, and the reason that we contracted for 708,000 barrels was to financially underpin the project.

380. **MR. BERGNER:** Thank you.

381. If I could ask the Regulatory Officer to kindly turn up -- it's the same exhibit, B16-05 -- it's this time page 6 and it's the response to Chevron IR1.3(2). That's it. Thank you.

382. And in case anyone's eyes are fading like mine, I'll just read it in -- that the question is:

*“How [was Trans – how] has Trans Mountain determined what additional interest there may be in the expanded system for terms of less than 15 years?”*

383. And the response says:

*“Please see the response to [...] 1.2.4.”*

384. And if we could scroll up a couple of pages to page 4, we'll see the response. There it is. And the response reads:

*“At this time, Trans Mountain does not have plans to offer firm transportation service on terms shorter than 15 years.”*

385. So that's your answer. You were asked how has Trans Mountain determined what additional interest there may be and your answer is we have no plans to offer it. Am I reading that cross-reference correctly?

386. **MR. STONESS:** That is correct. And that brings me back to the conversation I started into previously. We're trying to underpin a project of 890,000 barrels. In order to do that, we have signed up 708,000 barrels.

387. Had we offered 5-year terms, that would either have to come out of the

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- 20 percent allocated to spot or would have to make the amount dedicated to 15 to 20 years smaller. Had we done either of those, it would have resulted in higher prices for each of them. And our view was that that would have caused the project to fail.
388.           **MR. BERGNER:** Thank you.
389.           Earlier you mentioned the 80/20 split -- if I can call it that. Let's turn to that.
390.           In terms of the 20 percent which is uncommitted capacity, am I correct in understanding Trans Mountain has not undertaken a forecast of the needs of uncommitted capacity over the 15 or 20-year period?
391.           **MR. MacFARLANE:** That's correct.
392.           **MR. BERGNER:** Thank you. There's a number of current -- excuse me -- of current land destination shippers that currently ship on the basis of monthly nominations that have not signed up for the firm service offering; correct?
393.           **MR. MacFARLANE:** Correct.
394.           **MR. BERGNER:** And the -- just for clarity, the -- among the current land destination shippers that have not signed up include Chevron Canada Limited; correct?
395.           **MR. MacFARLANE:** It does, yes.
396.           **MR. BERGNER:** Thank you. And in addition, the -- among the current land destination shippers there are refined product shippers and a number of refineries in Washington state that currently ship on monthly nominations but that have not signed up for the firm service offering; correct?
397.           **MR. MacFARLANE:** By "refined products" do you -- are you referring to the iso?
398.           **MR. BERGNER:** Pardon me?
399.           **MR. MacFARLANE:** By "refined products" are you referring to the

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iso volume? You mentioned refined products were not signed up.

400. **MR. BERGNER:** Well, let's -- let's ---

401. **MR. MacFARLANE:** I just wanted to clarify what -- if you were talking about the volume that goes to your -- to the Chevron refinery?

402. **MR. BERGNER:** Okay. Well, let's break it down.

403. There's a number of Washington State refiners that ship crude oil on a monthly nomination system now that have not signed up for firm service; correct?

404. **MR. MacFARLANE:** That's correct.

405. **MR. BERGNER:** And Chevron's volumes for both crude oil and iso-octane are shipped on a monthly nomination system now and Chevron has not signed up for firm service; correct?

406. **MR. MacFARLANE:** That's correct.

407. **MR. BERGNER:** And while they're not in evidence in these proceedings, Trans Mountain knows the volumes shipped by existing land destination shippers on a monthly nomination basis; correct?

408. **MR. MacFARLANE:** Correct.

409. **MR. BERGNER:** And you also know the land destinations who have signed up for firm service and the volumes that they have signed up for; correct?

410. **MR. MacFARLANE:** We do, yes.

411. **MR. BERGNER:** And so, knowing all of this, are you suggesting that Trans Mountain was unable to make a forecast or simply felt that a forecast of the needs of uncommitted capacity was simply unnecessary? Which is it?

--- (A short pause/Courte pause)

412. **MR. STONESS:** Mr. Roth, we looked at the -- I'm sorry, Mr. Bergner.

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413. **MR. BERGNER:** I've been called worse.

414. **MR. STONESS:** First mistake of the day.

--- (Laughter/Rires)

415. **MR. STONESS:** The current usage of those shippers is less than the 180,000 spot that we have available. In addition to that, our pipeline is going from size of 300,000 barrels to 890,000 barrels. We consider that, in a likely scenario where those shippers have more usage in the future, they will likely get that from the contracted shippers.

416. **MR. BERGNER:** Thank you, and we'll be coming to that point as well.

417. So staying with the forecast for a moment, Mr. Stoness -- and Mr. Kelly, I see you in the back row, so we'll bring you into this perhaps.

418. When Trans Mountain brought forward its application in the Firm 50 proceeding, RH-2-2011, it did provide a forecast of the needs of uncommitted capacity; correct?

419. And Mr. Kelly, I refer to you because I believe you were the author of that forecast.

420. **MR. KELLY:** My recollection, Mr. Bergner, is that we prepared a forecast of total Trans Mountain throughput in relation to the firm service matter that you're referring to.

421. **MR. BERGNER:** Okay. Perhaps it might be easier if we could turn up again the same exhibit number, but this time the Trans Mountain Response to IR-1.9. And it's on page 18 spilling over to 19.

422. There we go. If we could look -- excuse me. The answer to No. 1 is confirmed, but if we could look at the question. There we go. Thank you.

423. And this is all I was trying to establish; that in the Firm 50 proceeding, based on Mr. Kelly's forecast, the position of Trans Mountain was:

*"There is no anticipated apportionment of land capacity on an*

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*annual basis for the period from 2011 to 2016." (As read)*

424. Correct? And it's confirmed there. I was just trying to get us grounded in what forecast I was talking about.
425. **MR. KELLY:** Yes.
426. **MR. BERGNER:** Now, that application was filed in November of 2010; correct?
427. **MR. KELLY:** That's correct.
428. **MR. BERGNER:** And since November of 2010, the Trans Mountain pipeline has been in apportionment every single month since, which by my count is 28 months and counting; correct?
429. **MR. MacFARLANE:** Since late 2010; was that the question?
430. **MR. BERGNER:** Yes, November 2010.
431. **MR. MacFARLANE:** Yes.
432. **MR. BERGNER:** Thank you.
433. And at the hearing of the Firm 50 proceeding, which we'll all recall fondly, was August 2011 -- is that consistent with your memory, August 2011 was the hearing?
434. **MR. KELLY:** Yes.
435. **MR. BERGNER:** There was some additional talk about the forecast of apportionment at that time. And Mr. Kelly, I've given, through your counsel, a short excerpt of the transcript of the evidence that was given. Have you received that? It's about a three-page excerpt of Volume 2 of the transcript.
436. **MR. KELLY:** I believe I have the same document in my hands, but maybe we can just confirm by transcript reference.
437. **MR. BERGNER:** Certainly, just -- and I have copies if it's helpful.

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438.           **MR. STONESS:** Sorry, Mr. Bergner, is that the decision that you're talking, the transcript?
439.           **MR. BERGNER:** No, it's not the decision. It's a short excerpt from the transcript of the hearing. It's dated August 23, 2011. And perhaps we can just proceed with the questions and we'll see if the transcript is even necessary.
440.           **MR. NETTLETON:** Mr. Chairman, I received this from my friend this morning just before the commencement of this. I have given a copy to Mr. Kelly.
441.           I wasn't given -- I don't have copies for the rest of the witnesses. So if Mr. Bergner's intention is to ask questions to the panel, I'm going to need more copies or, if they're going to be just directed to Mr. Kelly, then I think we can proceed.
442.           **MR. BERGNER:** Thank you, and they will be directed just to Mr. Kelly.
443.           And again, perhaps it's easier to do without the transcript, but I did want to provide that reference for you.
444.           In August of 2012 -- I'm sorry, of 2011, you were asked about how long the apportionment that was being seen at that time would last. And in August of 2011, you responded that you thought it would be a couple of years. And for reference, that's Answer 2534.
445.           **MR. KELLY:** I see that, yes.
446.           **MR. BERGNER:** So November 2010, the forecast is no apportionment. August 2011, the forecast is a couple of years, i.e. until 2013. And today, your forecast is a couple or three years, to 2016; correct?
447.           **MR. KELLY:** Well, to the last part of your question, I don't think I specifically said apportionment until 2016.
448.           **MR. BERGNER:** Okay. Well let's break it down; did I have the first two right? November 2010 forecast is no apportionment. Apportionment appears in November 2010 and by August of 2011, the forecast has altered, that that apportionment will last for a couple of years.

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449.           **MR. KELLY:** Yes, that's consistent with the previous record.
450.           **MR. BERGNER:** Thank you. And it's not consistent with how things have turned out is it?
451.           **MR. KELLY:** Well actually, I'm just actually referring back to the transcript that you've referred me to and I think the line just above where you are actually makes a relevant point here, that projects can take a significant amount of time depending on regulatory matters, environmental matters and so on. So that's -- that's relevant.
452.           The other point I'd make -- and I suppose it's said with a, you know, fair number of years of forecasting experience under my belt that forecasting is sometimes a difficult business.
453.           **MR. BERGNER:** We'll have no disagreement there, Mr. Kelly.
454.           And just while we're on that point, forecasting gets increasingly difficult the farther out in time you go, correct? In other words, a forecast of the near term carries, shall we say, less uncertainty than a forecast of a longer term period; fair statement?
455.           **MR. KELLY:** Generally fair, yes.
456.           **MR. BERGNER:** Thank you. And so I was perhaps asking too sweeping a question last time but let's start with the November 2010 forecast of no apportionment. That's not consistent with how things turned out in the short term between November 2010 and today; correct?
457.           **MR. KELLY:** That's correct.
458.           **MR. BERGNER:** Thank you. And you're aware that apportionment has reached up to 75 percent for land destinations?
459.           **MR. KELLY:** I am aware of that, yes.
460.           **MR. BERGNER:** Thank you. Now, if we could turn to Exhibit -- again -- B16-05. And this time it's a response to Chevron Trans Mountain 1.9.

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461. My friend makes the observation that I failed to put an exhibit number on this. I'm not sure whether we want to mark it as an aid to questioning or an exhibit in and of itself. I'm content with either. I'm in your hands.

462. The traditional practice seems to be to mark them as exhibits. In some recent hearings they've been marked as aids to questioning. I'm not sure if anything turns on it.

463. **THE CHAIRMAN:** We'll -- yes, sir?

464. **MR. NETTLETON:** Mr. Chairman, I suspect we'll be referring to this in final argument. So I'd prefer it if it were marked as an exhibit.

465. **THE CHAIRMAN:** I guess something turns on it, so an exhibit number please?

466. **THE REGULATORY OFFICER:** That will be C6-6.

--- **EXHIBIT NO.PIÈCE No. C6-6:**

*Excerpt of Trans Mountain Pipeline Transcript - Firm Service Application of  
November 29, 2010 - Volume 2*

467. **MR. BERGNER:** Thank you.

468. And we were turning up Exhibit B16-05, Chevron Response -- Trans Mountain response to Chevron I.R 1.9 and the excerpt I'm looking for is on page 19. There it is. There it is.

469. So staying with forecasting, it's subpart five to that answer which reads:

*“Trans Mountain is unable to reasonably forecast monthly apportionment levels for the requested period (January 2013 to December 2017, inclusive). The monthly level of apportionment is subject to shipper behavior, as well as changing market conditions...”*

470. I'll stop there.

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471. The monthly level of apportionment was subject to shipper behaviour and changing market conditions in 2010 and 2011 wasn't it? In other words, that statement was as true then as it is today; correct?

472. **MR. MacFARLANE:** Correct.

473. **MR. BERGNER:** But yet somehow Trans Mountain was able to produce a forecast for the Firm 50 proceedings but claims to be unable to do so now.

474. **MR. MacFARLANE:** I think the question is forecasting apportionment levels ---

475. **MR. BERGNER:** Yes.

476. **MR. MacFARLANE:** --- not demand, which, in my mind, are two different questions.

477. **MR. BERGNER:** Well, if we could look at the question; Question five. Stop there.

*“Please provide a forecast of monthly apportionment from January 2013 to December 2017, inclusive.”*

478. So we are talking about a forecast of apportionment?

479. **MR. MacFARLANE:** That's correct.

480. **MR. BERGNER:** And a forecast of apportionment is what was produced in the Firm 50 proceedings; correct?

481. **MR. KELLY:** To my knowledge a forecast of apportionment was not prepared. We were forecasting volumes through the pipeline.

482. **MR. BERGNER:** And if volumes through the pipeline are less than the capacity of the pipeline, there's no apportionment; correct?

483. **MR. KELLY:** Well, I don't run the pipeline but I believe that to be consistent with how apportionment is determined.

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484.           **MR. BERGNER:** And based on the forecast of throughput, Trans Mountain suggested there would be no apportionment. We looked at that IR, we can go back to it if you like.
485.           **MR. KELLY:** I think the -- if we could just be clear that the forecast that was prepared in relation to the firm service application in November 2010 was based on the facts as we knew them at that time. The discussion we had in August, in the hearing, was based on the changed facts that we had between November and August of 2011.
486.           **MR. BERGNER:** Thank you. And the discussion we're having today is based on the facts as we know them today; correct?
487.           **MR. KELLY:** Yes.
488.           **MR. BERGNER:** And -- okay. I -- let's move on.
489.           **MR. MacFARLANE:** I think your question was around forecasting apportionment, which is extremely difficult to do. You know, the way we answer this question, I think, is relevant. It is subject to shipper behaviour and we're seeing apportionment on not just Trans Mountain but other pipelines out of the Western Canadian Sedimentary Basin as well.
490.           **MR. BERGNER:** Right. And my earlier question was, shipper behaviour was a factor in 2010 and 2011.
491.           **MR. MacFARLANE:** It is but you're asking ---
492.           **MR. BERGNER:** Shipper behaviour is always a factor.
493.           **MR. MacFARLANE:** --- you're asking two different questions. One is forecasting, whether we will be fuller or above capacity and the other is the level of nominations -- the level of apportionment due to nominations and they're inconsistent.
494.           As soon as a pipeline -- as soon as nominations exceed its capacity -- we've seen this in other pipelines where gamesmanship will happen and nominations lead to excessive apportionment.
495.           **MR. BERGNER:** Thank you. That's the shipper behaviour part.

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496. **MR. MacFARLANE:** It is, yes.

497. **MR. BERGNER:** And the other part is changing market conditions. And market conditions are a factor in 2010 and 2011 as well?

498. **MR. MacFARLANE:** They are and I'm not speaking market conditions.

499. **MR. BERGNER:** Thank you.

500. We'll come back to the other factors you mentioned. First, I'd like to cover this; if we could turn to Exhibit B16-02, this is Trans Mountain's response to the National Energy Board's IR 1.5(b), and it's on page 11. If we could go down a little further? Thank you. It's (b).

501. And just to put us in context, this is Trans Mountain's response in terms of what options an uncommitted land shipper has to secure capacity. And so I'd just like to look at a few of these. And the first category is straightforward; they can nominate to a lands destination. I'd like to look at the second category which suggests land shippers can nominate to uncommitted Westridge capacity.

502. And under the original application, that was 75,500, that's dropped to 40,000. We're on the same page so far?

503. **MR. MacFARLANE:** Correct.

504. **MR. BERGNER:** And so let's break it down. For a dock shipper, such as Chevron Canada Resources, there's less uncommitted Westridge capacity available under the revisions; correct?

505. **MR. MacFARLANE:** That is correct. However, land nominations can be redirected to dock as well.

506. **MR. BERGNER:** And for land shippers, this second tier option, if I can call it that, after the land capacity is spoken for, there's less available for a land shipper under this second capacity or second option identified as well; correct?

507. **MR. MacFARLANE:** I'm sorry. I don't understand your question.

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508. **MR. BERGNER:** Well, the first category is straightforward. If a land shipper wants capacity, they can nominate for the uncommitted land shipper capacity. I'm asking about the second one. Assuming that's full, the second answer says they can nominate for uncommitted Westridge capacity.

509. **MR. MacFARLANE:** Which is true. Now, the difference here between the two, you -- you referenced the 75,000 in previous or the original application. That left 75 for land as well and ---

510. **MR. BERGNER:** Right.

511. **MR. MacFARLANE:** --- what we have today is we've increased that spot capacity to 180,000 barrels a day and to land to 140,000 barrels a day and so, by default, the allocation to land under this current revised application is near equal to the capacity of the entire uncommitted capacity of the previous smaller pipeline size.

512. So you're -- you're correct in the fact that there's less capacity available for the dock to be redirected, however, the total capacity available to land has gone up.

513. **MR. BERGNER:** Okay, thank you.

514. Let's -- if we could scroll down slightly and look at the third option identified, the third and the fourth. The third option suggests that land shippers can, quote:

*"...secure capacity from parties who have contracted for [...] firm transportation service;..."*

515. So this is what you were referring to earlier. If they can't get the uncommitted capacity, they can go buy it from the firm shippers; correct?

516. **MR. MacFARLANE:** Yeah. Essentially, the land -- the land shippers have access to the entire pipeline capacity subject to delivery capability.

517. **MR. BERGNER:** Would you agree that it is reasonable to expect that firm service shippers will use the capacity they have contracted for?

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518.           **MR. MacFARLANE:** It's reasonable to expect they'll use it. Whether they will redirect it to a land destination or dock destination, I'm not aware of.
519.           **MR. BERGNER:** All right. But they contracted for the firm service capacity and the assumption is they contracted for it because they plan to use it; correct?
520.           **MR. MacFARLANE:** That's my assumption, yes.
521.           **MR. BERGNER:** Yes. And this third option is essentially saying to uncommitted shippers that, well, you can try your luck in the secondary market and if they don't plan to use it, they may be willing to sell it to you. That's what this third option is.
522.           **MR. MacFARLANE:** Well, I think the committed shippers, when they looked at it, albeit they requested a destination -- a priority destination or a -- sorry, a -- what is the ---
523.           **MR. BERGNER:** Freudian slip there. We'll get to that a little later.
- (Laughter/Rires)
524.           **MR. MacFARLANE:** Their designated delivery point. My apologies.
525.           So the -- the committed shippers when they designated that delivery point, that was at our request so that we could design the pipeline accordingly -- according to their plans. However, they were also offered very clearly and they were quite interested in the ability to redirect.
526.           So I'm assuming that while they're -- most shippers were looking for clearing capacity at the Port of Vancouver, that, in their minds, they would have the ability to redirect to land destinations as well and sell into that market should it provide better netbacks.
527.           **MR. BERGNER:** Right. And when it's redirected or when it's -- more to the point, when it's sold to a uncommitted land destination shipper, that firm shipper can charge whatever it wants for that capacity; correct?

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528.           **MR. STONESS:** You are correct. However, given that there are 13 of those parties, they're going to be competing with each other to -- to sell that capacity. And in times when the pipe isn't full, one would expect that they'll be selling it for less than the posted toll.
529.           **MR. BERGNER:** Yes. Well, when the pipe isn't full, uncommitted land shippers aren't buying. It's only when the pipe is full that these options become important.
530.           **MR. STONESS:** Not necessarily because there could be more spot than spot available.
531.           **MR. BERGNER:** Sorry. If there's more available capacity, the land shippers will use the land shipper uncommitted capacity.
532.           **MR. STONESS:** That is true, but even at that point when you have a choice of paying the posted tolls or negotiating with another party, it's likely that if the pipe isn't full, there -- there will be times when the tolls are at a discount.
533.           **MR. BERGNER:** Ah, okay. So now I'm with you. So when nobody wants to ship and the firm shippers are desperate to sell their firm capacity, is that the scenario you're talking about? I'm talking about the other scenario contemplated here when the pipe is full.
534.           **MR. STONESS:** I'm saying that there's two scenarios. One of them is that if the pipe is full, they may have to pay a premium. When the pipe is less than full, they may pay a discount, so sometimes it could be a premium; sometimes it could be a discount.
535.           **MR. BERGNER:** Thank you.
536.           And so when the pipe is full and they're paying a premium, would you agree that, in assessing how much it can get for its firm service capacity, a firm service shipper is going to look at the alternative sources available to a potential buyer?
537.           **MR. STONESS:** That would be one thing they looked at. The other thing they would look at is what is the alternatives of the -- of the refiner. So they can only charge what the market will bear.

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538.           **MR. BERGNER:** Right. And if ---
539.           **MR. STONESS:** So if Chevron, for example, could get oil at a less expensive price, that would limit the -- the price, and there are 13 parties competing to have this business.
540.           **MR. BERGNER:** Right. I think we're talking the same point. I was calling that, they would look at the alternative sources available to the potential buyer.
541.           **MR. STONESS:** Yes.
542.           **MR. BERGNER:** Thank you.
543.           And just for clarity, that means the potential seller is not going to be looking at whether the market overall is workably competitive. They're going to be interested in the options available to the individual buyer, not the overall workably competitive nature of the market; correct?
544.           **MR. REED:** Let me just chime in. They will be looking at the alternatives available to the potential buyer. Those alternatives include, of course, on the Trans Mountain system, competition from other firm shippers providing their capacity at release to a potential purchaser as well as, of course, alternatives off of Trans Mountain, other pipelines, rail, other types of cargo deliveries. So they will be looking at all of the options available to that buyer, including the options made available by other firm shippers.
545.           **MR. BERGNER:** Thank you.
546.           Again, I think we're saying the same thing, but it's the alternatives of the individual buyer; correct?
547.           **MR. REED:** Yes, the party making that capacity available under their firm contract will look at all of the alternatives available to that buyer and to the other potential buyers in the marketplace.
548.           **MR. BERGNER:** Yes, thank you.
549.           Just moving to the fourth condition or the fourth option, the option that had been identified as they can nominate from uncontracted capacity within the

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- 80 percent tranche, that one's been struck out, and I take it this option is no longer available. This one's disappeared.
550.           **MR. MacFARLANE:** That's correct. We're fully contracted.
551.           **MR. BERGNER:** Thank you. Let's turn to a discussion of capacity.
552.           Mr. Chairman, I believe the break, you said, was 10:30, or 10:00.  
Forgive me.
553.           **THE CHAIRMAN:** Around 10:30.
554.           **MR. BERGNER:** Ten thirty (10:30). Thank you.
555.           Turning to a discussion of capacity. The nominal capacity of the  
existing Trans Mountain system is 300,000 barrels per day; correct? Nominal.
556.           **MR. MacFARLANE:** Correct.
557.           **MR. BERGNER:** And I have an exhibit reference here, but perhaps  
we don't need to go to it.
558.           Can we agree that the actual capacity of the Trans Mountain system  
can be and has been lower than the nominal capacity of 300,000?
559.           **MR. MacFARLANE:** It is subject to the amount of heavy crude,  
maintenance, and carry-over volumes.
560.           **MR. BERGNER:** Right. And all of those things -- amount of heavy  
crude, maintenance, and carry-over volumes, all of those can decrease the actual  
capacity available from the nominal capacity?
561.           **MR. MacFARLANE:** It can both decrease and increase, yes.
562.           **MR. BERGNER:** Well, in 2011, the average monthly deliveries were  
273,000 barrels per day, which is less than the 300,000 nominal capacity. I can  
give you a reference if you like.
563.           **MR. MacFARLANE:** And the heavy percentage was higher, that's  
correct.

