

**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 5

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

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

**February 19, 2013
Le 19 février 2013**

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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 19, 2013

Audience tenue à Calgary (Alberta), mardi, le 19 février 2013

BOARD PANEL/COMITÉ D'AUDIENCE DE L'OFFICE

R. George Chairman/Président

D. Hamilton Member/Membre

A. Scott Member/Membre

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- Ms. Terri-Lee Oleniuk
- Mr. Jeremy Barretto

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- Mr. Nick Schultz

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- Ms. L. Bernette Ho

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- Mr. Don G. Davies

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Cenovus Energy Inc.
- Mr. Don G. Davies

Chevron Canada Limited
- Mr. Keith Bergner

Devon Canada Corporation
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Husky Energy Marketing Inc.
- Mr. Don G. Davies

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Nexen Marketing
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- Mr. Barry Zalmanowitz

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- 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

6092. **THE CHAIRMAN:** Good morning, everybody. Mr. Roth?

JOHN VAN HEYST: Resumed

GILLON BROWNIE: Resumed

GREG MATWICHUK: Resumed

6093. **MR. ROTH:** Good morning, Mr. Chairman, Members of the Panel.

6094. Over the course of the weekend, Mr. Matwichuk noted an error in his evidence that he adopted on Friday and did not