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564.           **MR. BERGNER:** The heavy percentage was higher, so available capacity was lower; correct?
565.           **MR. MacFARLANE:** I'm sorry, can you repeat the question?
566.           **MR. BERGNER:** You mentioned that the heavy percentage was higher, and I was just clarifying that that meant the actual available capacity was lower; correct?
567.           **MR. MacFARLANE:** The -- well, and which year are you referring to; is it 20 ---
568.           **MR. BERGNER:** Eleven (11). Perhaps we'll turn it up.
569.           **MR. MacFARLANE:** That year, we were de-rated ---
570.           **MR. BERGNER:** I was trying to ---
571.           **MR. MacFARLANE:** --- by pressure restrictions on the pipeline.
572.           **MR. BERGNER:** Right.
573.           **MR. MacFARLANE:** That was the paramount factor.
574.           **MR. BERGNER:** Right.
575.           **MR. MacFARLANE:** Yeah.
576.           **MR. BERGNER:** Perhaps let's just turn it up. I was trying to move more quickly without the exhibit. It's Exhibit B16-04, and it's at the back, Attachment Number 1 to NEB IR 1.9.
577.           That's the one.
578.           And the second-last page, page 6 of 7 of that attachment -- it's paper page 6 of 7, that's it -- no, sorry, we've got to go a little further. There we go. I believe that's the one. My eyes aren't quite that acute anymore.
579.           For 2011, I was suggesting that the average monthly deliveries were

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273,000, which is the number shown on the bottom right-hand corner.

580.           **MR. MacFARLANE:** That is correct, but if you look at the numbers from April onward, you can see that they were being impacted by the pressure restriction on the pipeline at the time.

581.           **MR. BERGNER:** Right. And that reduces actual available capacity below the nominal capacity; correct?

582.           **MR. MacFARLANE:** It does, yes. Yes.

583.           **MR. BERGNER:** And so under your current proposal, 20 percent of the expanded system's nominal capacity is allocated to uncommitted shippers. And in any given month, this could be less than 20 percent of the actual capacity; correct?

584.           **MR. MacFARLANE:** It could, yes.

585.           **MR. BERGNER:** If we could just switch back to the other exhibit, B16-05, and it's the response to IR 1.5, page 10 of 28.

586.           And I apologize to the Regulatory Officer; this one is slightly out of order in my list. It's Response Number 5, and it's sub 5 as well. Up just a bit, response to 5. Oh, I'm sorry, that's the question.

587.           There we go.

588.           So this is just following up on the discussion we were having about what factors can reduce actual capacity from the nominal capacity. And we talked about pressure restrictions, maintenance, increased proportion of heavy oil shipments. And in relation to the last one, the proportion of heavy oil shipments, this answer caught my eye. It says:

*"Confirmed. However, under the proposed Expansion, the proportion of heavy crude will likely have no impact on capacity due to the dedicated operation of a two pipe system (one in light and one in heavy service)."*

589.           First of all, I would just like to clarify this; is this part of Trans Mountain's proposal that you'll have a segregated two-pipe system, one for light

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and one for heavy?

590. **MR. MacFARLANE:** We have a segregated two-pipe system, that's correct.

591. **MR. BERGNER:** As part of this proposal?

592. **MR. MacFARLANE:** As part of this proposal, yes.

593. **MR. BERGNER:** And which is which, the heavy pipe is ---

594. **MR. MacFARLANE:** The heavy pipe is the 36-inch pipe.

595. **MR. BERGNER:** And that's the 590,000 ---

596. **MR. MacFARLANE:** Five hundred and ninety thousand (590,000).

597. **MR. BERGNER:** --- nominal capacity. And so the existing pipe ---

598. **MR. MacFARLANE:** Just let me check the capacity, please.

599. The design capacity of the 36-inch, for the purposes of this application, would be 540,000 barrels a day.

600. **MR. BERGNER:** Sorry, 540?

601. **MR. MacFARLANE:** Five hundred and forty (540).

602. **MR. BERGNER:** So help me with the math, your current system has a nominal capacity of 300,000; the expanded system would have a nominal capacity of 890,000, that's 590,000 barrels per day of new capacity. And so that's why I was asking if the new line -- by referring to the new line, the 36-inch line, you were talking about 590,000 barrels of capacity?

603. **MR. MacFARLANE:** I don't recall talking about 590,000. I think the incremental capacity from today is up 590, but I don't recall saying that that was the capacity of the heavy pipe, the 36-inch pipe.

604. What you're seeing there is the advantage of putting just light commodities in the light line will increase its capacity from 300 to 350.

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605. **MR. BERGNER:** Okay. Okay. Thank you.

606. And so returning to this answer where you say:

*"...the proportion of [...] crude will likely have no impact..."*

607. Why the qualifier "likely"; will it have an impact or won't it?

608. **MR. MacFARLANE:** The proportion of heavy crude, there is a possibility that you could do heavy crude in the 24-inch pipeline. We're not precluding that. However, it's not in the current design plan.

609. As well, heavy crude can be blended with other light commodities and moved on the light line as well.

610. **MR. BERGNER:** Okay. So if I'm understanding, the 540,000 barrels per day of the new 36-inch line is dedicated to heavy but if there's more heavy, that could also be moved on the existing pipe, if I can call it that?

611. **MR. MacFARLANE:** Should capacity be available on the existing pipe, we would not turn back heavy crude, we would move it on the 24-inch.

612. **MR. BERGNER:** Thank you. And so would the two lines be apportioned separately?

--- (A short pause/Courte pause)

613. **MR. MacFARLANE:** We anticipate a portion of this pipeline in aggregate. However, we do reserve the right to accept commodities or not, depending on the operating capability of the pipeline.

614. **MR. BERGNER:** Right. So if you're accepting more heavy, and that extra heavy gets shipped on the existing pipeline, the proportion of heavy crude could have an impact on capacity available on that existing line for uncommitted shippers; correct?

615. **MR. MacFARLANE:** Not if more heavy goes on the new pipeline. That would have no impact. If there's capacity available after satisfying all the light nominations such that we could move heavy on the 24-inch, we would -- we

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would do that.

616.           **MR. BERGNER:** Okay. So that's exactly the point I was trying to get at. Are light and heavy apportioned separately or is apportionment in aggregate?
617.           In other words, if light -- if shippers want to move light crude on that existing line, do they get that space notwithstanding the proportion of heavy crude nominations? Is it in aggregate or is it separate? That's what I'm trying to understand.
618.           **MR. MacFARLANE:** It is in aggregate, however, we always look at the types of commodities nominated, and there could be reasons why we would not be able to accept certain commodities based on pipeline capacity, tank volume or capacity, segregation requirements, and others.
619.           And so the answer is we are looking to apportion in aggregate, however, it would be an unusual circumstance where we would put heavy crude on the 24-inch pipe and only where such capacity would be available without injuring the other parties.
620.           **MR. BERGNER:** And those "other parties" being the light crude shippers?
621.           **MR. MacFARLANE:** The light shippers. The incremental heavy capacity -- heavy volume put on the light would have significant impact. The first batch in would have a significant impact on the capacity.
622.           **MR. BERGNER:** Right. And that negates, if you will, the benefit you were referencing earlier of making the existing line 350,000 barrels per day of nominal capacity. If you put heavy on that line, that's no longer there; correct?

--- (A short pause/Courte pause)

623.           **MR. MacFARLANE:** I guess what I was trying to describe and maybe not very well is that the ability to move light crude on the heavy line is unrestricted. We would certainly accommodate higher nominations of light crude if capacity was available on the heavy. The reverse is not necessarily the case because of the capacity impact it would have on the 24-inch pipe.

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624. So we would apportion -- in that case, in the case where the 36-inch pipe is oversubscribed and the 24-inch pipe -- the light pipe -- is either near or at its capacity, we would apportion the heavy crude at a higher rate than light crude.

625. **MR. BERGNER:** Thank you.

626. Sticking with capacity but in a slightly different vein -- and I think we can forego the exhibit reference here. In its update to its application, the January 10, 2013, Trans Mountain stated that the 80/20 split between land and dock, quote, "reflects physical limitations at the Westridge dock".

627. And I'd like to understand, what are the relative physical limitations of the Westridge dock?

628. **MR. MacFARLANE:** The limitations are around the tanker logistics in the port of Metro Vancouver and our ability to move ships through a -- the second narrows in particular.

629. **MR. BERGNER:** And in terms of a capacity -- the capacity limitations that this imposes -- and again, I apologize for doing math on my feet, it's not in my nature -- but under the applied-for methodology, 588,000 barrels per day of firm commitments have been made to the dock; correct?

630. **MR. MacFARLANE:** Correct.

631. **MR. BERGNER:** And in addition, there's 40,000 barrels per day of uncommitted capacity to the dock; correct?

632. **MR. MacFARLANE:** Approximately, yes.

633. **MR. BERGNER:** And so adding those two together, 628,000 barrels per day, is that the physical limitation at the Westridge dock?

634. **MR. MacFARLANE:** It is not. It's the level of crude movements we feel is appropriate for the second narrows.

635. **MR. BERGNER:** No, I appreciate that, but does that limitation mean that 528,000 barrels per day is effectively the limit at the Westridge dock?

--- (A short pause/Court pause)

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636. **MR. MacFARLANE:** The limitations on tanker logistics through the port of Metro Vancouver is the limit on the number of ships. The volume is impacted by the quantity of crude that we can put on each one of those ships -- some ships are larger, some are smaller.
637. And so in our design we reviewed the 590,000 barrels a day roughly of capacity -- of committed capacity, and added a reasonable 40,000 barrels a day of uncommitted capacity to get the 630, determined that that was an appropriate level of ships given the average ships that come into the port of Vancouver.
638. **MR. BERGNER:** Thank you.
639. Let's try a new voice. Mr. Reed, we've heard from you briefly, but perhaps we can bring you back into this.
640. And just so we have a reference in front of us, could I ask the Regulatory Officer to please call up Exhibit B18-03, that's the reply evidence of John J. Reed. And that's it on page 2, starting at line 32.
641. And this is in response to Suncor -- and you'll hear from Suncor later, but I wanted to pick up one point in this response. Starting at line 32, it says:
- “There is no merit to Suncor’s claim that it has no good alternatives to the Trans Mountain expansion and that the Open Season process was tainted by Trans Mountain’s market power.”*
642. And it's this next sentence I want to focus on:
- “Suncor has completely failed to address the fact that it could, either alone or with others, develop or financially support its own pipeline.”*
643. And I'll finish there.
644. I'm asking questions today on behalf of Chevron, including Chevron Canada Limited, which as we've discussed, has an oil refinery in Burnaby, British Columbia. And my question is would your answer be the same to them? In other words, if Chevron believed that Trans Mountain was exerting market power,

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would you similarly suggest that Chevron could, either alone or with others, build its own pipeline?

645. **MR. REED:** Yes, I believe that option is available to Chevron as well as the other shippers on the system.

646. **MR. BERGNER:** Thank you. Are you aware that that is exactly what Chevron did in the 1950s; it did finance a pipeline to supply its refinery in Burnaby and that refinery is currently called the Trans Mountain Pipeline?

647. **MR. REED:** That pipeline is now referred to as the Trans Mountain Pipeline, is that what you meant to say?

648. **MR. BERGNER:** Yes.

649. **MR. REED:** I'm not aware of Chevron's involvement in the original construction of the pipeline, but that does not surprise me. Most of the firm shippers on the Trans Mountain system have experience on their own in building oil pipelines.

650. **MR. BERGNER:** And Mr. Stoness, you can confirm that the Burnaby refinery has been using the Trans Mountain pipeline since it was constructed in 1954?

651. **MR. STONESS:** That's my understanding, yes.

652. **MR. BERGNER:** Thank you.

653. And Mr. Reed -- forgive me. Mr. Reed, from a societal perspective do you think it makes sense to have more than one pipeline serving the Burnaby refinery connecting Edmonton and Burnaby?

654. **MR. REED:** That depends largely on the economics and other benefits of potentially having more than one pipeline. So societal benefit would include, of course, not just environmental impacts and socio-economic impacts but also the potential competitive impacts, so it could. I would not want to answer that without a lot more specific information.

655. **MR. BERGNER:** Okay. But in answer to Suncor, you're saying they failed to address the fact they could build their own pipeline. And so by that, are

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- you suggesting that building its own pipeline would be a good and viable alternative for the Burnaby refinery?
656.           **MR. REED:** Am I suggesting that to Chevron, is that your question?
657.           **MR. BERGNER:** I'm asking would your answer be the same to Chevron? If Chevron doesn't like what Trans Mountain is offering, is your answer build your own pipeline?
658.           **MR. REED:** No, my answer is it acts as a break on the potential exertion of market power in these circumstances. Any form of new entry does that. We have seen, in fact, these parties engage in new entry to avoid concerns about the level of competition in the marketplace. We've also seen these parties propose open seasons to develop their own very, very large pipelines.
659.           I have worked for some of these parties in proposing and implementing open seasons for new pipelines. So it's an option ---
660.           **MR. BERGNER:** Fair enough.
661.           **MR. REED:** It's a ---
662.           **MR. BERGNER:** My ---
663.           **MR. REED:** --- as a check on market power, that was my point.
664.           **MR. BERGNER:** Okay. And so you believe it also acts as a check on Trans Mountain's market power that my client, Chevron Canada Limited, has the option of building its own pipeline to Burnaby?
665.           **MR. REED:** Yes, that's one of the many elements that keeps that in check.
666.           **MR. BERGNER:** Thank you.
667.           And perhaps just while we have that exhibit up, if we could scroll to the next page, page 3. And this is in response to Suncor's concern about recapitalizing the existing rate base.
668.           And I won't read it, but again let's start with a few facts. Perhaps this

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one for Mr. Stoness, can you confirm that up to 1995 Trans Mountain was regulated on a cost-of-service basis?

669.           **MR. STONESS:** So I think the answer is complicated. In the initial years of the pipeline I don't believe it was subject to regulation from the NEB. Somewhere around the early sixties it became subject to regulation at the NEB. Subsequent to that it was largely regulated on a cost-of-service basis, however there were several settlements and I wasn't here prior to 1995 so I don't know if they were prior to 1995.

670.           So, whether you would call a settlement a cost-of-service or not is your choice in your question. And then prior -- past that point in time there were many settlements.

671.           **MR. BERGNER:** Fair enough. So starting in 1996 there was the incentive toll settlement for 5 years, and again in 2001 there was an incentive toll settlement for 5 years; correct?

672.           **MR. STONESS:** That is correct.

673.           **MR. BERGNER:** Thank you. And just while we're talking about those can you confirm for me that in the 1996 and the 2000 incentive toll settlements the three signatories to that were Trans Mountain, CAPP (Canadian Association of Petroleum Producers) and Chevron?

674.           **MR. STONESS:** That is my understanding, yes.

675.           **MR. BERGNER:** Thank you. And in the 1996 and 2000 incentive toll settlements there was a depreciation rate identified for the existing Trans Mountain pipeline; correct?

676.           And there's a reference for this but I'm trying to move more expeditiously. If you're able to confirm ---

677.           **MR. STONESS:** That is my understanding -- that is my understanding as well.

678.           **MR. BERGNER:** Thank you.

679.           And are you able to confirm that under the 2000 settlement, in respect

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of depreciation, Trans Mountain took the view that the economic truncation date of the system was 2025?

680. **MR. STONESS:** That is my understanding as well.

681. **MR. BERGNER:** Currently, Trans Mountain's view is not that the economic truncation date of the existing line is 2025; correct? You don't plan to take that line out of service in 2025?

682. **MR. STONESS:** There is no plan to take it out of service in 2025. I believe the -- there is no plan to take it out of service in 2025. I believe the current depreciation rate is somewhere in the order of 35-year expected life.

683. **MR. BERGNER:** It's -- sorry I missed that last part, the current?

684. **MR. STONESS:** The current depreciation rates are somewhere in the 35-year life --expected life.

685. **MR. BERGNER:** And that's the proposed depreciation rate for the expansion; correct?

686. **MR. STONESS:** No, the -- well it's a complicated question. There are -- if you look in CAPP 1.3, you'll see a different depreciation for the existing rate base as opposed to the incremental rate base.

687. And I think I misspoke; the 35-year depreciation rate is the incremental rate base. The existing rate base is at a longer rate.

688. **MR. BERGNER:** Thank you.

689. So Mr. Reed, if we could return to you and return to that exhibit which was Exhibit B18-03, your reply evidence on page 3, line 3 -- 1, 2, 3. There we go.

690. It's the second sentence I wanted to pick up on in that paragraph. It says:

*"Pursuant to negotiated tolls, there is no 4 longer a regulated rate base on which Trans Mountain can earn a regulated 5 rate of return going forward..."*

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691. I want to be clear; the negotiated tolls you're referring to here are the negotiated tolls proposed in this proceeding; correct, it's not the negotiated we've experienced on the system, including the 1996 and the 2000 incentive toll settlements we've been talking about?
692. **MR. REED:** My reference is to the proposed negotiated tolls. I don't have an opinion with regard to the past settlements.
693. **MR. BERGNER:** Thank you. So this statement you're making is forward looking, about if negotiated tolls are used, as proposed here, then there will be no longer a regulated rate base; correct?
694. **MR. REED:** Correct, for the duration of the negotiated tolls. Yes.
695. **MR. BERGNER:** Thank you.
696. Mr. Chairman, I have one last area to cover. I'm content to endeavour to do that before the break but it may spill slightly over beyond 10:30.
697. **THE CHAIRMAN:** That's okay, as long as it's not overly spilling over.
698. **MR. BERGNER:** Thank you. It's only one page of notes, it shouldn't be that long.
699. A reference was made a moment ago, I believe by you Mr. MacFarlane, to CAPP, (Canadian Association of Petroleum Producers) IR 1.3. If we could turn to that, please, it's Exhibit B16-06. That's it. And page 5 of 7, and if we could go down to the bottom of the page?
700. There we go. I'm sorry maybe it's the list at the top of the page. No, no, sorry. That's it. Right.
701. And in discussing this IR, and in some of the answers discussed a moment ago, there was a discussion of various risks that were identified and some of the risks are identified here. And so if I could just summarize some of these risks that I think we've been talking about, risk of increased construction cost, risk of increased operating cost, underutilization, changing market conditions and shipper default.

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702. Are these the main risks Trans Mountain is referring to in this IR? Did I miss any?

703. **MR. STONESS:** I'm sorry can you repeat your list?

704. **MR. BERGNER:** Sure. Perhaps we can take it one by one. One of the risks Trans Mountain is concerned about is increasing construction costs.

705. **MR. STONESS:** That is correct.

706. **MR. BERGNER:** Correct?

707. Another is increase in operating costs?

708. **MR. STONESS:** That is correct.

709. **MR. BERGNER:** Another risk is underutilization of capacity?

710. **MR. STONESS:** That's correct.

711. **MR. BERGNER:** Another is changing market conditions?

712. **MR. STONESS:** That is correct.

713. **MR. BERGNER:** And the last one I had listed was shipper default?

714. **MR. STONESS:** That is correct.

715. **MR. BERGNER:** And so these are some of the risks identified that Trans Mountain says it essentially needs to be compensated for?

716. **MR. STONESS:** Well, I would point out that the line above indicates "such as" so there are additional risks in addition to that list that you've put forward.

717. **MR. BERGNER:** Fair comment.

718. **MR. STONESS:** One for example, which is quite significant, is sustaining capital. So at some point during the life of this project there could be significant capital needs and that might also change the return expectation.

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719. **MR. BERGNER:** Thank you.

720. Would you agree that a cost-of-service pipeline can react to issues such as increases in construction or operating costs, underutilization, changing market conditions and shipper default by filing for updated tolls?

721. **MR. STONESS:** Yes, is the short answer.

722. **MR. BERGNER:** Thank you.

723. And, Mr. Reed, will you also agree with that because I actually took that from your reply evidence? That a cost-of-service pipeline can react to issues such as those by filing for updated tolls.

724. I can take you to that if you like.

725. **MR. REED:** I agree with this statement. I think that's exactly what the shippers here were concerned about. Was that under a cost-of-service model the pipeline could do that and that their shippers would face those risks.

726. **MR. BERGNER:** Right. But Trans Mountain has identified these risks as risks it is taking on by not being a cost-of-service pipeline. And my suggestion to you if Trans Mountain was to be a cost-of-service pipeline it could react to these issues if they arise by filing for updated tolls.

727. **MR. REED:** The answer to that is yes. I think if it was operating as a cost-of-service pipeline this risk is essentially shifted from the transporter to the customers and that is exactly what the customers here were afraid of; was facing that risk and that uncertainty over 20 years of firm service agreements.

728. And so yes you could shift the risk to the customers. That probably would not permit the pipeline to be built, which is a different issue, but yes under a cost-of-service model you can shift those risks.

729. **MR. BERGNER:** And just to pick up ---

730. **MR. STONESS:** Sorry, Mr. Bergner, let me just clarify one thing which is market risk is -- is one of the ones that would shift to us as opposed to the shippers. So that one shifts in a different direction.

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731.           **MR. BERGNER:** Sorry; you're referring to the changing market conditions one we identify?
732.           I was taking that to be -- to be related to underutilization, changing market conditions may result in underutilization.
733.           **MR. STONESS:** Sorry, I didn't get that question.
734.           **MR. BERGNER:** I was trying to understand the clarification you were offering about market conditions or changes to market conditions. And I was clarifying that I had understood that to be a reference to changing market conditions may result in underutilization and so that that's a risk for Trans Mountain.
735.           **MR. STONESS:** Right. And what I was saying is that I agree with Mr. Reed but there is a risk that we could have death spiral and that risk is shift -- shifted to the cost-of-service entity unlike the others.
736.           **MR. BERGNER:** Right. And just while we're talking about what shippers want, can we agree that some shippers want?
737.           **MR. REED:** Yes. I think the evidence of the firm service agreements are -- is indicative of what those shippers want.
738.           **MR. BERGNER:** Right. But it doesn't reflect the wants of those shippers who did not sign firm service agreements; correct?
739.           **MR. REED:** I would agree with that. I don't think you can ---
740.           **MR. BERGNER:** Thank you.
741.           **MR. REED:** --- infer either agreement or disagreement by the shippers not having signed up for that firm service.
742.           **MR. BERGNER:** Thank you.
743.           No further questions.
744.           **THE CHAIRMAN:** Thank you.

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745. Just to be clear is that -- you've finished your cross?

746. **MR. BERGNER:** With the Panel's indulgence, if I just might review my notes over the break I believe I've finished my cross but...

747. **THE CHAIRMAN:** Okay that's fine. We'll take a break at this time.

748. **MR. BERGNER:** If I can leave my finger on the piece.

749. **THE CHAIRMAN:** I just wanted to know if we should call you back or -- so we will return at five past 11.

---Upon recessing at 10:34 a.m./L'audience est suspendue à 10h34

--- Upon resuming at 11:03 a.m./L'audience est reprise à 11h03

**IAN ANDERSON: Resumed**

**SCOTT STONESS: Resumed**

**NORMAN RINNE: Resumed**

**GREGORY HILL: Resumed**

**KEVIN MacFARLANE: Resumed**

**JOHN REED: Resumed**

**GEORGE SCHINK: Resumed**

**STEVEN KELLY: Resumed**

750. **THE CHAIRMAN:** Mr. Bergner, have you had a chance to review your notes.

751. **MR. BERGNER:** I have. And I'm -- I'm pleased to advise Mr. Anderson and others who have scheduling constraints that I won't detain them any further; I have finished with my questions so it just remains to say thank you to the witness panel.

752. **THE CHAIRMAN:** Thank you, sir.

753. **MS. BEAUCHEMIN:** Mr. Roth for Suncor.

754. **MR. NETTLETON:** Mr. Chairman, while Mr. Roth gets set up, perhaps I could just advise you of -- of some developments over the break with discussions with my friends and colleagues regarding timing.

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755. It -- it seems that adjustments are being made to schedules and other time constraints are developing. As I understand it, in addition to Mr. -- Dr. Waverman's constraint on time for Tuesday my friend Mr. Miller's panel, the Total panel, is only available this week. Which we'll try to accommodate I think as I understand it from discussions with my friends such that Dr. Waverman would appear before the end of this week, along with the Total panel, but not as part of the Total panel. But both of those we would try and accommodate this week.
756. We would conclude any cross of those panels then and then the Suncor panel, the remainder of the Suncor panel would come back the second week and be available for cross-examination then.
757. I also understand from my friend Mr. Roth that in terms of questioning of the Trans Mountain panel, and again to accommodate time constraints, Mr. Roth will be -- intends to cross-examine Mr. Anderson's areas and then have Mr. Miller come in and -- and engage in cross and then return to the other areas that Mr. -- sorry, Mr. Zalmanowitz will then come in and return to other areas that Suncor wants to pursue with these witnesses.
758. I think what we're likely to see is if that -- if that schedule actually is one that proceeds forward, I will be in need of speaking to my clients and witnesses that are on this panel for the purposes of preparing for cross.
759. And so I would ask that request of you, of the panel, recognizing of course that I would not be engaging in any discussions with them about their testimony and preparation for cross-examination in this panel.
760. So I would make that request. I think it only works if I have that ability.
761. **THE CHAIRMAN:** The Panel -- the Board doesn't have a problem with that as long -- with the proviso that you made in terms of rules of natural justice.
762. **MR. NETTLETON:** Thank you.
763. **MR. ROTH:** Good morning, Mr. Chairman and Members of the

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Panel, members of the Trans Mountain witness panel.

764. Sir, just -- and I mentioned it earlier when I was entering an appearance, I do also have questions for Dr. Lessard. So in the event that I finished up today, Mr. Miller would come on if there is still time, Mr. Zalmanowitz would come on and then I would finish with -- with Dr. Lessard and the TNPL witnesses on capital costs tomorrow.

765. I should however note that Mr. Nettleton wasn't provided Mr. Zalmanowitz's aids to cross-examination until yesterday evening in anticipation that Mr. Zalmanowitz won't be up until tomorrow in any event. And I don't anticipate he will. But in the event that he does -- does come up the Trans Mountain witnesses may not have had an opportunity to fully review those aids to cross-examination.

766. So with that said, sir, I propose to commence my cross-examination of the Trans Mountain panel.

**--- EXAMINATION BY/INTERROGATOIRE PAR MR. ROTH:**

767. **MR. ROTH:** So good morning, gentlemen. I don't think I've had the pleasure of examining very many of you. In fact I think Mr. Reed it's just been you and I on a couple of occasions back in New Brunswick on that Emera pipeline and I think TCPL's restructuring application I heard the word regulatory compact from you a few times.

768. But for the rest of you, my name is Bernard Roth, and along with Mr. Barry Zalmanowitz we're representing Suncor in this proceeding.

769. So I wanted to start with some questions about Trans Mountain's history as a very good pipeline company with a very good pipe. And Mr. Anderson, I'm assuming that you might be the best to help me out here.

770. It was difficult to tell from your direct evidence how long you've been associated with the Trans Mountain asset. It appears to have been for some time and even prior to Kinder Morgan's involvement, but it might not go back to the original construction. Am I correct in that?

771. **MR. ANDERSON:** It certainly does not go back to original construction, Mr. Roth. I joined what was then Terasen Pipelines in late 2004

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- coming from the Terasen group of companies in Vancouver.
772.           **MR. ROTH:** Perfect. So -- and I had some questions on the development of anchor loop, the TMX expansion program. So you would have come on board just during the initial stages of that program, so you can help me out on questions in that area as well.
773.           **MR. ANDERSON:** I'll certainly try.
774.           **MR. ROTH:** Is there anyone on the panel with more Trans Mountain experience than you, that's worked for the company dating back longer than 2004?
775.           **MR. ANDERSON:** For sure Mr. Rinne. Mr. Rinne would have been with Trans Mountain much longer than that. He can offer up the length of time.
776.           Mr. Hill, for certain, has been with Trans Mountain longer than I. And I believe Mr. MacFarlane probably joined shortly after I did.
777.           **MR. ROTH:** Okay, great.
778.           Mr. Anderson, to get into the background, I wanted to start with a couple of documents. And I'm going to be referring to them a few times during the course of my cross-examination. And I provided all of them to your counsel in advance.
779.           But the ones I wanted to start with were the slides from an investor presentation that you would have recently given, as well as a transcript of your comments made at that presentation and covering those slides. Do you have those?
780.           **MR. ANDERSON:** I have the aids to cross that you provided yesterday, yes.
781.           **MR. ROTH:** Okay. So with -- just so the Board Panel and Board staff can follow along, I just propose to distribute these two aids to cross-examination.
782.           **THE CHAIRMAN:** Go ahead, please.

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--- (A short pause/Courte pause)

783.           **THE CHAIRMAN:** Mr. Roth, I'm assuming you're not asking for exhibit numbers for aids to cross?

784.           **MR. ROTH:** We might want to get through them and if Mr. Nettleton finds it acceptable after I've crossed on them for a while, we could give them exhibit numbers after that.

785.           We -- I will be proposing to do it at the end of the day, so we could do it right now. Whatever Mr. Nettleton prefers.

786.           **MR. NETTLETON:** I would like to first see where this is going and then let's -- if I could request that we decide whether or not there's any issues, then we can have the discussion about whether there should be a ---

787.           **THE CHAIRMAN:** I think that's a good way of proceeding.

788.           **MR. ROTH:** Thank you, sir.

789.           Now, I just want to get the context in which this investor presentation was given. And I noted that at one point at the bottom of the first page, in reference to Keystone XL, you said -- you swear to God that we all need the Keystone XL pipeline to happen and suggested we all cross our fingers.

790.           **MR. NETTLETON:** Sorry. Where are you -- are you -- where are you?

791.           **MR. ROTH:** Sorry. The bottom of the first page.

792.           **MR. NETTLETON:** This is the transcript? Are you referring to ---

793.           **MR. ROTH:** The transcript. It's in fact the transcript, which says -- you're quoted as saying:

*"The pipeline capacity assumes XL gets approved. Cross your fingers, swear to God, we all need that to happen." (As read)*

794.           Now, I take it from your presentation that it wasn't under oath, that was just a figure of speech.

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795. **MR. ANDERSON:** It was just a figure of speech, Mr. Roth.
796. **MR. ROTH:** But having that, and although some of your comments were forward looking, the presentation you gave and the statements you made were to investors and were accurate, to the best of your knowledge and belief at the time?
797. **MR. ANDERSON:** What I would say is that the statements I made at the analysts' conference in the context of that conference were accurate as I would understand them as well as included my points of view on a number of things which I think is likely evidenced once reading that transcript that some were my points of view on some topics.
798. **MR. ROTH:** Correct. But it was an investor presentation and it's important to be accurate. You certainly don't want to mislead investors, you want to provide them with accurate information and accurate, honestly-held opinions during the course of that presentation; correct?
799. **MR. ANDERSON:** Most certainly I would strive for accuracy. Like I said though, with the related dose of opinion.
800. **MR. ROTH:** And obviously when you're making forward looking statements, they have to be based on opinion because we don't know what the facts are; correct?
801. **MR. ANDERSON:** Yes. And the presentation would have been qualified that way.
802. **MR. ROTH:** So in the presentation, as I read it, you're largely speaking to the investment opportunity for Kinder Morgan partners associated with Trans Mountain expansion; correct?
803. **MR. ANDERSON:** My part of the investor presentation, Mr. Roth, would have covered both the current and existing operations of Kinder Morgan Canada, including the Trans Mountain expansion potential that exists.
804. **MR. ROTH:** Right. Which is by way of length of the presentation, most of your time was spent speaking to the expansion.

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805.           **MR. ANDERSON:** That's correct.
806.           **MR. ROTH:** Okay. And you cover some Trans Mountain history and provide an overview to investors of some of the risks associated with the expansion; correct?
807.           **MR. ANDERSON:** I provided a bit of history to the process that we undertook that led to the proposal and the proceeding that we're in today. As well, I provided some perspective on what I saw the opportunities and some of the broader challenges in executing on the project.
808.           **MR. ROTH:** And another term for "challenges" are "risks"?
809.           **MR. ANDERSON:** I think they likely have different definitions, but they're not unrelated.
810.           **MR. ROTH:** Okay. And as far as history is concerned, you mentioned the pipeline was built in 1953 and crosses 1,100 watercourses and that you, Trans Mountain, carefully and diligently manages this each and every year; correct?
811.           That would be on page 4, the second paragraph, the last couple of sentences -- last two sentences.
812.           **MR. ANDERSON:** That's correct. I do believe saying that, Mr. Roth.
813.           This may be an opportune place for me to point out that I do not believe there was actually a transcribed document that came out of the conference, that this was your or your client's capturing of the transcript from the audio, I think, that was provided. But we didn't provide a transcript per se, nor were there written speeches provided.
814.           **MR. ROTH:** Okay. Have you -- you had the opportunity to review this written transcription?
815.           **MR. ANDERSON:** I have.
816.           **MR. ROTH:** Okay. Were there any inaccuracies that you noted in it that we should correct?

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817.           **MR. NETTLETON:** Mr. Chairman, the witness has just answered that there was no transcript. I don't know how he would be in a position to compare against something that didn't exist.
818.           **MR. ROTH:** Just from his general recollection, sir. This is the third iteration, and the tape was a little bit fuzzy and a great deal of detail was -- or time was spent making sure it was transcribed accurately, but if Mr. Anderson has any recollection that something just doesn't look right -- more from his recollection, I understand that he doesn't have -- didn't have speaking notes.
819.           It's not a big deal. If he just recalls, he's read the transcript, was there anything that stood out as a manifest mistake?
820.           **MR. NETTLETON:** I think what my friend just referred to is that he produced this from some tape. And I think it would be helpful to the Board to understand exactly how this came about and what tape he's referring to.
821.           But I think the question, in order for the witness to answer the question about authenticity, one first has to establish how this document came about.
822.           **MR. ROTH:** Sir, it's a webcast that's available on -- I believe it's Kinder Morgan's website, and I had my assistant take a Dictaphone, tape it off of the computer and then do what she does with all of my tapes; she typed it up.
823.           And then there were two other individuals from Suncor and Mr. Matwichuk that carefully listen to the tape and proofread it against the transcript she had produced. That's how the transcript was generated.
824.           **THE CHAIRMAN:** I guess it depends how you use it. If you're going to be using it to kind of nitpick every single word of something of that nature, I'm a bit nervous about it, if it's kind of general questions based on that, that's probably more of an appropriate nature, if it's something that Mr. Anderson recollects.
825.           Is that satisfactory?
826.           **MR. ROTH:** That's satisfactory. I just wanted to know he, having read it, if he just said, "Oh, I don't think I said that", I just wanted him to tell me now, and that might eliminate some questions later.

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827.           **MR. ANDERSON:** Mr. Roth, I don't believe there is anything in this that I don't recall saying. I cannot, as it's been noted, defend the exact words or every word that is used to describe it. Having put that qualifier to it, there were no apparent errors in it to me or misstatements.
828.           **MR. ROTH:** Thank you very much.
829.           Now, Trans Mountain obviously knows the pipeline route and the right-of-way very well, and this would be required in order to assess ongoing geotechnical risks associated with the river crossings you were mentioning. There were geo-hazards as well; correct?
830.           **MR. ANDERSON:** We most certainly have ongoing integrity programs that are undertaken to ensure the safety and security of the pipeline.
831.           **MR. ROTH:** But you'd also have a great deal of detailed information regarding the right-of-way. I know it's a big issue as far as water crossings and river scour, avalanche areas, areas of seismicity, shifting. You'd have a very good handle on all of those issues associated with your right-of-way, given the 60 years of operations and the fact that you diligently look at these matters on an annual basis; correct?
832.           **MR. ANDERSON:** Mr. Roth, I'm not disputing the premise. You're using words like "very good" and so forth, which are somewhat subjective in their interpretation.
833.           What I can say is that we have very good knowledge of the right-of-way, the asset, the crossings, the condition of those crossings, the natural hazards that are around the pipeline, and we monitor those things on a regular basis according to both our standards and regulatory standards.
834.           **MR. ROTH:** Okay. And you state that you have confidence that Trans Mountain, in 2015, will be able to do as good a job or better constructing a line than it did in 1953?
835.           **MR. ANDERSON:** Yes, sir.
836.           **MR. ROTH:** Okay. And it's my understanding that generally speaking an excellent job was done installing the 24-inch line. One example is

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- the coating that was applied in trench at the time of the construction has more than withstood the test of time such that the pipeline is in excellent shape and you have no reason to believe that it cannot be operated safely at design capacity for as long or longer than the new 36-inch line you're putting in?
837.           **MR. ANDERSON:** I don't know compared to the new 36-inch, but I can certainly attest to the fact that we believe that the condition of the pipeline is such that we remain confident it can continue to be operated indefinitely.
838.           **MR. ROTH:** And you also say you're recognized in B.C. for being a very experienced operator and builder of pipelines after 60 years, and this is what has led to Trans Mountain being so well respected?
839.           **MR. ANDERSON:** I did say that, yes.
840.           **MR. ROTH:** Okay. And you do talk about that you have an integrity record and you put it out for all to see and I would suggest to you, and you can disagree if you want, but I would suggest that Trans Mountain, over its 60 years of operations, has an excellent record of integrity of the operations of that pipeline. And, in fact, one of the things is that you've never had any marine incident in the life of the Westridge dock and shipping out of it, have you?
841.           **MR. ANDERSON:** I believe we have an excellent record as an operator of the pipeline, Mr. Roth, and I'm not aware of any incidents that have ever occurred at our dock.
842.           **MR. ROTH:** As well, you have detailed knowledge of the route and of the right-of-way from the geophysical aspects, geological, hydrological -- hydro-geological perspective, but you also have extremely good knowledge of the route from both a social and environmental perspective. And I think you've given an example of this that you know at least 40 of the Chiefs of First Nations affected by the route on a first-names basis?
843.           **MR. ANDERSON:** Let me break that down in pieces. You made a big jump from all of the "ological" references you made, some of which I don't even know the meaning of.
844.           I can say that we would have experience in operating the pipeline and considering the condition of the pipe and the environment around it most certainly, and we have people who undertake that work every day.

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845. I can also say that we've got relationships with communities along the pipeline, every community, including First Nations communities.
846. **MR. ROTH:** Right, but from a social stakeholder perspective as a well-respected operator, you have very good stakeholder relations. So from a social, socio-economic and environmental perspective, your 60 years of operations has stood you in good stead to advance this expansion?
847. **MR. ANDERSON:** I think the context I'd put around that, Mr. Roth, is I believe entirely that we've got a trustful and respected operation in British Columbia, and I think we've proven that over decades of operation, which is not to say that there aren't those in the public or who potentially oppose pipeline projects or other aspects of our industry, who perhaps would have a different point of view.
848. Therefore, I can't immediately equate the history and the operations of the pipeline to an assumption that we have all of the societal trust, confidence, and so-called licence to continue to expand. Those are things we need to continue to earn every day going forward.
849. **MR. ROTH:** Right. And I didn't mean to suggest that there was going to be no objecting parties to your expansion application. I was just trying to compare Trans Mountain after 60 years, working from a starting point in this expansion with a very good reputation relative to maybe a Greenfield project, if Suncor decided to try and build a pipeline to Vancouver, you have a better starting position in all of these respects.
850. **MR. ANDERSON:** I will acknowledge that we have an existing operation, Mr. Roth, that comes with relationships and what I believe is trust and a mutual respect with a number of the parties and counter-parties that we deal with on a daily basis.
851. Whether or not that provides some advantage over a Greenfield proposal, I think is very much dependent upon the circumstances, the location, and the specific interests of parties for any proposal.
852. **MR. ROTH:** Maybe we could put it in real terms. If I got a -- Suncor has a project, a pipeline project and we're looking for a president to run us through regulatory approvals in getting it and we're willing to offer exactly the

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- same financial incentive to you for a successful outcome that Trans Mountain Kinder Morgan would, and you had the two job offers, and also assuming that you're a financially motivated person, which job would you take?
853.           **MR. ANDERSON:** I'm sorry I'm going to have to ask you to repeat the question. I thought you were talking about pipeline project then you talked about a job. Can you repeat it for me?
854.           **MR. ROTH:** Okay well, certain people -- your experts, maybe even in your own evidence, suggested an alternative to Suncor would be to build its own project, so I'm raising this hypothetical okay.
855.           Well, Suncor is going to be building its own project at the same time Trans Mountain is going forward with the project and there is a job for a president of the pipeline company that's going to take that forward to regulatory approval and there is a \$25 million bonus for those for -- to getting a certificate; that's what you get the day that certificate comes down, you get a \$25 million paycheque, same base salary. Are you going to work for Suncor or are you going to work for Trans Mountain?
856.           **MR. ANDERSON:** I don't think there are enough facts there for me to consider the job offer, Mr. Roth. I think that it would be largely dependent upon the circumstances and I don't think I want to speculate on what my decision might be.
857.           **MR. ROTH:** Okay. So you're in the running for the job. Okay.
858.           Now, I have the odd reference back to the transcript and you don't have to go there. Sometimes I'll want to go there and actually read it to you. But in response to IR it said that Kinder Morgan partners -- that's referred to as KMP sometimes, you understand that?
859.           **MR. ANDERSON:** I understand that.
860.           **MR. ROTH:** Okay, acquired the Trans Mountain system from KMI -- which would have been Kinder Morgan Inc., correct?
861.           **MR. ANDERSON:** Correct.
862.           **MR. ROTH:** Okay. And that acquisition occurred at some point in

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- 2007 for an acquisition price of \$549.1 million; correct?
863.           **MR. ANDERSON:** I can't confirm that number, Mr. Roth. I don't have it in front of me.
864.           **MR. ROTH:** Okay, so -- okay. I was hoping if it would have been handy. It's -- Trans Mountain's response to Suncor 1.1c which is Exhibit B16-8 at Adobe page 3.
865.           **MR. ANDERSON:** I have the response in front of me now, Mr. Roth.
866.           **MR. ROTH:** Sorry?
867.           **MR. ANDERSON:** I have the response in front of me now.
868.           **MR. ROTH:** Okay, so that's accurate, that you have no reason to dispute that that was the acquisition price?
869.           **MR. ANDERSON:** I have no reason to dispute it, no.
870.           **MR. ROTH:** Okay. And it's also indicated that this acquisition price was at a discount to KMI's net book value. I'd like to know, how big was the discount or what was KMI carrying the Trans Mountain pipeline on its books for at the time of the acquisition?
871.           **MR. ANDERSON:** I am not aware of, Mr. Roth, of what that discount amounted to. That was a transaction between KMI and KMP, I'm not aware of what the actual amount was that was different from the purchase price.
872.           **MR. ROTH:** Would you be able to ascertain that in -- with relative ease? If you asked KMP do you think they'd give you the number and if so, how long do you think it would take?
873.           **MR. ANDERSON:** I'm not quite sure I fully grasp the relevance of it, Mr. Roth, to the application before the Board.
874.           Having said that, I'm sure to the extent the number is publically available and we could find it and provide it to the Board if they thought it was meaningful. And we could probably do that within a day.

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875.           **MR. ROTH:** I'd appreciate that, sir, if that could be an undertaking, Mr. Nettleton can speak to it.
876.           **MR. NETTLETON:** Maybe what Mr. Roth can do is just help, me at least, understand the relevance of the discount to this proceeding and then I can make an understanding about what -- or whether there's an object.
877.           **THE CHAIRMAN:** I would be interested in that answer, Mr. Roth.
878.           **MR. ROTH:** So it is explained in Suncor's evidence. I think there's a concern here, sir, that purchase price premiums for regulated assets are in play here. And what inevitably happens if someone has paid a premium over net book value or over the regulated rate base and net book value of a company, they tend to want to earn a return on that. And we're suggesting there's a large element of that in play.
879.           Over successive iterations, the assets certainly became a lot more valuable once the Anchor Loop was built and it's Suncor's view -- and I'll continue to pursue in cross-examination, that a significant purchase price premium was paid for the asset based on the ability to expand it. And all this happened in the timeframe of the Kinder Morgan acquisitions in 2005 and 2007.
880.           So what the Board has to be very concerned about is whether the application before it is in fact, designed to earn a return on effectively what was paid for a regulated asset based on its expansion potential. And most of that's the Anchor Loop, sir, but there's certainly other things that Mr. Anderson has been speaking to. So that's the relevance of it.
881.           **THE CHAIRMAN:** Could you just maybe make a bit more explicit the link to where in the Part IV application here to just and reasonable tariff?
882.           **MR. ROTH:** Right. So the link to it, sir, would be the motivation of Trans Mountain to be earning a return on a purchase price premium paid for a regulated asset that's fundamentally a Part IV issue.
883.           **MR. NETTLETON:** Mr. Chairman, the reason why I'm rising is what I heard from Mr. Roth was the theory of his client's case is that there was a premium paid. But the evidence, as shown in this information request, is to the contrary. It says that a discount from net book value was paid. So that's strike one in terms of this idea that the value of the discount is now something that has

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relevance.

884. And the second point is -- and I don't have the IR reference, but I can get it -- is that the evidence of Trans Mountain in this proceeding is that the existing assets are going to be transferred at net book value.

885. So again, the question is if that is the case -- and my friend is welcome to test these witnesses on that answer about the transfer of the assets going at net book value, but if that is on the face of the record, again, it raises doubt in, respectfully in my mind, about why this discount is relevant at all.

886. So it strikes me that if my friend wants to pursue this area and come back to a question that he's now asking, there would at least be a better understanding or basis for the request that he's making, but until that's established, I do object to the undertaking.

--- (A short pause/Courte pause)

887. **THE CHAIRMAN:** Mr. Roth, we're having difficulty to -- without seeing it that it's hard to say the relevance. We're having difficulty seeing the path forward to how this would help the Board.

888. If you could help us by laying a better foundation to this to see -- at this present time, we'd be inclined to agree with counsel for TransCanada -- sorry, Trans Mountain. I apologize, another excellent company, but...

--- (Laughter/Rires)

889. **MR. ROTH:** I'm hoping you write the same decision as you did in Komie, sir, but a denial of the application.

890. But in any event, sir, the relevance might become clear. So where my cross-examination is leading is it seems like there's sole source financing here and as an investor investing in an asset that you paid a purchase price premium for, and that's like anybody, an individual paying a stock price or anything, there's a tendency to really find it hard to write off a loss and just leave it there. You have a tendency to want to go back and get it at another date.

891. If there was market financing and Trans Mountain could go anywhere it wanted to get its financing and project finance this pipeline, unassociated with a

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history of having paid a purchase price premium for the asset, I would not have an issue here, but once, and I think we'll get to this later in the cross, there's just sole source financing for this project. It's either KMP gets its hurdle rate or there's no project then I think it's very relevant what KMP paid for the asset.

892. Now, if I'm wrong in that and Trans Mountain has access generally to the capital markets and can go project finance this with anyone, then it won't be relevant. So I'm not at the stage in the cross-examination yet where I've got the answer to the question, can KMP or can Trans Mountain go to a different bank than KMP. If the answer to that is no, then I think it's highly relevant, sir.

893. **THE CHAIRMAN:** Sir, given where we are in the cross, I guess, we will let the cross continue right now and we will rule after lunch.

894. **MR. ROTH:** Thank you very much, sir.

895. So this is more of a general question; why would a purchaser pay a premium to net book value for the assets of a regulated company? What would be the motivation to that?

--- (A short pause/Courte pause)

896. **MR. ANDERSON:** Making it a general answer i.e. not specific to either Terasen or Trans Mountain transactions which aren't quite as simple as how you've laid out, generally speaking, a purchaser would pay a premium for a regulated asset if they saw any one of a number of potential opportunities ahead of them.

897. For example, efficiencies and cost reduction that may come from synergies of combining assets, growth opportunities, expansion opportunities, extension of that regulated business, perhaps into other opportunities that might present themselves in other business lines.

898. There's a multiple of reasons that an investor may acquire a regulated asset which wasn't solely the case in -- in this example over and above perhaps a book.

899. **MR. ROTH:** Right. And I think all of them you identified would involve some kind of negotiation or agreement for setting tolls on something different than what's understood as a traditional cost-of-service basis.

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900.           **MR. ANDERSON:** No, not at all. You can still set tolls based on traditional cost-of-service, but that you saw opportunities beyond that or synergies beyond that, so not necessarily at all.

901.           **MR. ROTH:** Okay. Well, one of them is the potential for expansion of the pipe -- an expansion of the pipe and tolling of the expansion and the pipe on something other than a cost-of-service basis. That would be one potential motivation to pay a premium?

902.           **MR. ANDERSON:** I think I've said that, generally speaking, as you described, an investor may pay a premium if they saw the potential to expand and access opportunities it would not otherwise have the opportunity to.

903.           **MR. ROTH:** At the time KMP purchased the Trans Mountain pipeline in 2007, construction of the TMX Anchor Loop was well into process -- in the process of finishing up; correct?

904.           **MR. ANDERSON:** Just to be clear, Mr. Roth. KMI acquired the asset in 2005. KMP acquired the asset from KMI in 2007. So Kinder Morgan had ownership of the Trans Mountain Pipeline prior to Anchor Loop being executed, however, it was in and about the same time that those transactions were occurring that the commercial terms in the planning around Anchor Loop expansion was -- was culminating.

905.           **MR. ROTH:** Okay. And I think you answered my next question. When KMI bought the line from Terasen in 2005, I was going to ask you what the status of Trans Mountain's dealings with the federal government would have been on acquiring the rights to construct the Anchor Loop through Jasper National Park.

--- (A short pause/Courte pause)

906.           **MR. ANDERSON:** Subject to check on specific dates, Mr. Roth, the recollection is that we had a proceeding before the NEB for the -- the first part of that expansion which was a pump station expansion over the period of 2005-2006 and that the Anchor Loop expansion itself was before the Board in 2006, culminating in late 2006 decision and 2007-2008 construction.

907.           **MR. ROTH:** Right.

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908.           **MR. ANDERSON:** So it would have been overlapping with -- with the transaction that occurred between KMI and KMP.
909.           **MR. ROTH:** Right. But -- like I work on pipeline development projects and certainly on a project like the Anchor Loop, well before I'd ever waste the time or money on an application I'd want to know if the federal government was going to allow me to construct a pipeline through Jasper National Park, if they were receptive to giving you the land rights.
910.           **MR. ANDERSON:** Was that a question?
911.           **MR. ROTH:** Yeah, were there any discussions with the federal government prior to the filing of those applications as to whether or not Parks Canada, for example, would -- if its environmental concerns could be accommodated, would be willing to grant the land rights to go through the park?
912.           **MR. ANDERSON:** We would have no doubt been in conversations leading up to that application with, for example, Parks Canada, who has jurisdiction within the park, which is not to suggest for a moment that any of those discussions would have resulted in us concluding that the application would be approved. That's up to the jurisdiction of the National Energy Board.
913.           **MR. ROTH:** Right. But should the application be approved, you had some confidence that you would be able to secure the right-of-way from Parks Canada.
914.           **MR. ANDERSON:** To be clear, we already had the right-of-way through the park. What we're seeking from Parks Canada were the necessary local considerations for the expansion. We had the ability to put a second line in that right-of-way as a result of the original permit, if I recall.
915.           So the discussion with the Parks was around the environmental impacts and how those were going to be mitigated in order to get a final resolution.
916.           **MR. ROTH:** Right. And you had some degree of confidence before you submitted your application, that should the NEB approve it, that you'd be able to satisfy Parks Canada's concerns that -- such that you could proceed with the looping project?

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917.           **MR. ANDERSON:** Mr. Roth, we wouldn't have filed the application with the Board if we weren't confident that we'd be able to meet and satisfy both the Board's and other jurisdiction's considerations.

918.           **MR. ROTH:** Good. And as far as Anchor Loop is concerned, it's approximately 100 -- 150 some odd kilometres of 36-inch pipe that runs through -- parallel to or in the vicinity of Trans Mountain's existing 24-inch lines through Jasper National Park and Mount Robson Provincial Park in British Columbia?

919.           **MR. ANDERSON:** That sounds correct.

920.           **MR. ROTH:** Okay. And the construction of that line created approximately 40,000 barrels of incremental capacity?

921.           **MR. ANDERSON:** I believe that's correct. That took the capacity line from 260 to 300.

922.           **MR. ROTH:** And shippers and through CAPP, agreed to pay essentially the costs of that under the negotiated settlement, allowing Trans Mountain to earn a return of and a return of -- on capital associated with that looping; I think the capital was roughly half a billion dollars?

923.           **MR. ANDERSON:** I recall the investment to be approximately \$550 million on that project, Mr. Roth. And you are correct in that the investment itself was embodied within negotiated toll settlement that we were undertaking with CAPP and shippers at the time as we were advancing the project.

924.           **MR. ROTH:** Right. So the pipeline was essentially built or agreed to be built under the existing negotiated toll settlement that has a rate base and a regulated rate of return; correct?

925.           **MR. ANDERSON:** You're correct in that it was agreed to be built within the context of the negotiated settlement that we entered into with CAPP at the time, that did have, as part of it, rate base, debt equity structure and returns, as well as other incentives for the operator to manage costs and perhaps provide increased capacity.

926.           And as I pointed out earlier, Mr. Roth, that was -- all three things were happening at the same time; the settlement was being determined with CAPP, the

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- project was advancing and KMP was acquiring the assets from KMI at the same time.
927. So the knowledge of that settlement and the terms of it and the investment being made in Anchor Loop would have all been part of the consideration that KMI would have made -- or KMP would have made in its acquisition of the assets from KMP -- from KMI.
928. **MR. ROTH:** And sir, the reason it's called the Anchor Loop is it was designed to anchor a looping of the line all the way from Edmonton to Vancouver and that's why you put in a 36-inch line to ship 40,000 barrels of oil. I believe Trans Mountain made it quite clear and it's stated in the Board's decision on the Anchor Loop that the reason that its 36-inch line was to accommodate subsequent expansion. Correct?
929. **MR. ANDERSON:** If I recall why we used the term, anchor, Mr. Roth, it was at the time we had considered both southern and northern expansion and the take-off for the northern piece would have been at Rearguard. And what the Anchor Loop provided was the capacity from Edmonton to Rearguard for an expansion both south and north at the time we had a Northern Light proposal.
930. So the anchor wasn't solely related to the capacity at the time of going south but also a consideration that perhaps someday Northern Light might exist.
931. **MR. ROTH:** Right but from Edmonton to Jasper, you would loop it with a 36-inch line to tie into -- on the east side of the park and then on the west side of the park, there could be further looping to Vancouver or a north route from Rearguard to Kitimat?
932. **MR. ANDERSON:** In terms of pipe construction, correct but we hadn't determined what the size of that future expansion pipe might be. At the time we put in Anchor Loop, it wasn't known what the future support was going to be for a project or future investment.
933. So the Anchor Loop was seen as the most effective way to provide the capacity at Rearguard to go north and south but we hadn't decided what size pipe we were going to put both east of Edson or south of Rearguard.
934. **MR. ROTH:** Okay. So it was to accommodate a looping expansion but you hadn't determined if the pipe size would be 36 inches or something less

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- than 36 inches yet for the looping?
935.           **MR. ANDERSON:** We had not determined that at that point. Using a 36 also had two other benefits through the park. One was it reduced power cost by putting in a large pipe, which benefited all shippers and as well -- and this would have been part of the discussion with the park, it -- that in effect reduces the environmental footprint going through the park and that power stations weren't required through that section.
936.           And we were providing capacity through the park at the time with the view that we'd only be going through the park one time and so we wanted to make sure we built the capacity through the park during that one time to provide for the future growth.
937.           **MR. ROTH:** Right. And I believe this is mentioned in the Board decision but as far as the environmental sensitivity or challenges associated with the route, the park is part of a UNESCO world heritage site and represents some of the most environmentally sensitive terrain in the Canadian west; correct?
938.           **MR. ANDERSON:** Sounds like you've been reading some of our material. Yes.
939.           **MR. ROTH:** Okay. And also suggest to you that Trans Mountain did an excellent job of installing, constructing, reclaiming the Anchor Loop and Parks Canada was very pleased with Trans -- Trans Mountain's job. If I said TransCanada, I'm sorry. That was your fault, sir.
940.           Sorry, so you'd agree with me that Parks Canada was very pleased and you'd agree that with the characterization that Trans Mountain did an excellent job of constructing, installing and reclaiming the pipe through the park?
941.           **MR. ANDERSON:** I won't speak for Parks Canada but I do believe that we did an excellent job.
942.           **MR. ROTH:** Now, I think you'd already mentioned this but there was an earlier application that involved some additional capacity through pumping power. I don't know, maybe 21 pumps or something like that, that was preceding in conjunction with the Anchor Loop to add an additional 35,000 barrels a day capacity to the line?

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943.           **MR. ANDERSON:** I believe it was 13 or 14 pump stations that were added in advance of the Anchor Loop that increased capacity from what I believe was 225 nominal at the time to 260,000 barrels a day.
944.           **MR. ROTH:** Right. And this construction was all occurring within the 2005 to 2008 time period which, generally speaking, was a period of considerable cost pressure with respect to labour and materials in western Canada was it not?
945.           **MR. ANDERSON:** You have the timeframe right, Mr. Roth. I can't recall exactly what the labour conditions were at the time.
946.           **MR. ROTH:** You recall that there was some concern in western Canada that, leading up to the 2009 downturn where we had a bunch of projects taken off the table, the economy was getting very hot in the 2005 to the end of 2007 time period; you have no recollection of that?
947.           **MR. ANDERSON:** I recall that there were -- was a period of time where the labour market was tight and was concerned about cost pressures. I just can't compartmentalize that to be exactly overlapping with pump stations. It was generally within the same few years.
948.           **MR. ROTH:** Okay. Well, that cost pressure was over by 2009; you do recall that?
949.           **MR. ANDERSON:** Yes.
950.           **MR. ROTH:** And by that point, November 2008, your expansion projects resulting and 75,000 barrels of additional capacity were completed by November of 2008?
951.           **MR. ANDERSON:** The final phase of the expansion being Anchor loop Key 1 Phase November 2008, correct.
952.           **MR. ROTH:** Okay. Now, sir, I wanted to talk about the Trans Mountain expansion and the numbering system TMX Anchor loop, TMX 2, TMX 3, TMX 4. So what TMX 1 would have been is the pumping expansion and the Anchor loop -- or maybe we never really had a TMX 1. It was TMX Anchor loop and pumping?

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953.           **MR. RINNE:** Mr. Roth, I -- those are my numbers and name so -- yeah, TMX 1 started out as TMX 1, was then split at the request of shippers into two projects that -- pump station expansion project and the TMX Anchor loop.
954.           **MR. ROTH:** Okay. And then TMX 2, and Mr. Bergner briefly referred to it, was 100,000 barrel a day expansion that involved more looping between the park and Vancouver; correct?
955.           **MR. RINNE:** Yeah, the TMX 2 project was a notionally at the very earliest concepts of plus 100 a day, so 400. Subsequently, when we did the open season, we revised that down to 380 -- a plus 80 project. It included looping in Alberta and some looping in British Columbia ---
956.           **MR. ROTH:** Okay.
957.           **MR. RINNE:** --- as well as pump stations in other facilities.
958.           **MR. ROTH:** And then TMX 3 was proposed to be a 300,000 barrel a day expansion project that would have completed some looping between essentially the Mount Robson Park in British Columbia and Vancouver?
959.           **MR. RINNE:** Correct. I think there was still some looping a little bit around Edmonton and then the rest of it was in British Columbia, and again, pump stations and other facilities.
960.           **MR. ROTH:** And then for TMX 4, that was contemplated to kick off after the Trans Mountain system -- that 36-inch pipe got through the parks and kick off at Rearguard and go to Kitimat with another 400,000 barrels a day?
961.           **MR. RINNE:** I don't think we had the name TMX 4. Maybe anecdotally, but certainly on presentations and things we called it the northern leg as an extension from, as Mr. Anderson had said, from Rearguard. The sequencing of TMX 1, 2, 3 and the northern leg was really a plug and play type of design. You could go from 1, you could stop at 2; you could go from 1 to 3, which is essentially the application that's before us now.
962.           We could have gone from 1 to a part of 2 and extension to the northern leg. Any combination of those is what was envisioned back in the mid-2000s.
963.           **MR. ROTH:** Okay. And the TMX northern leg that I've referred to

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as TMX 4 was 400,000 barrels a day?

964.           **MR. RINNE:** Notionally, it could be whatever -- ultimately, the design would have been requested from shippers, but a line at the time we had contemplated would have been either a -- around a 30-inch line extending from Rearguard, which would have been capable of taking 400.
965.           **MR. ROTH:** Right. And I'm getting all these numbers off of a little slide presentation that came out with TMX open season package, but it essentially had 1.1 million barrels a day coming from Edmonton going through the park, then 700,000 barrels a day going into Vancouver and 400,000 barrels a day going into Kitimat. That sounds familiar?
966.           **MR. RINNE:** Correct. Originally, the -- I mean, the numbers could be whatever they were, but for illustrative purposes, those are what we were using; 1.1x Edmonton, 700 Vancouver, 400 north to Kitimat.
967.           **MR. ROTH:** Is -- and I believe Mr. Anderson has already said it. You only had one shot at going through the park; you took it with a 36-inch pipe. How much volume can you get through that 36 and 24-inch pipe under their design capacities? Was that the 1.1 million barrels?
968.           **MR. RINNE:** Well, at the time, you know, detailed hydraulics -- this was a plan laid out for, you know, some -- like I said, some plug and play designs. We don't really -- haven't considered what the maximum capacities could be given future scenarios, but at the time, we notionally laid out 700 in the 36-inch system and 400 in the other system.
969.           **MR. ROTH:** Okay. But was there the potential for further expansion between Edmonton and the west coast given the pipe you'd put through the park? Like you -- could you have gone beyond 1.1 million?
970.           **MR. RINNE:** Well, Mr. Roth, I think that depends a lot on the types of materials that are shipped -- being shipped in the pipeline from day to day. If it's a heavy pipeline, you can ship more. If it's a heavier pipeline, you can ship less through the same pipeline. You can modify the hydraulic capacity by adding pump stations or larger pump stations to increase your capacity. So pipeline design can be quite flexible that way.
971.           I think the important thing was that within the constraints that we had

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- at the time of Anchor loop, finding a project that would provide incremental capacity without over or under building the pipeline, the 36-inch line, was landed on.
972.           **MR. ROTH:** Okay. And maybe you said heavy -- you're talking heavy crude, not heavy -- if you said heavy -- the capacity depends on what you're shipping, whether it's heavy or light crude. You weren't referring to the wall thickness of the pipe, were you?
973.           **MR. RINNE:** No ---
974.           **MR. ROTH:** Okay.
975.           **MR. RINNE:** --- material type.
976.           **MR. ROTH:** Okay. And I -- and you had that discussion with Mr. Bergner, the capacity depends on whether you're shipping a heavy or a light crude, so it'd depend on what your crude mix was what your ultimate capacity would be.
977.           **MR. RINNE:** That's correct.
978.           **MR. ROTH:** Okay. So for TMX 2, which is 400,000 barrels a day, the proposal was -- that you went to open season on was to contract 85 percent of that 400,000 barrels a day, so the 300,000 barrels existing, 100,000 expansion and you'd contract out 85 percent of that; correct?
979.           **MR. RINNE:** That's correct, although we subsequently revised that number down to 380,000 barrels a day.
980.           **MR. ROTH:** Right. But the open season document and the FSA would have defined the expansion to be an expansion to 400,000 barrels a day.
981.           **MR. RINNE:** Notionally, at the time in the open season document, yes.
982.           **MR. ROTH:** Okay. And contract tolls for TMX 2 were not all that different from existing tolls by way of amount. They range between \$2.50 and \$3 a barrel for heavy crude between Edmonton and the dock?

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983.           **MR. RINNE:** I'd have to pull up the open season documents.
984.           **MR. ROTH:** Okay. I don't have to distribute it, if you're comfortable just with the range. I can hand it out and you can flip to it quickly if you want, or you just can say ---
985.           **MR. RINNE:** Sure ---
986.           **MR. ROTH:** --- that sounds right, subject to check.
987.           **MR. RINNE:** --- subject to check.
988.           **MR. ROTH:** And we'll see if we can avoid having to bring that one out.
989.           **MR. RINNE:** Sure.
990.           **MR. ROTH:** Okay. However, the way the open season documentation was set, those tolls were unlikely to stay at that level, were they? Because tolls for TMX 3 and TMX northern leg, at least Rearguard, were to be rolled in and the original TMX 2 shippers were going to have to pay whatever that rolled in toll was; correct?
991.           **MR. RINNE:** The toll design, toll methodology or principles that were in the TMX 2 document which I believe you're referring to had a -- you know, provisions in there for that. Those tolls would not be -- those tolls would be influenced by subsequent changes to the expansion or for other costs as well. But an expansion of the pipeline, TMX 2 or 3, I can't remember what happened with respect to the northern leg specifically, but ---
992.           **MR. ROTH:** Right. I think you rolled in costs to Rearguard, but they were stand-alone from Rearguard to Kitimat. That sounds right?
993.           **MR. RINNE:** That sounds about right.
994.           **MR. ROTH:** Okay. And then just if I'm a TMX 2 shipper and I'd have taken your 80,000 barrels of capacity for 2.50, you could have gone to an open season in TMX 3 and got some shippers to agree to pay five bucks. And as a TMX 2 shipper, I'd have had to pay that five bucks.

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995.           **MR. RINNE:** I'm going to have to check all of the details of what the tolling principles were at the time.

996.           **MR. ROTH:** But subject to check, the existing TMX 2 shipper's toll went up. It was a rolled in toll and they'd had to pay whatever the TMX 3 toll was.

--- (A short pause/Courte pause)

997.           **MR. RINNE:** Yeah, subject to check I -- I think you're correct. It was a rolled-in toll methodology that didn't provide toll certainty to the shippers. It provided them capacity certainty in the event that there were future open seasons that contracted for more capacity but not toll certainty.

998.           **MR. ROTH:** Right. And one of the tolling principles was that the intent was to have expansion tolls reflect the market value of the expanded capacity and Trans Mountain's economic criteria at the time of investing?

999.           **MR. RINNE:** Again, subject to check I believe that's what was in the toll principles.

1000.          **MR. ROTH:** Okay. Now, we've already found out -- and you've said why the TMX open season was unsuccessful. I'd never known what the actual nominations were for and I didn't know that was made public but you provided those to Mr. Bergner.

1001.          The timeframe -- and that cuts out a line of questioning I had, or at least one or two. In the timeframe of TMX 2 and TMX 3 the open season proposal there were other competing projects, and I'd call them competing at that time that were in the tri-frame and I put TransCanada's base Keystone project, Northern Gateway itself it kicked off its project in 2005-2006, Enbridge Clipper was out there with its project which is originally a contract project, and Keystone XL eventually overlapped into the tail-end of your open season as well. Would that be correct?

1002.          **MR. RINNE:** Yes, there were other pipeline projects that were being proposed then on the table. I think the ones that you described cover -- cover the gamut.

1003.          **MR. ROTH:** Okay. And whereas TMX projects failed to gain

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shippers support, all of the other projects I just mentioned eventually got project support and filled their capacity; correct?

1004.           **MR. RINNE:** I think we had one or two on there that -- that didn't win shipper support. We had some competing proposals that were on the table. For example we had a competing proposal to the XL pipeline which -- which we weren't able to get shipper support for. And there may be other ones but certainly for different reasons, and complicated ones I'm sure, TMX 2 open season was unsuccessful.

1005.           **MR. ROTH:** Okay. And the open seasons held by others were eventually successful?

1006.           **MR. RINNE:** I don't think Clipper was an open season process. I think Clipper was a -- a negotiation, like a CAPP more -- more akin to our -- our TMX anchor loop type of project. It was not a contracted pipeline held through open season but through negotiation at the CAPP table, more like our TMX home project. And Keystone base case I believe was probably the one that was being considered by shippers at the time of -- of TMX 2.

1007.           I don't know whether Keystone XL had -- was on the market at the time. And Gateway I believe was also in a process but I don't believe its open season was successful. I think it -- again, this is just my recollection, the open season was unsuccessful and they subsequently had ongoing negotiations that ultimately led to whatever the -- the current status of the project is.

1008.           **MR. ROTH:** Okay. So they had no open season and ultimately they filled the capacity they had to offer through precedent agreements?

1009.           **MR. RINNE:** I'm -- I'm sorry Mr. Roth, I'm having a hard time hearing you.

1010.           **MR. ROTH:** Sorry.

1011.           I'm just saying they had an open season process and eventually they filled their capacity that they had to offer, their 500,000 barrels a day of capacity signed-up through precedent agreements.

1012.           **MR. RINNE:** Correct. I think those were just recently -- the last of them anyway were -- were a result.

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1013.           **MR. ROTH:** Okay. Now, just as far as -- and I don't think it's material but I'd suggest to you the Enbridge Clipper project started out as a contract project but CAPP was rather adamant that they wanted to see it built as a Mainline expansion and tolled with the rest of the Mainline. Were you aware of that?
1014.           **MR. RINNE:** I'm not sure that I was aware of that but could have been. I -- I could also say if you looked in the records of TMX 1 as well, we initially discussed TMX 1 as a -- as an open season contract pipeline prior to subsequent to discussions and negotiations that that led to the CAPP-type negotiation for it.
1015.           **MR. ROTH:** Right. So something similar could have happened with Enbridge Clipper, you just don't know.
1016.           **MR. RINNE:** That's correct.
1017.           **MR. ROTH:** Okay. Now, with respect to project development costs on TMX 2, those were 100 percent Trans Mountain costs; correct?
1018.           **MR. RINNE:** I'm sorry, with respect to TMX 2 the project development costs that were proposed in the -- in the contracts?
1019.           **MR. ROTH:** Yes, the open season documentation at the first bullet and one of the toll principles project development costs 100 percent carrier.
1020.           **MR. RINNE:** In the event of failure?
1021.           **MR. ROTH:** The 100,000 barrel expansion.
1022.           **MR. RINNE:** In the event that the open season wasn't successful?
1023.           **MR. ROTH:** Correct.
1024.           **MR. RINNE:** I'll have to check that.
1025.           **MR. ROTH:** So subject to check you'll accept that?
1026.           This is probably the last one that I'll have to do and then we wouldn't

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- had to haul out this document. We've been doing very well.
1027.           **MR. RINNE:** Okay. My memory is -- is not that good.
1028.           **MR. ROTH:** It's actually very good.
1029.           **MR. RINNE:** I thought we had a 50/50 sharing of costs risk on that -- on the development cost side of that project if that project was unsuccessful.
1030.           So I'll have to check.
1031.           **MR. ROTH:** Okay. If you could do that and come back. It'll be quicker than me distributing the -- the paper.
1032.           So Firm 50 you've taken at -- or not Firm 50, the current expansion you've taken a different approach. And I'll get into Firm 50 now.
1033.           Project development costs for this application are funded through Firm 50 revenues where shippers pay project development costs through the premiums they pay for the use of existing -- 50,000 barrels a day of existing Trans Mountain capacity; correct?
1034.           **MR. RINNE:** I'm sorry could you ask the question one more time?
1035.           **MR. ROTH:** So I'm saying this time around, project development costs are being funded by shippers through premiums they pay in order to secure 50,000 barrels a day of existing Trans Mountain capacity.
1036.           **MR. RINNE:** We're using some of those, arguably the majority of those funds from Firm 50. We're applying some of them to a tank currently under construction. And right now we're allocating others to this project.
1037.           **MR. ROTH:** Okay. But if ---
1038.           **MR. ANDERSON:** If might add, Mr. Roth, to that just to put a finer point on it.
1039.           And that is that the application of the Firm 50 funds, the development costs of this proposed expansion was a matter agreed to between ourselves and CAPP and our shippers that that would be a reasonable and appropriate place to

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use those funds going forward to reduce everybody's risk.

1040. And that's what was proposed to the Board and ultimately accepted. It wasn't necessarily the -- the use of the funds that we had originally conceived. I think we had a number of options available to us. That was one that we agreed to with our shippers.

1041. **MR. ROTH:** Okay. And I believe you in the transcript of the investor conference call which we've talked about earlier, you indicate that:

*"There's \$29 million a year coming in for Firm 50 fees that is being used to offset all of the development costs for us in the project. So if at some point along the line either ourselves or our shippers exercise some of their very limited outs and the project doesn't succeed or we don't get the permits, all of the development costs are being covered by the Firm service fees that we are collecting so there is no risk there to us." (As read)*

1042. That's what you've indicated in your investor conference call, correct?

1043. **MR. ANDERSON:** I thought it sounded better when I said it at the analysts' conference than you reading it.

1044. But that's accurate; that is the deal that we have both with our shippers and through the Board's order in Firm 50. And we believe it to be a very prudent and responsible way to help mitigate the risk of both ourselves and our shippers, as development costs are incurred and the project is proceeding up to points in time where approvals may not be granted or outs may be exercised.

1045. **MR. ROTH:** And Trans Mountain's forecast using \$136 million in firm service fees to offset project development costs and, in this case, I realize that's just a forecast, right, but that's what you gave in response to CAPP 1.3?

1046. **MR. ANDERSON:** If the projects proceed as planned, the permits are received as planned, and the costs incurred are as forecast, that will be the amount of development funds from Firm 50 that we will have to offset development costs at the point of construction commencing.

1047. In the event that the project is not approved, either at CPCN time or

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- sometime prior, then the development cost will be offset at whatever they are incurred at that point in time with future firm service fees that will extend beyond 2015 or 2016.
1048.           **MR. ROTH:** So it could be greater than or less than the \$136 million just depending on when the project is no longer proceeding?
1049.           **MR. ANDERSON:** And what the costs are that have been incurred.
1050.           **MR. ROTH:** Okay. Now, you'd agree with me that in Firm 50 application, you never indicated to the NEB or the shippers that any expansion you came forward with that you were funding with Firm 50's fees would be based upon setting tolls at the market value of the expanded capacity, did you, unless I missed something during the course of the Firm 50 proceeding?
1051.           **MR. RINNE:** I'm sorry; can you ask the question one more time?
1052.           **MR. ROTH:** Mr. Rinne, we've gone through and you said, well, in TMX 2, yes, that was one of the toll principles that the expanded tolls for the expanded capacity would be set at the level of the market value of the expanded capacity and investment criteria at the time.
1053.           There was no discussion like that during the Firm 50 as to what the toll principles were, what the toll methodology would be for the expansion? You're just looking for money to pursue an expansion. There was no suggestion as to how the expansion would proceed as far as Part IV tolls were concerned?
1054.           **MR. RINNE:** Yeah, I think that's an accurate characterization. The discussion around the use -- the appropriate use of firm service fees to offset development spending for an expansion that we would ultimately bring forward.
1055.           **MR. ROTH:** Okay. In Firm 50 you were making 50,000 barrels a day of capacity available, and the terms upon which you made it available is that no one shipper could obtain the entire 50,000 barrels a day of capacity; correct?
1056.           **MR. RINNE:** That's correct. I believe we restricted it to 40 percent or about 20,000 barrels, I believe.
1057.           **MR. ROTH:** Okay. And the reason you gave for limiting the amount of capacity that any one shipper could have is because you didn't want shippers to

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- be able to exercise market power over a constrained asset; correct?
1058.           **MR. RINNE:** That's correct, that is the answer. And the background to that was we looked at the split between land and dock at the time and deemed that in aggregate, 75,000 or 79,000 barrels was a more appropriate split between land and dock and aggregate, and that we wanted to still maintain some spot capability. That's why there is about 25,000 barrels a day of spot and the remaining ultimately 54 was contracted amongst five parties.
1059.           **MR. ROTH:** Right. And the market power that the shipper would be exercising that you were concerned about would be the market power of selling the capacity of a constrained asset in the secondary market; correct?
1060.           **MR. RINNE:** Yeah, that's correct. The theory being more shippers would create a more competitive market for that space.
1061.           **MR. ROTH:** Okay. And the constrained asset you're referring to is the Trans Mountain pipeline that was under apportionment at the time?
1062.           **MR. RINNE:** The constrained asset would be the -- that 54,000 barrel per day tranche and that -- directed to the dock.
1063.           **MR. ROTH:** Pardon?
1064.           **MR. RINNE:** Directed to the dock.
1065.           **MR. ROTH:** Directed to the dock?
1066.           **MR. RINNE:** Right.
1067.           **MR. ROTH:** Would you agree with me that the constraint on the asset can be reflected in the dock premiums that are applicable to the spot capacity going to the dock?
- (A short pause/Courte pause)
1068.           **MR. RINNE:** Mr. Roth, there's a lot of factors that impact the dock bid premiums. We -- we have, as you know, an existing spot capacity mechanism in place today and prior to Firm 50 and we still do, where the bids are done on a monthly basis. Those are likely more directly related to short term changes in the

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- markets affecting buyers and sellers. And then the Firm 50 premium that's being collected was looked at, I think, by the shippers at the time, more of a longer term positioning for gaining access.
1069.           The problem with the current -- or the monthly dock bid process is there's no guarantee for shippers from any month that they have access to the pipeline, and that was what was rectified from Firm 50 for that portion of the pipeline.
1070.           **MR. ROTH:** Right. But as far as the immediate constraint and the constraint of market power that you were talking about on that 50,000 barrel asset, it would have been the ability to sell on the secondary market. I think you agreed with that.
1071.           And it would have been ability to sell on its secondary market at probably a rate that reflected what the spot dock premium was; correct?
1072.           **MR. MacFARLANE:** I think, Mr. Roth, that the level of bids to the dock are reflective of the heavy capacity or -- and the heavy demand and the differentials appropriate to those, as opposed to the light volume that might be redirected to land or the value of the light commodity. And I think those are two different -- two different prices.
1073.           **MR. ROTH:** Indeed. But I was just suggesting that the level of premiums indicates a constraint on the existing asset capacity and premiums -- what have recent premiums been; I've heard premiums have gone into the range of \$50 a barrel for those spot volumes. Is that correct?
1074.           **MR. MacFARLANE:** That -- no, your numbers are well above what we've seen.
1075.           We don't publish the maximum price that is bid for on a month-to-month basis; however, I can tell you that it didn't reach that level.
1076.           **MR. ROTH:** So what level has it reached?
1077.           **MR. MacFARLANE:** We don't publish that, and I'm not sure I'd want to divulge that information.
1078.           **MR. ROTH:** So you'll tell me it's not 50, but you won't tell me how

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much I'm off?

1079.           **MR. MacFARLANE:** It's less than 50.

1080.           **MR. ROTH:** Okay. We could go around for a while and I could go up and down, but I take it that won't get us anywhere.

--- (Laughter/Rires)

1081.           **MR. MacFARLANE:** I don't think I'll comment other than it's not 50.

1082.           **MR. ROTH:** Okay. So that's as far as we're going to go.

1083.           Now, I think as far as ---

1084.           **THE CHAIRMAN:** Mr. Roth, just a process check here. Is there a logical point where you can finish your current line of thinking -- or questioning?

1085.           **MR. ROTH:** I can just follow up on this point on constraint capacity with one more question to Mr. Anderson regarding his presentation.

1086.           And Mr. Anderson -- actually, sir, it will take me a little while to go through those. It's probably better -- I'll try your patience if I try and -- and I'll go too fast if I try and not try your patience.

1087.           **THE CHAIRMAN:** Oh, it's not just my patience.

1088.           **MR. ROTH:** Okay.

1089.           **THE CHAIRMAN:** I hear some grumblings of tummies out there. So we'll reconvene after lunch at 1:30.

1090.           **MR. ROTH:** Thank you, sir.

--- Upon recessing at 12:31 a.m./L'audience est suspendue à 12h31

--- Upon resuming at 1:29 p.m./L'audience est reprise à 13h29

**IAN ANDERSON: Resumed**

**SCOTT STONESS: Resumed**

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**NORMAN RINNE: Resumed**  
**GREGORY HILL: Resumed**  
**KEVIN MacFARLANE: Resumed**  
**JOHN REED: Resumed**  
**GEORGE SCHINK: Resumed**  
**STEVEN KELLY: Resumed**

1091.           **THE CHAIRMAN:** Mr. Roth, we're ready with your ruling.
1092.           We did hear Mr. Nettleton's objection, but given that Mr. Anderson answered that if this number was public he could provide the answer tomorrow, and this does not seem to be unduly onerous, the Board will allow the undertaking.
1093.           Could we have an undertaking number?
1094.           **THE REGULATORY OFFICER:** That will be Undertaking No. 1.
1095.           **THE CHAIRMAN:** Oh, Mr. Roth, just for clarity, could you clearly state the exact nature of the undertaking that you want?
1096.           **MR. ROTH:** So sir, the undertaking was to find out what the discount that was written off by KMI when it sold the asset to KMP and then I wanted to know what the premium over net book value that KMP would have still paid, and I think it would be part of that answer. You'd be able to calculate it if you got the response to the undertaking.
1097.           **THE CHAIRMAN:** And just to repeat myself a bit, if those numbers -- if that information is public and if it's not too onerous for Mr. Anderson to provide it.
1098.           **MR. ROTH:** Right. And I think what it will essentially do is confirm the evidence that Mr. Matwichuk got from public sources.

**--- UNDERTAKING NO./ENGAGEMENT No. U-1:**

*For Mr. Anderson to provide the discount that was written off by KMI when it sold the asset to KMP and the premium over net book value that KMP would have still paid.*

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1099.           **MR. ROTH:** Are we ready to proceed, sir?

1100.           **THE CHAIRMAN:** We are, thank you.

1101.           **MR. ROTH:** Thank you.

**--- EXAMINATION BY/INTERROGATOIRE PAR MR. ROTH:  
(Continued/Suite)**

1102.           **MR. ROTH:** Mr. Rinne, your counsel advises me that we had had a discussion -- and thank you very much for cooperating with that so I didn't have to hand out a bunch of paper to get those. But you did do a subject-to-check, and I understand through your counsel you just wanted to speak to the issue of TMX 2 development costs and who bore those costs in the event of an approval and who bore those costs in the event that there was no approval or that approval wasn't on commercially reasonable terms?

1103.           **MR. RINNE:** Correct, and thank you. We went through the Aid to Cross information you sent last night over and found it. So I think you knew the answer already and just wanted me to reiterate it.

1104.           So there's two scenarios. The project does not proceed. There was 100 percent costs -- it says 100 percent to carrier for regulatory approval is received, but the project doesn't proceed. And the 50/50 sharing between the shippers if the regulatory approval is not received.

1105.           **MR. ROTH:** Right. And 50/50 sharing between the carrier and the shippers if there's no approval or the approval isn't on commercially reasonable terms.

1106.           **MR. RINNE:** And then the bracket in there is that carrier would seek to recover its 50 percent through mainline tolls in future.

1107.           **MR. ROTH:** Right.

1108.           Okay, Mr. Anderson, I think we left off with you. And I wanted to get into this issue of a constrained asset when we were talking about limiting the market power of 50/50 -- Firm 50 shipper. And earlier I'd handed you out your investor presentation, which were the slides, and also a copy of your transcript where you spoke to the slides.

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1109. And I wanted to take you -- I think I did hand this already out to the Board Panel. So I want to take you to the fifth slide in that package that I think you are speaking to.

1110. And so your comments starting at the last paragraph of your Investor Comments were -- we'd already gone over that you were very much hoping that Keystone XL got built because we all need that. And then you were speaking to Trans Mountain assuming expansions, including Northern Gateway, and then you state:

*"So if all three of those pipeline projects proceed, we're still looking to be tight on pipeline capacity out of the Western Sedimentary Basin by the middle of the next decade, so access is critical."* (As read)

1111. And I take it the slide you're speaking there to is on the top left-hand corner of page 5 where it shows essentially, without Keystone XL, we're out of capacity by -- before 2018. And then if you have both Trans Mountain and Northern Gateway expansions sometime at or around 2022, we're out of capacity again.

1112. **MR. ANDERSON:** Your reference is accurate that that was the portion of that slide that I was referring to with those comments.

1113. **MR. ROTH:** Right. And that's the basis for your opinion that access is critical.

1114. **MR. ANDERSON:** I didn't think I'd have the ability to expand upon what I meant to tell the analyst, but I'll seize this opportunity as that ability if you like because I think the important part to consider in that statement I made is that access is critical. And that is meant to say that if you look at that top left chart and you look at the projected oil sands growth and you look at pipes currently in place and in the approval stages of some sort, be it XL, Trans Mountain or Northern Gateway, the lines on the chart would have you conclude that access remains a critical consideration for the market to respond to, both producers and pipelines.

1115. And when you couple that with the other three conditions that I laid out, Asian demand, U.S. production and widening spreads, the message to be

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- conveyed is that we all need to diligently pursue new pipeline projects that are going to mitigate that impact. And my belief would be that the industry will respond that way; that these constraints will not be left unsolved by industry, but that we will build more pipeline into more markets as the supply grows and as demand continues to grow.
1116.           **MR. ROTH:** Right. And then when you're speaking to the graph on the bottom left, which is entitled "Widening Price Spreads", you indicate that differentials have gotten to the point that they're costing producers, by some estimates, \$2.5 billion a month and the Canadian economy \$30 billion a year in lost revenue.
1117.           That's what that differential spread graph is representing?
1118.           **MR. ANDERSON:** That is me using numbers generated by other studies and other reports to drive home that point that market access continues to be something that we, as an industry, need to continue to pursue.
1119.           **MR. ROTH:** Right. And if we just look at those differential spreads and you have a few points on the line, they actually reach their peak of \$38 a barrel being the spread between Brent and MSW at around the time of the close of your second round of the open season -- like it -- you had April 12<sup>th</sup> written on there and you've got a line there shortly before showing a spread of \$38 a barrel?
1120.           **MR. ANDERSON:** I'm not sure you connecting those two points is relevant. I mean, it is a point in time where differentials were what they were and it was a point in time that we were working at negotiating and finalizing contracts for our expansion that was going to be several years out with much uncertainty as to its completion. So I wouldn't connect those two as being related, they're coincidental.
1121.           **MR. ROTH:** Okay. But certainly during the period of time you were negotiating, the differentials were spreading and they spread out to a peak at or about the time that the second round of the open season closed, whether -- we can argue about whether it's a coincidence and whether it would have affected shippers in your market power, we can argue about that, but it's just factually that's what this graph is representing.
1122.           **MR. ANDERSON:** Those are the facts of the lines on the graph, yes.

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1123.           **MR. ROTH:** Okay. So and then we go to the compounding thing and you've talked about it in the start of the third paragraph -- you're talking about the Bakken crudes and you mention that U.S. production is also taking off and that's another challenge for Canadian producers.
1124.           **MR. ANDERSON:** It's another long-term challenge for Canadian producers.
1125.           **MR. ROTH:** Okay. And just to relate those two graphs back, Keystone XL capacity, for example, some of that capacity would -- and some existing capacity on the Enbridge Mainline system is being taken up by those Bakken crudes; correct?
1126.           **MR. ANDERSON:** Part of the Enbridge system -- their north system would be accessing some of those Bakken crudes as would express. I'm not sure that base Keystone is picking up any Bakken crudes actually, but that -- I'm not sure.
1127.           **MR. ROTH:** No. But Enbridge had a Bakken pipeline approved that ties into the north system at well over 100,000 barrels expandable to 300,000 barrels. NEB would have approved that about a little over a year ago; correct?
1128.           **MR. ANDERSON:** If you say so, sure.
1129.           **MR. ROTH:** Yeah. You have no reason to dispute that?
1130.           **MR. ANDERSON:** No.
1131.           **MR. ROTH:** Okay. And then Keystone XL, there's 100,000 plus barrels of capacity that's been allocated for Bakken crude; and in fact, that's one of the selling features to U.S. government is we've got this 830,000 barrel a day pipeline and some of this capacity is for U.S. domestic crude producers; correct?
1132.           **MR. ANDERSON:** I do understand that XL ran an open season for a -- I think, a connection at Baker where they're going to pick up some Bakken barrels, yes.
1133.           **MR. ROTH:** Yeah, and some is in the order of \$100,000 -- 100,000 barrels or more?

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1134.           **MR. ANDERSON:** Again, I don't have that reference point, but if you say so, I'll agree with it.
1135.           **MR. ROTH:** Okay. And then I -- like I don't know if I can read it as well as you read, but the last -- you're saying the bottom right where's there's market -- where's the market, where's the market, and I take it you were trying to be emphatic at the time. You said, "It's Asia."
1136.           So in any event, you're seeing that there's certainly market in Asia and there's a desire on the part of producers to diversify and get there and there's also some urgency in the sense of timing because you're talking about the Saudis, the Russians, the North Africans and the Venezuelans also chasing that market; correct?
1137.           **MR. ANDERSON:** Those were my statements, correct.
1138.           **MR. ROTH:** Right. And these are your statements to investors, but these are the same facts that producers who are negotiating with you and going through your open season process are facing these same facts?
1139.           **MR. ANDERSON:** Producers would be facing these same facts as well as a multitude of other facts, Mr. Roth, including their own production forecasts, their own timing of their projects, the type of commodities they're producing, the markets that are best to access, other competing pipeline proposals to the east and to the south.
1140.           So there's a multitude of things that a producer's going to consider when making their choices, including perhaps short term or medium term rail alternatives into varying markets is increasingly growing. So these are the four facts that I laid on the table as being, I thought, reflective of -- for those analysts, just what's happening in Canada.
1141.           And I thought they painted a very good picture for those analysts that I think led to what we believe can be a successful project with our expansion. But as a producer dealing with us on how they make their decisions, there are a good many of other considerations that they will be making.
1142.           **MR. ROTH:** Okay. Maybe actually as a segue just -- I was -- I'm going to jump around here because that -- I provided another AQ and I don't have to produce it, to just confirm that you said it. It's a newspaper report from

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January 10<sup>th</sup>, 2013, just after you announced your increased expansion to 590,000 barrels and you're quoted as saying:

*"We're seeing growing interest and in some cases what I would call concerns and angst from producers around their ability to access markets."*

1143. Now, that's reported in the newspaper article I provided you. That was what you were stating publicly about what producer's perceptions were regarding the market circumstances they had. They had "concern and angst" regarding access to markets?

1144. **MR. ANDERSON:** I think a couple of points to make to that, Mr. Roth. Firstly, I don't know that I would rely on newspaper articles as being a very reliable source for information given the history of how reporting occurs. Having said that, I'm not disputing that I would have said that -- that statement.

1145. And further to that, I think that it was made in the context of broad concerns by producers that pipeline expansions and projects and availability into markets was going to be a hindrance to their future barrel value as well as the benefits that those barrel values apply to the Canadian economy at large.

1146. And that that angst is not unlike what I would hear from your client or other producers that it is -- it's imperative that we satisfactorily and responsibly build on infrastructure to all markets, not just the west coast.

1147. **MR. ROTH:** Okay. And the context of those remarks and I think there were -- people were -- the reporter seems to have been quizzing you as to whether the market interest that led to your additional expansion capacity going up from 450,000 barrels a day to 590,000 barrels a day, whether there were -- was any concern over the prospects of the Northern Gateway pipeline that was leading to that additional interest and you indicated, no, that it wasn't. And you were quoted as saying, in the U.S.:

*"They're producing more [...] than they have in decades and that's going nowhere but up, and that provides a significant challenge to Canadian producers."*

1148. So you're essentially saying that it wasn't prospects over Gateway that was driving this interest in additional capacity, you were suggesting that it was

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just generally an urgency to get to market.

1149.           **MR. NETTLETON:** Mr. Chairman, I'm sorry to rise, but if Mr. Roth is continuing to cite quotes from newspaper articles, I think it would be beneficial to have the context of what he is speaking to put in front of the witness so the witness can understand and comment exactly on what quote Mr. Roth is referring to. Otherwise, I don't know how a witness would be able to reflect on some quote that may have been provided to a reporter or not. I think it's important for that context to be given.
1150.           **MR. ROTH:** Okay. Sorry, I have no problem -- I did provide and -- Mr. Anderson, you do have a copy of this newspaper article I was referring to?
1151.           **MR. NETTLETON:** You provided several newspaper articles. So first of all, we don't know which article you're referring to.
1152.           **MR. ROTH:** I said -- I gave the title of it up front, Mr. -- I'm more than happy to hand it out, I just wanted to save some time if I don't have to get out and distribute it if we just can get the admission. But I'm more than happy, Mr. Nettleton, to distribute it if that would be your preference.
1153.           **MR. NETTLETON:** I would think it would be helpful to the Board to know what article you're referring to because again -- and it would certainly be helpful to me because multiple exhibits or aids to cross were provided.
1154.           **MR. ROTH:** Certainly if it's helpful to counsel and -- I'm more than happy to distribute it and this will mark it as an exhibit later on and make sense in the transcript.
1155.           **THE CHAIRMAN:** Well, we'll make that decision later on ---
1156.           **MR. ROTH:** Okay.
1157.           **THE CHAIRMAN:** --- but whichever way it goes, but as an aid to cross, we'd like it distributed.
- (A short pause/Courte pause)
1158.           **MR. ROTH:** Sorry. Mr. Anderson, you're ready to proceed? You have a copy of the article I was referring to. I believe the Regulatory Officer has

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- put it up on the -- on the screen.
1159.           Then the passages I was referring to are on the second page, starting at the growing angst comment which is in the third black paragraph I guess for you if you have black and white, the fourth paragraph.
1160.           And then the comment that it wasn't anything regarding the Gateway prospects that was driving this, it was just the significant challenge facing producers. I think you suggested before you had an opportunity to read it. You weren't disputing that you had made these comments?
1161.           **MR. ANDERSON:** Thank you, Mr. Roth. I have the -- I have the aid now.
1162.           I'm not disputing that I made these comments. I do note that the reporter did take out part of what I said in the middle of that, I don't know, fourth paragraph just after "he added", he deleted some words. I don't know what those words were.
1163.           Having said that and putting that context behind it what I was saying to the report at the time when asked about whether or not I believed the success in our supplemental open season was in connection with any interests or waning of interests on Northern Gateway's behalf, I had no knowledge nor do I have any knowledge now around the decisions that individual shippers made to support varying pipeline projects.
1164.           I think we as a pipeline industry broadly look at the need for more than just our own specific project and that we believe all of them are necessary. And we're pursuing them in that regard.
1165.           That said, in the near term they are competing for barrels short term to get those barrels attracted. But to directly draw the connection that our open season was related to Northern Gateway's position was not something that I could -- I could agree with.
1166.           **MR. ROTH:** Okay. But you do agree that they're all needed. I think that's what you said.
1167.           **MR. ANDERSON:** I think the data that I was relying upon is -- is the graph I referred to earlier which shows supply and it shows pipeline capacity.

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And those two lines intersect at various points which is where industry, I believe, will respond appropriately to provide access into markets. And in many respects we're going to be in competition for some of those pipeline projects as we have been historically.

1168. But -- that's my response.

1169. **MR. ROTH:** Right. And just for efficiency, did -- I'm going to come back here later in the cross-examination but we don't have to come back.

1170. At the very bottom paragraph the last thing you're quoted as saying, you say:

*"I don't think there's any doubt if I look at the issues and challenges we face one of the greatest challenges is to demonstrate and convince the public that tanker traffic through the Port Metro Vancouver can continue to be done ..."* (As read)

1171. Yeah, I take it that should be: "[in] a safe manner" rather than "is a safe manner."

*"So I'll be dedicating a lot of time and attention to that as we have already."* (As read)

1172. So I just wanted to know is it your position that one of the greatest challenges your project faces are those tanker traffic issues in the Port of Vancouver, marine traffic?

1173. **MR. ANDERSON:** Once again I remind you that the quote would have been in response to a specific question that -- that I would have been asked about Port Metro Vancouver and perhaps the concerns of some of the Vancouver public as to whether or not that expansion can occur safely.

1174. And I would have responded affirmatively that it is one of the significant challenges that we face in demonstrating the public trust and confidence that that industry can continue to go through that port.

1175. **MR. ROTH:** Right. But things are relative and you suggest it was one of the greatest challenges. Correct?

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1176.           **MR. ANDERSON:** One of the greatest challenges I believe in providing British Columbians with the confidence and trust will be confidence and trust that the tanker traffic industry itself can be operated safely through that port.
1177.           What makes it one of the biggest challenges for us is that we're not in solely in control of that. And we've got other parties that we're relying upon to play their part in demonstrating that need.
1178.           So it is one of the greatest challenges. It's certainly not the only challenge. We've got a long list of other challenges that we've got to overcome.
1179.           **MR. ROTH:** Now, if we could move on to the open season process. Would you agree, just generally speaking, without getting into this particular open season, that one of the reasons the National Energy Board regulated pipeline conducts an open season is to satisfy it's common carriage obligations?
1180.           **MR. STONESS:** Say the question again.
1181.           **MR. ROTH:** Whether you would agree, just generally speaking, not with respect to your process but I guess it would be applicable, as a general principle one of the purposes of an open season process for at least an oil pipeline is to satisfy the pipeline's common carriage obligations both statutory and common law?
1182.           **MR. NETTLETON:** Mr. Chairman, my friend is now asking these witnesses to make conclusions about questions of law.
1183.           And although I don't mind my witnesses asked -- being asked questions to their knowledge, these witnesses obviously are not lawyers.
1184.           And it would strike me that if Mr. Roth is wanting to take the position legally that that's what open seasons do he's entitled to that in argument. But I'm not sure why he would be asking questions of that nature to these witnesses.
1185.           **THE CHAIRMAN:** Mr. Roth, can you coach those questions as a commercial question?
1186.           **MR. ROTH:** Yeah.

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1187.           **THE CHAIRMAN:** Instead of legal.
1188.           **MR. ROTH:** Yeah. Indeed I can.
1189.           I think it's just -- it's mentioned in a number of the IR responses and then there's a long list of -- and quite often I agree lawyers draft information responses believe it or not. So -- and they can have legal propositions in them.
1190.           So maybe just -- is it your understanding that from a commercial perspective in order to provide fair open and non-discriminatory access to a pipeline, a pipeline regulated by the NEB, holds open seasons?
1191.           That's a factual question. Is that why, without tying it back specifically to the common carriage obligation.
1192.           **MR. STONESS:** The reason that we have an open season is that then everybody receives the same offer and the same time.
1193.           **MR. ROTH:** Okay. And through the open season process essentially shippers nominated or offer volumes to the pipeline company over specified -- by periods of time, in this case it was 15 years or 20 years; correct?
1194.           **MR. STONESS:** I'm sorry can you repeat that question?
1195.           **MR. ROTH:** Well, through the open season process you tender a contract in terms and then shippers will sign your TSA and in that they'll offer up volumes. That'll be one of the key elements they're allowed to fill in, another key element they're allowed to fill in is the term, 15 or 20 years.
1196.           So through the open season process the shipper is tendering or nominating or offering to the carrier to ship volumes, a certain volume, over a specified period of time; correct?
1197.           **MR. STONESS:** All of that is correct, but in addition to that there's -- in our open season, there was a process where we negotiated terms for those contracts.
1198.           **MR. ROTH:** Right. But it's not as, if after you negotiated the terms, that you were obligated to accept all those tenders. You didn't -- for sake of

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- example, you didn't know how much nomination you would get. So the shippers are actually making the offer of volume to you and then you have a period of time to assess those offers, determine if they're complying and determine if you have sufficient capacity to honour them. Correct?
1199.           **MR. STONESS:** That is true, but you're assuming that there's a limited capacity available, and that wasn't the case.
1200.           **MR. ROTH:** No, but you don't know that in advance.
1201.           You could have gotten nominations for 2 million barrels of capacity and then you would have had a pro rate; correct?
1202.           **MR. STONESS:** There is some upper limit to the amount that could be accepted, yes.
1203.           **MR. ROTH:** Right. So the shippers are making the volume offers to you and then you determine whether you're able to accept them after the shippers make them in the open season process; correct?
1204.           **MR. RINNE:** That's correct, Mr. Roth. I'll add there's another step in that process, is that after we serve notice to the shippers that they then, in our process anyway -- I'm not sure what other open seasons do. They then have a 30-day approval process for them to secure their necessary -- whatever necessary internal approvals they may need.
1205.           And in our process, for example, had we served them notice that their volumes were apportioned by any amount, they wouldn't have -- or actually, for any reason, they would have been able to withdraw that request.
1206.           **MR. ROTH:** Right. And then you accept the nomination after that 30-day period and after you've determined whether you had to allocate any -- or apportion of any barrels. Then you put your signature, Trans Mountain's signature, on the TSA, correct, or accept it?
1207.           **MR. RINNE:** Correct.
1208.           **MR. STONESS:** But I'd still take you back to -- there's a potential that the project size could change depending on the response. And so there wasn't a limit on any of the rounds for how much could be accepted.

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1209.           **MR. ROTH:** Right, exactly. This was unlike the TSA or the document that was tendered in TMX 2 that defined an expansion to a certain limit of 100,000 barrels.
1210.           Mr. Rinne has described it went down from the open season, but the definition of the expansion was a defined expansion of 100,000 barrels right in the open season documents in the TSA; correct?
1211.           **MR. STONESS:** That's at the risk of subject to check.
1212.           **MR. ROTH:** Sure.
1213.           **MR. RINNE:** We -- our intention, one of our stated goals in this open season was, to the extent possible, to design an expansion that met the service requests or the offers, as you would put them, from everyone to the extent practical.
1214.           **MR. ROTH:** Right. And so Mr. Stoness has clarified that this is different from your TMX 2 open season because you didn't have a defined expansion limit in the TSA.
1215.           It could be whatever you could accommodate and you'd decide that once you got all the offers in; correct?
1216.           **MR. RINNE:** Correct. That's the approach we took.
1217.           **MR. ROTH:** Okay. So in this case, you -- at the end of round two of the open season you had accepted 500,000 -- 508,000 barrels a day; correct? At the end of round two of the open season you had accepted 508,000 barrels a day of firm capacity?
1218.           **MR. RINNE:** Correct. After the -- after the shipper notification process, yeah, we settled at 508.
1219.           **MR. ROTH:** Five hundred and eight (508).
1220.           **MR. RINNE:** I believe that was the number.
1221.           **MR. ROTH:** Yes. And that would have left you with 96,000 barrels

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- a day of uncontracted firm capacity and approximately 150,000 barrels a day of spot capacity that you were prepared to proceed with the project on that basis without marketing or having marketed in advance that 96,000 barrels a day of capacity.
1222.           **MR. RINNE:** That's correct.
1223.           **MR. ROTH:** And you had the option, you could either market that capacity on a spot basis or you could enter into firm contracts for that capacity but always subject to "most favoured nations" provision with shippers that are already signed.
1224.           **MR. RINNE:** So the -- I think there may be two issues in your question.
1225.           Just discussing the "most favoured nations" provisions, the primary reason for that "most favoured nations" process is in there around the spot toll. And the mechanism's around ensuring that if Trans Mountain were to offer a spot toll that was less than the contracted tolls that the "most favoured nation" provisions would kick in and maintain the differential between the spot toll and effectively lower the contract tolls.
1226.           We -- then the next part of your question is what about the 96,000 barrels a day of available uncontracted capacity. So our intentions in that process were to go ahead with the application and begin the regulatory process and then make a determination at some later date about whether we would offer that uncontracted capacity to the market.
1227.           Our intentions would have been to do it at the same terms and conditions as the initial rounds, but we hadn't actually -- clearly, we didn't have the demand for it at the time and so we were advancing the project with what -- with the volumes we had.
1228.           **MR. ROTH:** Right. But you didn't have a legal obligation to fill it. Like you could have taken the risk on the spot capacity and sold it into the spot market for a spot toll had you chosen to do so.
1229.           **MR. RINNE:** There's nothing in the contracts that would have had us been obligated to offer that space to the market, correct.

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1230.           **MR. ROTH:** Right. And if you didn't do that, it was available for you to market spot and you would have received the spot toll for that.
1231.           **MR. RINNE:** Yes. Sorry, it's a very obvious question. Yes.
1232.           **MR. ROTH:** Yes, okay. And then the other thing -- Mr. Bergner got here and I was interested.
1233.           Did you also have the option to market that as a firm five-year capacity or did you -- were you contractually bound pursuant to the "most favoured nations" provision to offer that on identical terms to the terms that shippers had signed up, or could you offer a new five-year contract?
1234.           **MR. RINNE:** I'll have to check -- so I'll have to check the conditions of the contract, but I don't believe there was any obligation or limitations in that regard.
1235.           I would suggest that our intentions would have been to simply offer up more 15, 20-year contracts because that's what the initial round of shippers signed up for and had the opportunity to participate in.
1236.           **MR. ROTH:** Right, but the -- that information response you went through with Mr. Bergner that was stroked out after you ended up selling all your firm, it suggested that you might have been able to accommodate a shipper like Chevron that wanted a five-year contract out of that 96,000 barrels a day if you went forward, but now it filled up so that's not an option.
1237.           **MR. RINNE:** Mr. Roth, we hadn't put a lot of thought on what to do with the 96,000 barrels a day of space.
1238.           I'd suggest that our intention would have been to -- within the context of what we had offered, was to move forward with the commercial application, see if it was successful, which will be the conclusion of this process. And then, depending on market conditions, we would have likely -- our plans would have been to offer up that capacity when the market wanted it, likely with the same terms and conditions as was offered in the initial rounds.
1239.           **MR. ROTH:** Okay. And again, we don't have to go any further because it's a moot point now, isn't it? We don't have any more left, so you don't have to determine what you're going to do. All your firm is sold.

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1240.           **MR. RINNE:** Well, correct. And the intention, as you know, the round -- the supplement Round 3 was resulting from the NEB decision of August 2012 and we felt that it would be expedient to resolve that issue to the -- to the benefit of everyone as soon as possible, and that's why we went forward with the Round 3 in the fall, early winter of 2012.
1241.           Any shipper that met the conditions of the -- of the Round 3 obligation as it was stemming from the Board's decision would have been able to participate in those -- in that supplemental round on the same terms and conditions as the first two rounds.
1242.           **MR. ROTH:** Okay. Just as far as what occurred, Suncor Energy Products, or SEP, had nominated in Round 2 and its nomination was rejected because it had redacted Section 2.2 of the FSA; correct?
1243.           **MR. RINNE:** That's correct.
1244.           **MR. ROTH:** Okay. And Suncor took the position that the February 13<sup>th</sup>, 2002 ruling of the JRP allowed it to nominate without the burden of the regulatory support clause for the toll methodology and the toll; correct?
1245.           **MR. RINNE:** I don't believe the JRP is involved in this one.
1246.           **MR. ROTH:** Oh, the NEB, sorry.
1247.           **MR. RINNE:** Yes, that one --
1248.           **MR. ROTH:** I don't think we'll ever get to a JRP again, but anyway.
1249.           **MR. RINNE:** That was the position they took. Yes, I believe so.
1250.           **MR. ROTH:** Okay. And Trans Mountain took the position that the NEB's February 13<sup>th</sup> ruling didn't require it to do that and it rejected SEPP's nomination on that basis.
1251.           **MR. RINNE:** That's correct.
1252.           **MR. ROTH:** Okay. Now, Trans Mountain extended the open season to April 10<sup>th</sup>. It would have had an option, if it had wanted to, to remove Section

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- 2.2. It made adjustments to the open season before and it just could have allowed all shippers to participate in Round 2 without 2.2 if it wanted to. You could have done that.
1253.           **MR. RINNE:** Well, I think our position at the time was that we didn't -- we didn't concur with the position of Suncor. Subsequently, that was ruled differently by the Board in August, but we didn't believe that that was needed to for Round 2.
1254.           **MR. ROTH:** No, but you didn't do it on the basis you said it would be unfair to other shippers. That was your reason for rejecting Suncor's position, to say, well, Suncor, you shouldn't be allowed to nominate with 2.2 in there because it would be unfair. And what I was suggesting to you, well, it wouldn't be unfair if, before the close of Round 2, you'd have just taken that out. That would have taken care of the fairness issue for everyone; correct?
1255.           **MR. STONESS:** The answer to that is we had a choice at that stage. We could either go forward taking out 2.2 for all or leave 2.2 in. At that moment, we considered that it was -- it didn't make sense to go seek contracts with parties that allowed them to then turn around and -- and say the contracts weren't appropriate.
1256.           **MR. ROTH:** The position that a party was in, though, they signed with 2.2 or chose not to sign and object. You say, well, Suncor, you could have still objected. The position it put it, though, in is they risk losing capacity on the project if they wanted to maintain a right to express concerns on volume.
1257.           So that put considerable pressure on to sign because there was no assurance after a hearing on this application that there would be a new open season; correct?
1258.           **MR. STONESS:** I'm not sure that it put -- I don't know what pressure they were under. They had other alternatives. They could have shipped elsewhere. There were other pipelines that were competing with ours. In the case of Suncor, they had options to ship on Gateway.
1259.           **MR. ROTH:** Okay. But their option to participate in the open season and get capacity on your line was over and done with, so they had lost the opportunity to participate in the Trans Mountain expansion; correct?

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1260.           **MR. STONESS:** No, if they -- if they opposed the condition and the open season was thrown out, then it would have started a new round -- or it would have started a new project description.
1261.           **MR. ROTH:** Right. But they risked that the open season would not be thrown out and they would not get capacity on the line.
1262.           **MR. STONESS:** They risked that the Board might not agree with their position, yes.
1263.           **MR. ROTH:** Okay. And the value of the regulatory support clause, Section 2.2, and having no contracted shipper object to the toll, Trans Mountain would have believed that that would have enhanced the prospects of getting approval and that's why the clause was in there? I'm just wondering, why did you insist on the clause?
1264.           **MR. ANDERSON:** I'm getting a little lonely here, Mr. Roth, let me weigh in.
1265.           Two point two (2.2), I think, from our standpoint was put in for several reasons. One of those reasons was just what we thought the logical and apparent reason is, that if you sign a contract, you would no doubt support the successful completion of that contract and -- and the terms, if that's a logical connection to make. But it was also more than that in that 2.2 provided us with the -- what we felt was a very important condition, which was that parties would be publicly supporting, together with us, the application brought before the Board.
1266.           We're well aware of the fact that every project's going to have its challenges and its risks and its contentious issues. And we believe that industry collective support is -- is something very desirable in advancing a project like this and that we didn't want to be in the position that we're in today where we have agreed to terms with virtually all the shippers save and except Suncor and -- and Total, where we're disputing a contract that has been freely signed up for and that the strength of industry behind us is one that we wanted to rely upon.
1267.           **MR. ROTH:** I think you're agreeing with me, the reason that regulatory support clause is in there is Trans Mountain wanted to increase the chances of its toll methodology and the tolls that it would produce being approved by the Board; correct?

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1268.           **MR. REED:** Mr. Roth, I'm sorry. I was trying to intervene there with a -- an addition to that answer before.

1269.           Another reason that that provision was in there is it had been in the prior FSA in the Firm 50 application. In that application, Suncor and three other parties challenged that provision. And the Board rejected that challenge in that case and found that the open season was fair.

1270.           So again, apart from the support it provided, it was also viewed as being consistent with the Board's prior ruling in rejecting the challenges to virtually the same provision just a year earlier.

1271.           **MR. ROTH:** Right. And that really brings home the risk that I was speaking to Mr. Stoness about, that if you leave that 2.2 in, don't get capacity and object at that time, it's pretty hard to undo the open season. I think you highlighted that, haven't you, Mr. Reed?

1272.           **MR. REED:** Certainly that's not what I meant to highlight. What I meant to highlight was the provision was consistent with the Board's prior practice and rulings and that's why it was in there. It was something that the company considered to be reasonable.

1273.           You know in my evidence, I also opined that I thought it was reasonable based upon prior Board rulings. But yes, there's always a risk when you challenge an established position by the Board that you may fail in your challenge.

1274.           **MR. ROTH:** Exactly. So in my discussion with Mr. Stoness, I was suggesting that the shippers face considerable risk that if it chose to try and undo the open season, based on Firm 50, there was a good chance that that might not happen, so the shipper by -- had a great incentive if they actually could not do without that capacity to take 2.2 and not object to the toll.

1275.           **MR. REED:** I agree with you that you're taking a risk if you mount a challenge to a prior Board ruling and you're not successful. In the end, all of that, of course, ended up being moot because the provision was removed and all of the shippers are free to speak their mind in any way, shape or form they choose to in this proceeding.

1276.           So in the end, it's had no effect. But yes, I would agree with you that

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- if you choose to challenge a Board ruling from a prior case, then you run the risk of losing.
1277.           **MR. ROTH:** Okay.
1278.           **MR. RINNE:** Mr. Roth, if I could also add to that.
1279.           By and large, this issue -- this clause wasn't contentious in our discussions with almost 30 companies during the open season. Clearly with your client it was and -- and Total and a few others, but it wasn't -- it wasn't a primary issue of concern for many companies and I believe it still isn't.
1280.           And having said all of that, I believe we've dealt with the offending provision by responding in a very timely manner and a very positive way in the supplement Round 3. There is no 2.2 clause ---
1281.           **MR. ROTH:** Okay.
1282.           **MR. RINNE:** --- and so the issues that you're raising have been addressed by the supplement to the open season.
1283.           **MR. ROTH:** Okay. So you're suggesting it wasn't that big a deal. But you now have 13 shippers; correct?
1284.           **MR. RINNE:** Well, as I -- I think we have somewhere -- we had a much broader conversation across the industry geographically as well as upstream and downstream in a broad spectrum of companies. And this issue was pretty narrow amongst a relatively minor number of companies.
1285.           And so we now have 13 signed shippers on the project but, as I said before, we accepted and moved forward with the Board's ruling in August as quickly as we could so we could advance the project in a manner that addressed the concerns of 2.2 in a way that was fair to them as quickly as possible, as well as our existing shippers.
1286.           **MR. ROTH:** Right. But the issue of 2.2 constrained four shippers from participating in the original open season and held back 200,000 barrels a day of capacity that would otherwise have been nominated.
1287.           That sounds like a fairly significant material concern to me, Mr. Rinne.

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You're not agreeing with that?

1288.           **MR. RINNE:** What I'm saying, Mr. Roth, is that in the context of the open season, the negotiations that were ongoing between ourselves and all of the companies -- companies had many different reasons why they participated and why they didn't. For the most part, 2.2 was not one of those issues. Supplement -- the supplement to the open season that occurred was our ability to respond to it.

1289.           Your client, Total and CNRL were the participants in Round 3. And we're not disputing the fact that their interest remains for the expansion. What I'm saying is that we dealt with that by having a fair and open Round 3 process designed specifically to address the 2.2 issue.

1290.           **MR. ROTH:** So the Board didn't direct you to reopen the open season. That was Trans Mountain's own idea to remedy the removal of Section 2.2. There was no direction to reopen open season from the Board; correct?

1291.           **MR. ANDERSON:** If I recall, Mr. Roth, the -- what the Board did with that decision is they laid out a new issue for consideration which was, but for 2.2, what effect might that have had on shippers who didn't sign up and how would we address that in this proceeding.

1292.           And we took that to our supporting shippers and concluded that the best path forward was to get this matter resolved sooner than later, to have the supplemental open season, to put a tight condition around it that the only parties that would be included in that were those that but for 2.2 wouldn't -- would have signed up in the original.

1293.           We went forward with that, we got the commitments that you mentioned. And the further point to that I think that's important is that, once 2.2 was removed, all parties had the opportunity to intervene in this proceeding and oppose the project. And only Suncor and Total have done that.

1294.           **MR. ROTH:** They haven't opposed the project at all. I think they -- I think their evidence is they fully support the expansion project. They support the toll methodology generally. They just want a reset -- or at least from Suncor's perspective, just wants a reset toll. So I don't think it's accurate or fair to represent them as opposing the project, is it, Mr. Anderson?

1295.           **MR. ANDERSON:** Fair enough. They're opposing several of the

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- terms included within the negotiated settlement, perhaps not as I defined it.
1296.           **MR. ROTH:** Okay. As far as Suncor is concerned, it's just one term and that's what the initial toll is -- or the escalator. Two terms.
1297.           **MR. ANDERSON:** I think we would read your evidence more broadly than that, that there are more opposition concerns being raised than just the toll.
1298.           **MR. ROTH:** Okay. So as far as why Trans Mountain, after your discussion with the shippers that had signed on chose to limit Round 3, I take it there was a concern by Trans Mountain and/or its shippers that if you opened up the third round season to everyone unrestricted by having to prove they would have participated by -- through Section 2.2 is you could end up oversubscribed.
1299.           **MR. RINNE:** Well, in fact, Mr. Roth, we were oversubscribed. That's why we expanded the pipeline, to accept all of the new volumes. As you'd brought up earlier that it was 90 -- notionally 96,000 barrels per day of available uncontracted capacity at the end of Round 2 that, in theory, if we had had that or less in the supplement to the open season, we would have carried on with the project that we had at the time.
1300.           So the issue of how Round 3 -- the supplement to Round 3 was framed was a tricky -- a balancing act, quite frankly, between ourselves and the industry to respect the decision of the Board, which had cause for us to have Round 3 without Section 2.2 and yet recognize that over the time of the closure of the second round to the time of the third round, new shippers would know the results of the first two rounds and know who the shippers are and would have a benefit in that regard to look at the capacity being offered and respect that the issue of 2.2 had happened during the initial rounds.
1301.           And there is this passage of time issue as well that we tried to address as best we could. It's a difficult problem to solve and so we talk about the but for 2.2 clause in that the shippers who were affected by 2.2 and would have otherwise participated but for 2.2 were the shippers that were -- would have qualified, essentially, for Round 3.
1302.           And so that's quite a broad spectrum of the market. And what we said was, opening up in November of 2012, exactly the same terms and conditions the 2.2 clause is removed. And shippers who would have otherwise participated but

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- for 2.2 could submit nominations.
1303.           So it was a tricky balancing act to find terms that respected and addressed the issues raised by the Board by striking 2.2 while not enabling shippers to take advantage of the passage of time.
1304.           **MR. ROTH:** Right. One of the problems that would have arisen if you were oversubscribed and couldn't add enough capacity such that you did not have to pro ration is the terms of your deal with the existing shippers -- for example, the 75,000 barrel a day volume discount -- it would have undermined the terms of your existing deal with existing shippers if you'd have had to pro rate your capacity.
1305.           You'd already accepted those volumes, so that would have been a great deal of difficulty for Trans Mountain to pro rate those volumes; correct?
1306.           **MR. RINNE:** Well, in fact, I think you know the answer to that. In the terms of the open season notice for Round 3, we described what we would do in the event of oversubscription.
1307.           We would first talk to the shippers that did participate in Round 3 whether -- that we were in an oversubscribed situation and offer them the opportunity to reduce their nominations. We would talk to our existing shippers and see if they were open to the idea of curtailment of their volumes that were originally contracted. And we would explore what expansion scenarios we could undertake to meet the goal of trying to address everyone's volume requests that we got in Rounds 1, 2 and 3.
1308.           That's exactly what we did. We had those conversations. Everyone was supportive of a bigger pipe, if possible, getting all of their subscribed volumes and that's how we ended up with an 890 project instead of a 755 project.
1309.           **MR. ROTH:** Exactly. But since you didn't have a volume in your TSA, the third option was really at your election. You didn't need anybody's agreement for that. You needed agreement to pro ration and turn back because you'd already accepted the volumes, but if you were honouring through an expansion your existing volumes and the contract wasn't predicated on any expansion size, the third option was completely within your control.
1310.           **MR. RINNE:** Mr. Roth, our primary purpose here was to fix and

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- respond to 2.2. We weren't trying to control the volume of the pipeline in any way. And in fact -- in fact, the -- we could have apportioned the volumes of the Round 3 shippers, of the Round 2 shippers.
1311. Now, once those volumes were apportioned, that would trigger a clause for them to terminate their contracts if that was material to their -- to their business case. But this was done in a manner of collaboration with the industry and, as a whole, to build a bigger pipeline.
1312. We talked not only to the contracted shippers. We talked to other spot shippers who weren't on the pipeline system. And the overwhelming response was for us to make the pipeline big enough to meet the service requests. And that's what we did.
1313. **MR. ROTH:** But you didn't need their agreement in order to make the pipeline bigger since you didn't have a defined expansion size and it didn't affect -- you were committed to the volume, committed to the toll. You didn't need their agreement to do that.
1314. You would have needed their agreement if you were going to pro ration their capacity and they were potentially going to lose their -- their volume discount at 75,000 barrels a day. That would have triggered a concern that would have required agreement; correct?
1315. **MR. RINNE:** I'm sorry. What's the reference to the 75,000 barrels per day?
1316. **MR. ROTH:** Well, the -- let's -- for the sake of example, if there was somebody that bid just enough to get 75,000 barrels a day and you had to pro ration their volumes down such that they no longer qualified for that discount, they're not going to be too happy with you if you pro ration them out of their discount.
1317. **MR. RINNE:** Mr. Roth, perhaps the initial terms of the open season are a little unclear.
1318. Shippers that requested volumes in excess of 75,000 barrels per day qualified for the large volume discount. If it turned out that we were either in any of the rounds apportioning those volumes down, they still would have qualified for the 75,000 barrels per day discount even they may have gotten some number

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- less than that, 70 or whatever percentage they would have been apportioned down. So we weren't making these decisions based on those kinds of criteria as you're suggesting.
1319.           And to reiterate, our goal here was, with industry, to find a pipeline solution that was what everyone wanted, which was a pipe that was big enough to accept the volumes that they've asked for. And that's what we did.
1320.           **MR. ROTH:** So as a result of the third round of the open season, we have a project that now you've gone from a 30-inch pipe to a 36-inch pipe; correct?
1321.           **MR. RINNE:** That's correct.
1322.           **MR. ROTH:** Okay. So we now match the size of the anchor loop?
1323.           **MR. RINNE:** Correct.
1324.           **MR. ROTH:** Okay. We have 135,000 barrels a day of additional capacity that we didn't have before?
1325.           **MR. RINNE:** Correct.
1326.           **MR. ROTH:** Okay. And we have a 10-cent reduction in the 15-year toll which, by my calculation, reduces shippers' costs by between \$500 and \$600 million over the life of their contracts.
1327.           **MR. RINNE:** Depends on the volume that -- is that in aggregate, or individual shippers?
1328.           I'm sorry. I don't --
1329.           **MR. ROTH:** That would just be an estimate to take in. That's why I gave you a range of between 500 and 600,000.
1330.           So I started out just on your firm volumes with 10 cents, said, well, that's \$70,000 a day, did the math for a year, multiplied it by 19 and I end up with, depending on what you assume is a 15-year toll or a 20-year toll, you get a range of shippers on the whole paying between \$500 and \$600 million less in tolls to Trans Mountain than they were proposed to pay when you only had a 30-inch pipe and a 455,000 barrel a day expansion.

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1331.           **MR. RINNE:** Well, it's subject to the check of your math. It sounds reasonable.
1332.           **MR. ROTH:** Okay. So did everyone really come out a winner here as a result of the Board granting Suncor's relief?
1333.           We have a bigger pipeline, it flanges up nicely to the anchor loop, more much-needed capacity and a toll that, at least for starters, is starting out saving producers between \$500 and \$600 million a year over the life of their contracts. And I take it Trans Mountain finds it acceptable. So it looks like, at least to this point, the Board's removal of 2.2 was a very good thing.
1334.           **MR. ANDERSON:** I think that if you looked at -- at the end result, Mr. Roth, I believe that we have a solution that is, we believe, in the best interests of all the parties.
1335.           I don't know that I would -- I would use the benefit of the rear view mirror to singularly attach 2.2's removal to that success. I think that the project, as originally conceived, was -- was a very successful proposition as well for all parties.
1336.           **MR. ROTH:** But without the removal of 2.2, we wouldn't have gone back to an open season and increased the size of the pipe because you limited the third round of the open season to only those people that would have bid but for 2.2; correct?
1337.           **MR. ANDERSON:** The events that occurred were as you described it, 2.2 was removed, a supplemental open season was conducted. That resulted in more barrels being accepted and us agreeing to invest almost a billion dollars more and expand the pipe and expand the project and with a toll reduction.
1338.           We have not yet brought that project before the Board. We've not yet got approval for that project. This is the -- just the commercial terms. So I think it's too early to judge whether or not everybody is -- is benefitted and that the solution is satisfactory.
1339.           I think we've got a lot work to do ahead of us before that can be concluded.

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1340.           **MR. ROTH:** Okay. So assuming the project gets approved, you've got a better project in the sense of a bigger pipe, more economies of scale, cheaper toll, everybody wins.

1341.           **MR. ANDERSON:** And I would add to that assuming our Application here is approved on the terms presented to the Board.

1342.           **MR. ROTH:** We'll get to that a little later.

1343.           Now, again, I think you had capsulated this well in your investor presentation. You essentially characterized the Board as pulling you into 2.2. You say that:

*"Well, it was a combination of the Board pulling and Suncor pushing that got us to the point we're at right now with a larger expansion and a lower toll." (As read)*

1344.           **MR. ANDERSON:** Could you restate that as a question, please?

1345.           **MR. ROTH:** Well, so I -- that's a proposition. I'm suggesting that as a result of Suncor pushing Trans Mountain in negotiations and then in regulatory proceedings before the Board and as a result of the Board pulling Trans Mountain as you described in your investor presentation, we've ended up with a larger expansion for a lower toll.

1346.           **MR. ANDERSON:** That's a result of the events that took place. That result was in no way known, anticipated or certain at the time.

1347.           We opened up after 2.2 was rejected. We were in a state of -- excuse me -- I would suggest significant uncertainty in that the shippers who had signed up were not happy with the fact that it was opening up again, were not happy with the fact that parties may change. And we had to find a solution that, I think we did, that satisfied everybody.

1348.           But by no stretch were the results known or were we confident how it was going to unfold. We went in through quite risky period. And I believe, at the end of day, we end up with the application before you that I believe is -- is a great solution.

1349.           **MR. ROTH:** Right. So you're saying it wasn't without risk. You

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- wouldn't have taken that risk yourself had you had the choice, being risk averse as Trans Mountain is. But having been forced to take the risk, it worked out for everyone's benefit.
1350.           **MR. ANDERSON:** As I said, benefit will be defined by final approval of the project to proceed and I take exception to your claim that we are risk averse. I think we're taking on significant risks with this project.
1351.           **MR. ROTH:** Okay. And when you say project proceed, I keep on getting confused. And we had a little exchange earlier when you said, "I always think of the project as the Part 3 facilities application".
1352.           Are you talking that project being approved or are you always -- or when you say project approval, you're talking about the Part 3 application now? Which are you referring to?
1353.           **MR. ANDERSON:** I'm referring to both parts, this part, which is the commercial underpinning, and the next part, which will be the CPCN.
1354.           **MR. ROTH:** Okay. So I think we started to get there and you were obviously leading me in the right direction with my cross.
1355.           We've got a 10-cent reduction in the toll and Suncor is still pushing and we're hoping the Board will be pulling. There's a possibility that we'll be able to get all the benefits of the expanded project with a further toll reduction as a result of this proceeding?
1356.           Is there any chance of that?
1357.           **MR. NETTLETON:** Mr. Chairman, we're now venturing into the world of negotiations on the stand and Mr. Roth is now seeking this forum to be a one where there's a negotiation effectively taking place between Mr. Anderson and Mr. Roth. And it isn't a proper line of questioning.
1358.           It isn't a proper area to be going down of saying that this is the right place to be saying -- to be asking questions about whether or not there's going to be more reductions in tolls and doing so through the stand, through the cross-examination process. So I'm objecting to this line of cross.
1359.           **MR. ROTH:** Maybe I can phrase it another way.

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1360. Just hypothetically, if Trans Mountain were prepared to proceed with the project under a lower toll that reduces tolls for everyone, puts more money in shippers' projects, would that be a good thing and in the overall public interest?
1361. Just assuming that it would. Would you agree with me that it would be?
1362. **MR. REED:** No, I would not agree with you that it would be. Public interest is defined broadly as to the effects on all parties. And what I can tell you is that the application before the Board was the subject of lengthy back and forth negotiation with all the parties that were involved.
1363. It's a package deal that has tolls defined and risks accepted by me and my company and that a reduction in the toll, singularly taken out of that deal, would result in a project that would be unacceptable for us to proceed with.
1364. **MR. ROTH:** That wasn't my hypothetical, though. I -- my hypothetical was, assuming that you were willing to proceed with the project as revised or expanded, if we took the money out of the owner of Trans Mountain's pocket and put it into the pocket of Alberta oil producers who reinvested it to produce more oil, isn't that a better thing that the NEB should take into account?
1365. The hypothetical is you'd still proceed with the project at the lower toll.
1366. **MR. REED:** And I just can't agree with the hypothetical.
1367. **MR. ROTH:** Okay. So you're always one step ahead of me, so let's get into that. We'll talk a little bit about the hurdle, right.
1368. You'd agree it takes a lot of things to build a pipeline expansion. Two basics are, it takes financing and it takes pipe which, in this case, it takes over \$5 billion of financing. And I haven't been able to figure it out because I see different kilometres of pipe, but it takes either 900, 975 or 980 kilometres of 36-inch heavy wall pipe. Is it 980, 975, 900?
1369. **MR. HILL:** I can answer ---
1370. **MR. ANDERSON:** Go with 980.

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1371.           **MR. HILL:** I can answer that exactly, if you want. It's exactly, subject to the details of construction, but 973 kilometres of 36-inch and nine kilometres of -- sorry, eight kilometres of 30-inch.
1372.           **MR. ROTH:** Thank you very much.
1373.           In the end -- so you'd agree with me it takes the financing, it takes pipe in order to build this expansion. Correct, Mr. Anderson?
1374.           **MR. ANDERSON:** I wish it was that simple.
1375.           **MR. ROTH:** It takes a lot of other things, but those are two basics.
1376.           **MR. ANDERSON:** I don't know that those are the primary basics that I would have defined.
1377.           I mean, they are two components of what we need, is pipe in the ground and money to invest in putting that pipe in the ground.
1378.           **MR. ROTH:** Right. So you have to find a pipe supplier and you have to find somebody to supply the money. You have to find a money supply and you have to find pipe supply in order to proceed with the expansion; correct?
1379.           **MR. ANDERSON:** Among 1,000 other things.
1380.           **MR. ROTH:** Yes, but those are definitely two. I'd suggest finding \$5 billion is a pretty big thing you have to find. Over \$5 billion.
1381.           **MR. ANDERSON:** Attracting the investment along with attracting the customers are fundamental components.
1382.           **MR. ROTH:** Okay. Now, in your response to -- you don't have to turn it up. You can if you want, but it just always saves time if we don't -- if I just can quote it to you and you recollect it.
1383.           But in your response to CAPP Trans Mountain 1.3, you say that Trans Mountain makes an investment decision based on a return on investment acceptable to Trans Mountain and its owners. You recall that generally not only that return has to be acceptable to Trans Mountain, but also Trans Mountain's

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owners?

1384.           **MR. ANDERSON:** Sorry; where in CAPP 1.3 are you?
1385.           **MR. ROTH:** Okay, sorry. So it's Exhibit B16-6, Adobe 4, page 4 of 7. And it's going to be the first part of the response, the second paragraph there in "Making Investment Decisions".
1386.           I just read the first sentence of that last paragraph at the bottom, not the bullet.
1387.           **MR. STONESS:** That's what the first sentence is.
1388.           **MR. ROTH:** Okay. And would you agree with me that Trans Mountain is a common carrier subject to the jurisdiction of this Board?
1389.           **MR. STONESS:** I'm not clear on how you'd define a common carrier, but we're certainly subject to the NEB.
1390.           **MR. ROTH:** Is Trans Mountain's owner either a common carrier or in any way subject to the jurisdiction of this Board, as far as you're aware?
1391.           **MR. STONESS:** I think you're asking me a question that is a legal question. I don't know the answer to that.
1392.           **MR. ROTH:** Okay. No, fair enough.
1393.           It might be, it might not be. You're not a lawyer. You can't say.
1394.           **MR. STONESS:** Right.
1395.           **MR. ROTH:** Good.
1396.           Now, you say in response to CAPP the KMP will be providing financing for the project and it has a target internal rate of return of between 12 percent and 15 percent and it will not proceed with a project that does not meet this targeted internal rate of return.
1397.           That's what you're telling CAPP.

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1398.           **MR. STONESS:** That's correct.
1399.           **MR. ROTH:** And is it fair, Mr. Anderson, to characterize KMP's business as being the business of financing energy infrastructure and other energy-related assets?
1400.           **MR. ANDERSON:** I'd agree with that. I would narrow energy to exclude power, but I would agree with that generally.
1401.           **MR. ROTH:** It's a source of money supply. That's the business it's in. Financing energy assets.
1402.           **MR. ANDERSON:** It's an investor in energy assets.
1403.           **MR. ROTH:** Okay.
1404.           **MR. ANDERSON:** Fortis Limited ---
1405.           **MR. ROTH:** If KMP ---
1406.           **MR. ANDERSON:** Fortis Limited Partners.
1407.           **MR. ROTH:** Right. If KMP wasn't to fund the project, is it possible for Trans Mountain to go elsewhere to get funding for this project?
1408.           **MR. ANDERSON:** We are not, nor have we contemplated, any consideration of going anywhere other than our owners, who own 100 percent of the asset, for funding of the project.
1409.           **MR. ROTH:** Okay. But is it -- theoretically, is it possible? Is there a legal impediment to you going to get project financing from another institution other than KMP?
1410.           **MR. ANDERSON:** I don't believe there's a legal impediment, but nor is there an intention.
1411.           **MR. ROTH:** Is it possible for Trans Mountain to negotiate with KMP what its hurdle rate would be?
1412.           Can you fight for capital for your company, Mr. Anderson? Can you

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- go in and tell your owner I can get the financing elsewhere for cheaper? This project is needed. I'm a common carrier. Cut the hurdle rate.
1413.           **MR. ANDERSON:** My owner has an interest in investing in projects that derive value to its unit holders at returns that we have indicated in our responses that you're well aware of. And I think that the negotiation aspect of it relates to where on that curve is a project going to deliver the required investment returns and how does that compare for other opportunities that KMP has for their -- has for the capital.
1414.           So to the extent that we have conversations about what that hurdle rate needs to be for a project given a different -- a certain suite of risks, we have that. And I can tell you that this project is on the very low ends of that hurdle rate.
1415.           **MR. ROTH:** Right. But I'm talking about competition and bargaining and I go looking for the posted rate on my mortgage and manage to knock 2 percent off the posted rate and I do that through negotiation and competition. If I just paid the posted rate all the time, I'd be paying a lot more.
1416.           And I wanted to know whether Trans Mountain, as a common carrier with obligations to its shippers and obligations to the Board, can negotiate with KMP and get a better rate.
1417.           **MR. ANDERSON:** I do not believe so.
1418.           **MR. ROTH:** Okay. So -- and that's the same answer if KMP happened to be in the pipe manufacturing business rather than the pipe financing business and wanted 50 percent more for its mill pipe than anybody else, you'd have to just say, "Sorry, guys, we can't proceed with the project because we don't get pipe. We've got a sole source of supply".
1419.           **MR. ANDERSON:** I don't understand the relevance of the question. I mean, I think what you're saying is that -- is KMP, as the investor in this project, unreasonably setting expectations as it relates to the package negotiation that we concluded with.
1420.           And I don't believe so and I think that these are very much within the realm of reasonability. And it is a package deal that we brought before our owner and, as well, we presented to our shippers. And we've reached a conclusion of that with the support of, let's say, 10 or 11 of the 13 shippers, and we intend on

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- proceeding with it on that basis.
1421.           **MR. ROTH:** But I'm suggesting to you that unless you're able to negotiate with KMP, which you say you're not, you're not going to get the best rate on financing any more than you'd get the best rate on pipe if you said I can only take pipe from this one supplier.
1422.           **MR. ANDERSON:** KMP has an interest in investing in energy projects to provide value to its unit holders and to its customers. We've demonstrated through this negotiation that we've been able to balance those interests with the conclusion that is supported almost unanimously by our contracted shippers. They have a desire to invest at these returns for this project and they are my sole source of capital.
1423.           **MR. ROTH:** Now, as far as if you were able to negotiate, at the same investor presentation you were presenting at, the KMP disclosed its cost of capital, did it not?
1424.           **MR. ANDERSON:** Yes, they did.
1425.           **MR. ROTH:** Okay. And KMP's cost of capital is 7.3 percent made up of 5.4 percent equity and 1.9 percent debt based on a 50/50 capital structure. That's KMP's cost of capital?
1426.           **MR. ANDERSON:** That's what it was for 2012. It varies each year with market conditions. And they've established a long-term cost of capital at or about 9 percent and they expect every project that comes before them to exceed that depending upon the risks that it carries. And for that, pipeline projects like mine have a hurdle requirement of 12 to 15 percent, and we're at the low end of that.
1427.           **MR. ROTH:** Right. But it's not as if you could say to KMP, "I want to cut your margins on this financing. I can get better project financing elsewhere. Reduce your hurdle rate or I'll go elsewhere". That was not an option for you.
1428.           **MR. NETTLETON:** Mr. Chairman, my friend has now asked that question three times. He has received an answer three times.
1429.           I thought Mr. Anderson's clear and express statement about being --

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KMP being its sole source of capital put an end to the issue, but it seems like my friend keeps wanting to go back. I would suggest that we ---

1430.           **MR. ROTH:** Sorry, the only reason ---

1431.           **MR. NETTLETON:** --- it's time for Mr. Roth to move on.

1432.           **MR. ROTH:** Yeah. Indeed. I was just wondering if he would change his answer after it was publicly disclosed what his cost of capital was, whether he would consider maybe that that was an option, but I agree with Mr. Nettleton. As long as the answer continues to be what it was before, notwithstanding we talked about the cost of capital, the question has been answered.

1433.           So I'll move on.

1434.           **THE CHAIRMAN:** Before you move on, the Board will want to take a short 10-minute break.

1435.           **MR. ROTH:** Okay. I can break right now, sir.

--- Upon recessing at 2:54 p.m./L'audience est suspendue a 14h54

--- Upon resuming at 3:06 p.m./L'audience est reprise a 15h06

1436.           **THE CHAIRMAN:** No problems. It's my understanding, Mr. Roth, that counsel has talked and 3:45 is still a good time to adjourn for the day?

1437.           **MR. ROTH:** Indeed. And actually, when I was on my page of notes, sometimes I get going and I was actually two or three pages ahead of where I told her I was, but I -- still, 3:45 would be a good time to break and then I'll just have a little bit tomorrow morning before Mr. Miller starts.

**IAN ANDERSON: Resumed**

**SCOTT STONESS: Resumed**

**NORMAN RINNE: Resumed**

**GREGORY HILL: Resumed**

**KEVIN MacFARLANE: Resumed**

**JOHN REED: Resumed**

**GEORGE SCHINK: Resumed**

**STEVEN KELLY: Resumed**

**--- EXAMINATION BY/INTERROGATOIRE PAR MR. ROTH:  
(Continued/Suite)**

1438.           **MR. ROTH:** Mr. Anderson, in your investor presentation you were also talking about the new multi-year settlement -- cost of service based settlement that you've embarked upon. And you said you thought that would be known in a week or two. And I don't know if you've made that public yet, but can you tell us whether you expect that the current rate of return on equity will be going up or down pursuant to that settlement?

1439.           **MR. ANDERSON:** The final details of that settlement are not yet public, Mr. Roth. We're still in the final stages.

1440.           **MR. ROTH:** Okay. So just directionally, would you be able to indicate whether that ROE, you think, would be going up or down?

1441.           **MR. ANDERSON:** I don't think it'd be appropriate for me to disclose that at this point until the final terms are agreed to.

1442.           **MR. ROTH:** Now, again, we don't have to turn this up. It's always quicker, but all -- by all means, you're entitled to if you want to refresh your memory. But in an information response to Suncor TML 1.46h, Trans Mountain suggests that offering firm service without an expansion would be different and suggested it may not be able to go to negotiated rates if there wasn't any expansion involved. Do you recall that response?

1443.           **MR. NETTLETON:** Do you have the exhibit number for that?

1444.           **MR. ROTH:** I usually do and I gave them all to the Regulatory Officer, but in my notes I didn't put that in red.

1445.           **THE REGULATORY OFFICER:** I think it's B16-8.

1446.           **MR. ROTH:** Thank you very much. And excuse me for not having the Adobe page. It's just one thing I didn't circle in red to make the note on, so (h), the response.

1447.           **MR. ANDERSON:** I think we've got the IR up, Mr. Roth, if you want to repeat your question.

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1448.           **MR. ROTH:** So you're suggesting there that there's something different about an expansion. If there was no expansion capacity available, you're suggesting that you might not be able to just negotiate rates with your shippers in moving to firm capacity.
1449.           **MR. STONESS:** Sorry; which paragraph are you in?
1450.           **MR. ROTH:** Well, I'm in (h) and the question there was, would it be appropriate to go to a negotiated toll if there was no expansion capacity. And you're suggesting, well, no because there's \$5.4 billion in investment here and that's what's underpinning the negotiation of these contracts. And then later on, there's some discussion, probably contributed by Mr. Reed, saying theoretically, you could have a similar opportunity and a commitment without expansion.
1451.           But the first part of the paragraph, it looks like it was produced by Trans Mountain, is suggesting that you wouldn't be proposing to go to a negotiated contract rate unless you were coming up with expansion capacity. Is that, in essence, what the response is?
1452.           **MR. ANDERSON:** I read it a little bit differently than that, Mr. Roth, in that it is the investment of 5.4 billion and the risks attached with that significant investment that requires us to seek firm commitments on the pipe which then translates into the settlement agreement and contracts that we reached. And I agree that it doesn't preclude anybody from entering into, you know, fixed-term contracts under different circumstances, different points in time.
1453.           The circumstance we have before us right now is that, under an expanded case, it's necessary to enter into those contracts to provide the security.
1454.           **MR. ROTH:** Okay. I take it if the expansion doesn't proceed because the hurdle rate isn't approved or the negotiated toll methodology based on KMP's hurdle rate isn't approved, Trans Mountain is content to continue to earn a cost of service based return on its roughly billion dollar investment in the pipeline?
1455.           **MR. ANDERSON:** I think the point I'd make, Mr. Roth, is that in our current Application we're not asking the Board to approve our hurdle rate. Our hurdle rate is just a fact of what's necessary to attract the capital that underpins the contracts that we put forward.

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1456.           If we were to not proceed with the expansion, we would continue to negotiate with our shippers on toll settlements that were appropriate at any point in time given conditions and risks that were inherent within those toll settlements. And while they may have some cost of service basis to them, those toll settlements do include other aspects that would not be traditional cost of service components such as incentives around capacity or power or the like.
1457.           **MR. ROTH:** Okay. So Trans Mountain's investor, KMP, that has the billion dollars tied up so far in the existing system is content to earn the return under on the basis of multi-pipeline rate settlements with 10 percent ROEs. It's not as if KMP is going to cash in its billion dollar investment in the project and take it out into the market and earn its hurdle rate on that rather than continue to tie up its capital in Trans Mountain.
1458.           **MR. ANDERSON:** The hurdle rates don't apply to the existing asset. The hurdle rates don't apply to the billion dollars currently invested in Trans Mountain.
1459.           **MR. ROTH:** Right. But one scenario is if KMP isn't willing to proceed with an expansion on the basis that it doesn't want to finance it given what the Board would approve for toll or toll methodologies, one solution would be to sell the existing asset to somebody else who might be prepared to proceed on an expansion and KMP can merrily go off and finance a pony express or another pipeline or -- with the billion dollars it has tied up in Trans Mountain. You don't foresee that being a possible.
1460.           **MR. ANDERSON:** I can never predict the future, Mr. Roth. I can never predict what assets might be bought and sold over a passage of time.
1461.           What I can tell you is that my shareholder is fully prepared to invest \$5.4 billion on the terms that we've reached with our shippers.
1462.           **MR. ROTH:** Okay. But if it doesn't get the terms it's looking for, it's also possible that your shareholder just might sell the pipe to somebody who is willing to invest on terms that are more acceptable and in accordance with whatever ruling the Board might come up with. That could be a possible outcome, too.
1463.           **MR. ANDERSON:** I think I've answered that, Mr. Roth. I can't

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speculate on what might happen in the future.

1464.           **MR. ROTH:** Okay. But for the time being, Trans Mountain and its investor, KMP, are happy under the existing toll settlement based on an ROE.
1465.           **MR. ANDERSON:** KMP has accepted the result of negotiations that we've entered into for toll settlements recently with our shippers that have a suite of components to them, including some incentives and some risks, and they've been satisfied with those toll settlements.
1466.           I think the point to be made as well, Mr. Roth, and to remember, and it goes back to your questioning earlier today. And that is that when KMP acquired the asset from KMI, there was a discount involved and, therefore, KMP is satisfying its original investment thesis around the acquisition of Trans Mountain and has dropped down into KMP through the existing terms of settlements that we're reaching. So that was money that was spent back in 2007. We're now looking prospectively at a new investment of 5.4 billion.
1467.           **MR. ROTH:** Okay. Now, I believe on a number of occasions, Trans Mountain and its expert consultants have suggested that an alternative for producers is to either individually or collectively band together and build their own pipeline. And I certainly don't want to accept that as being something that can be done, but I'd like to ask a couple questions on whether Trans Mountain would help make that happen.
1468.           If that producer pipeline, let's call it, was built from Edmonton to the flange of that 36-inch pipe that you've got going through the park, would Trans Mountain be prepared to establish -- and probably it doesn't have much choice in the matter because the Board probably would make it do it -- but from an investment perspective, would it be satisfied establishing a new receipt point and a delivery point and charging those shippers a cost of service toll on the pipe?
1469.           The shippers, of course, have to build their downstream pipeline to -- from Rearguard to Kitimat or Vancouver or a combination of the two. Trans Mountain is happy continuing on on a cost of service basis, new receipt and new delivery point, maybe a volume distance toll through the park.
1470.           **MR. ANDERSON:** I'm not sure I captured all components of your -- your proposition, Mr. Roth.

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1471. Suffice to say, we don't have any interest at this point in considering an alternative such as you've defined. We believe that we've defined a project that almost unanimously satisfies the conditions of our shippers and we're -- we're happy to proceed on that basis.
1472. **MR. ROTH:** No, it doesn't involve a project that you'd have to do. All you'd have to do is establish a new interconnection point for receipts and deliveries and use your existing 36-inch pipe. And my question was, you'd be satisfied just earning -- riding out a regulated return on the rest of that billion dollar rate base and provide service on a cost of service basis to producers who have built up to you and then past you.
1473. **MR. ANDERSON:** Let's -- let's be clear about one other thing, Mr. Roth, and that is we would not be satisfied. We are very interested in making this investment and expanding this pipeline for the benefit of Canadian producers, so we are anxious and keen to proceed with this project as we've defined it and as these contracts have underpinned.
1474. So I would -- I would not be satisfied to sit back with the existing system as it was because I believe that we've got a project here that is a very important critical piece of infrastructure expansion in the country and so we're anxious to proceed with that on the terms that we've agreed to.
1475. **MR. ROTH:** Okay. So in addition to all of the other hurdles and barriers to entry those producers would face, I take it they'd also have to bring a Section 71 application to force you to provide interconnection facilities to accommodate that greenfield project?
1476. **MR. NETTLETON:** Now, that's when I stand up, Mr. Chairman. I'm objecting on the basis that Mr. Roth's question is now asking for these witnesses to, again, make a legal conclusion about the nature of the applications and the types of relief that would be sought from this Board in respect of his hypothetical. It's inappropriate, and I object to it.
1477. **MR. ROTH:** I'll save you having to make a decision.
1478. I was happy enough with the first response I got before, sir. Not that I don't think I could have forced one if I had to, Mr. Nettleton, but I -- maybe I wouldn't have gotten it, but I was happy with your response.

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1479. You would not be happy with the proposition I put to you and that was your response, and I'll move on from there.

1480. I wanted to talk to you about the concept of leveraging existing assets. And if we could go back to your investor presentation that I handed out, the transcript, it's the top of page 4. It starts at the second sentence, saying, "*Clearly the opportunity...*"

1481. And I apologize if I can't read it as well as you said it.

*"...opportunity is for increased capacity offshore and accessing those markets are so richly sought after by Canadian producers leveraging off from existing infrastructure isn't lost on anybody. We think that is a core strength and an opportunity that we have with the project."* (As read)

1482. First, is the reference to "richly sought after by Canadian producers" at all related to the toll you managed to negotiate?

1483. **MR. ANDERSON:** I'm sorry; can you repeat that?

1484. **MR. ROTH:** Well, what does "richly sought after by producers" mean?

1485. **MR. ANDERSON:** I'm starting to regret some of my points of emphasis that I may make in presentations, but "richly sought after" means nothing more than an expression of desire and importance, nothing more than I richly anticipate spending the evening with my family.

1486. **MR. ROTH:** Okay. So as far as the leveraging off of existing infrastructure is concerned, it suggests part of this leveraging would be the fact that you already have approximately 158 kilometres of looped 36-inch pipeline that's ready to be expanded into that would be part of your leveraged existing infrastructure?

1487. **MR. ANDERSON:** The point being here that, as you put it, we have existing infrastructure in the ground and on the ground at our terminal sites and we have a right-of-way that we occupy. And that existing infrastructure and its -- the important function it's serving right now isn't lost on anybody. And parties that we talk to would agree generally that that provides for a clarity around the

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- circumstances that an expansion would have to deal with. It doesn't make those circumstances any easier.
1488.           So really, what the existing infrastructure provides us, I believe, is full sight lines to what the issues and risks and challenges are that we have to overcome. It doesn't diminish them. Urban settings, river crossings, First Nations territories, et cetera all provide significant risks and challenges to the project. The fact we're building in a terrain where we already operate provides us knowledge of what those situations are, as you took me through earlier today.
1489.           **MR. ROTH:** Right. But relative to a greenfield that would be getting going, you got 15 percent of your roughly 1,200 kilometres of pipe already built and in the ground as opposed to, for the sake of example, a Northern Gateway who's got almost an identical length of pipe but doesn't have 36 inches of it placed across 158 kilometres in the most environmentally sensitive area across its right-of-way.
1490.           You'd be able to leverage off of that existing asset relative to a non-greenfield project, I believe you referred to in your presentation, is your expansion is a non-greenfield project; correct?
1491.           **MR. ANDERSON:** I did refer to it I believe as a brownfield project, I think is the term, given the fact there's existing infrastructure in the ground. But as I said, that provides us with the knowledge and, I believe, the opportunity to execute on something.
1492.           It does not diminish what the risks and challenges are and, in many respects, greenfield projects provide a different kind of opportunity in that they provide you the opportunity to design a brand new route from point A to point B that may be more benign than the existing right-of-way we have today.
1493.           One of our significant challenges is going to be going through the Fraser Valley and the urban density that's occurred around the pipeline in finding alternative routings, in satisfying the communities along that route that the new pipeline project is important for their community. So it provides, I think, a different suite of risks.
1494.           I think that the point I made here and I think the one that's important to take away is that having existing infrastructure in the ground, including the Anchor loop, provide us with knowledge and experience. It doesn't make the job

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of completing the project relative to a greenfield significantly different and, in some respects, it makes it more difficult, as I referred to some of the urban situations we face.

1495.           **MR. ROTH:** But you're not highlighting that to your investors and your investors you're suggesting that having a non-greenfield expansion is an opportunity as far as leveraging off of infrastructure. I can't see anywhere where you were talking about that actually, in some respects, having existing right-of-way is disadvantageous.

1496.           I didn't see that anywhere in your investor presentation. You can correct me if I'm wrong.

1497.           **MR. ANDERSON:** I might not have in this presentation, Mr. Roth, but it's not to say that I haven't elsewhere talked about urban density and the challenges in that setting as being significant to overcome.

1498.           So I think that if you expected this analyst's presentation to be as thorough or as complete as our application before the Board, I think that you're mistaken. It was meant to hit on the high points that I thought was relative to the analysts.

1499.           **MR. ROTH:** Okay. And then another aspect of leveraging off existing infrastructure would be the \$29 million a month in firm service fees that you have to fully fund project development costs.

1500.           This would be a situation where you're leveraging value out of your existing assets being the premium that shippers -- firm shippers are paying for use of an existing asset in order to fully fund project development costs, whereas a greenfield -- for example, I believe that's on the record of the Northern Gateway proceeding that the Northern Gateway project -- project development costs are in excess of \$300 million.

1501.           So a greenfield project wouldn't be able to leverage off its existing system the same way you've been able to in order to advance the project; correct?

1502.           **MR. ANDERSON:** I think that every project will consider the development cost risk differently and, in their own circumstances, whether or not that's Keystone, Keystone XL, Northern Gateway or any other project. What are the circumstances around that project, its development, its commercial phase, et

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- cetera. And we'll strike some agreement around development cost risk sharing.
1503. Utilizing the firm 50 fees, we think, is an extraordinary way for us to offset the risk of development cost exposure for both ourselves and our shippers.
1504. Under the terms of the agreement, the shippers are more exposed to development cost risk than we are by virtue of the fact that the pipe is 80 percent committed. So it's a benefit to shippers more so than it is to us.
1505. **MR. ROTH:** Right. And that benefit to shippers should be reflected in a lower toll, all things being equal, than if the pipe had to sponsor project development costs up front of between \$200 and \$300 million.
1506. **MR. ANDERSON:** I don't know how you connect those two pieces together, Mr. Roth. I don't see the relationship at all.
1507. **MR. ROTH:** Well, if the shippers are the ones that are taking the risk if the project development costs, 100 percent of them, one would expect that that would mitigate the risk of the pipeline. And all things being equal, the pipeline should offer a lower toll than if it had to take the risk on project development costs.
1508. **MR. ANDERSON:** But by virtue of the Firm 50 fees, the shippers aren't taking the risks on development costs and that's how we've constructed it, that the Firm 50 fees will cover any risks on development costs and that -- what I was referring to is the benefit that shippers get from that as a part of this deal.
1509. **MR. ROTH:** Right. And what I'm suggesting to you that if they -- that benefit didn't exist and they -- for I see it as a benefit of yours and the shippers were -- the pipe was advancing all the project development costs, logically speaking, that would be greater risk on significant amount of upfront capital and the pipe would want a greater return as a result of having assumed all that project development cost risk; correct?
1510. **MR. ANDERSON:** I don't agree with the premise.
1511. The tolls that were negotiated in this settlement agreement are -- are considered well and beyond just development cost risks. There's -- there's numerous other conditions within the contract that are the package that we sought.

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1512.           And the other point I'd make is, is the development costs on this project, (a) we're managing them carefully, but also (b), they are but a mere shadow of the \$5.4 billion that's going to be spent.
1513.           **MR. ROTH:** Mr. Anderson, we'll get plenty more of those when Dr. Lessard shows up tomorrow as to what your cost risk is.
1514.           I'm just isolating this one and saying relative to a greenfield project maybe like Northern Gateway where it's the pipe that takes on all of the -- the risk or the vast majority of it, shippers can expect to pay a higher toll because the pipe has taken on the risk. Here, since the shippers have taken on all the risk through their premium Firm 50 fees, one would expect that that would put downward pressure on the negotiated toll.
1515.           **MR. ANDERSON:** I'm not sure that the funding partners in Northern Gateway would agree that the pipe is taking all the risk on development costs.
1516.           **MR. ROTH:** Let's just count them as equity partners or owners within ownership opportunities so they're the pipe as far as owners are concerned as well. But let's have another hypothetical project, if you will, where the pipe takes on all of the risk.
1517.           All I'm suggesting to you is an elementary proposition that that's a substantial amount of risk on project development costs. And all else being equal, the toll should be lower if the pipe is not the one that has to take that risk.
1518.           **MR. ANDERSON:** I'm -- I'm still not accepting the theoretical proposition, Mr. Roth. But I would also add, I think, that if the development cost exposure as is being covered by the Firm 50 fees was not as it is, the deal would have been different in some way, you know, and I'm not sure how the deal would have been different. But it's a bundle of conditions and -- and terms to satisfy all parties.
1519.           And to say that one has a singular effect on another, i.e. development costs and toll, it might have been development costs and make-up rights. It might have been development costs and incentive sharing down the road. I mean, who knows what the, you know, give and take might have been in that negotiation. I don't think it's at all fair to relate one to a toll change.
1520.           **MR. ROTH:** Maybe we could agree on this. If Trans Mountain or its

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- owner, KMP, had taken 100 percent of the risk on development costs, its risk regarding this project would have increased.
1521. Will you at least accept that, or can you think of a reason why not?
1522. **MR. ANDERSON:** I can agree with you that on that single item if the Firm 50 fees did not exist as part of the deal as we have them and that we, as a pipeline operator, were taking 100 percent of the exposure on development costs, that would have changed the risk profile of the deal and that it would have changed in some other fashion to accommodate it.
1523. **MR. ROTH:** Okay. Now, relative to a greenfield project, would you also say that leveraging on -- and again, I'm just talking about what you meant by the opportunity or advantage of leveraging off of existing infrastructure.
1524. Would another advantage be the fact that the Trans Mountain system is a pipeline connected to approximately 600,000 barrels a day of refining capacity in the B.C. lower mainland and Pacific Northwest market area? Is that another advantage of your existing infrastructure you're leveraging off of?
1525. **MR. ANDERSON:** I think it's a fact to consider, Mr. Roth, that we are connecting supply to markets and Trans Mountain connects to several different markets, one of them being the Washington State and Vancouver refinery market. And the needs of those refiners and their suppliers, we believe, have been and will continue to be served by the Trans Mountain pipeline.
1526. So you know, those refiners are served by other supplies as well, perhaps saving except Chevron in any significant way, but Washington State certainly. We're a minority portion of the feed stock going into Washington State. They're primarily served by other offshore locations, so they've got many options.
1527. So it's a fact that we access them. I'm not sure that it's necessarily something that we're relying upon as leverage, as you put it.
1528. **MR. ROTH:** Okay. But relative to a competitive greenfield project that's not pipeline connected, maybe one that goes to Kitimat, Trans Mountain has an advantage over serving those existing pipeline connected markets relative to a greenfield that would have to incur not only pipeline tolls from Edmonton to the west coast, but also tanker charges in order to access that 600,000 barrels a

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day of capacity that your pipeline connected to, would it not?

1529.           **MR. ANDERSON:** I don't believe so. I believe that if somebody wanted to ship on Northern Gateway is going to be certain that those barrels they're putting on ships are going to a market and that somebody's buying them and that they're connected to -- whether or not that market is attached to the pipe, it's effectively attached through the other means of transportation.

1530.           So I don't think I would look at our -- our plans versus a Northern Gateway and suggest that we have more leverage by connection to a market than they do. I mean, they're going to require contracts that underpin pipeline space and those contracts are going to be, I assume, connected with -- with refineries elsewhere.

1531.           **MR. ROTH:** Maybe if I could hand out another aid to cross here. I gave it to your counsel on Sunday night, late Sunday night.

1532.           It's an information response in the Northern Gateway tolls -- or case that sets out the Northern Gateway tolls. And then I put in red what your expansion tolls are.

1533.           Now, the relevant page is the last page of that aid to cross. Not the blank back, but the Table 8. And then I interlined in red -- and sorry, for counsel just had a black and white copy, but it's on the far right-hand side.

1534.           I've put Trans Mountain's 20-year and 15-year tolls next to Northern Gateway's non-funding participant term shipper tolls. And it more or less looks like you fit in, as far as the firm tolls are concerned, in the range -- in the case of Northern Gateway going over its capital cost estimate by 135 -- or being 135 percent of its capital cost estimate, your toll is in the middle of that range, your indicative toll.

1535.           And in the case where you're on -- and I put that -- I compared that to your open season toll limit, which I believe is established off of your P65 capital cost estimate grossed up by 25 percent; correct?

1536.           **MR. NETTLETON:** Sorry. What are you asking in terms of the correct -- the question ---

1537.           **MR. ROTH:** That ---

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1538.           **MR. NETTLETON:** --- that you did the math right?
1539.           **MR. ROTH:** No, that the open season toll limit for the tolls I have down there are -- that I'm comparing Northern Gateway -- 135 percent of estimate 2 are your open season toll limit tolls that are based on a Class 5 P65 estimate that you've grossed up by 25 percent, the additional \$1.4 billion; correct?
1540.           **MR. RINNE:** The open season toll limit is \$1.4 billion at 7 cents per hundred million. On every toll it's a little bit different, but it's roughly \$1 more than the current ---
1541.           **MR. ROTH:** Right.
1542.           **MR. RINNE:** --- 95 cents or something like that.
1543.           **MR. ROTH:** But it -- relative to what your Class 5 cost estimate is, you essentially increase costs by 25 percent to get to that open season toll limit.
1544.           **MR. RINNE:** We went to -- hang on one sec.
- (A short pause/Courte pause)
1545.           **MR. RINNE:** Mr. Roth, I know we're going to run out of time here today on this one and it's going to get complicated. So I'm happy to work our way through the numbers with you, but it's about 14 percent P65 to P65 and then we go up to P95. So the net of all of that is about a billion, four. I think ---
1546.           **MR. ROTH:** Okay.
1547.           **MR. RINNE:** --- that's what really matters.
1548.           **MR. ROTH:** So a billion, four added to what's now 5.4 billion.
1549.           **MR. RINNE:** Correct.
1550.           **MR. ROTH:** Right. So I just said that's roughly 25 percent.
1551.           **MR. RINNE:** Correct, although I just want to be clear because you're going to have discussions tomorrow about risks and things like that and it's -- we

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- need to make sure we're working with correct nomenclature when we're talking about the P levels and what it is. But it's a billion, four more than the current estimated toll. That's the open season toll limit.
1552.           **MR. ROTH:** And so I was trying to compare a Northern Gateway toll where it was approximately a billion, four, a billion, five over its cost estimate what the toll would be. And the most relevant toll I could find was your open season toll limit.
1553.           **MR. RINNE:** Unfortunately, that's not a correct comparative, Mr. Roth. The open season toll limit is the open season toll limit as applied to the fixed component of the toll. The variable component of the TMX toll is not in that number, and I would guess that the number that you're talking about for the totals of Gateway -- the 431, 513, 647 -- include that operating portion as well.
1554.           **MR. ROTH:** Right.
1555.           **MR. RINNE:** So you're not comparing apples and oranges there -- or apples and apples. You've got apples and oranges.
1556.           **MR. ROTH:** Yeah. I was just comparing total toll to total toll, all operating costs for ---
1557.           **MR. RINNE:** The 493 and the 548 is not the total toll, sir. The 548 and the 493 are the fixed component of the total estimate.
1558.           **MR. ROTH:** Okay. I might have to come back to that tomorrow, sir. It's 3:45, and it's a good time to break.
1559.           **THE CHAIRMAN:** Perfect. So we'll reconvene with the continuation of your cross tomorrow morning at 8:30.

--- Upon adjourning at 3:44 p.m./L'audience est ajournée a 15h44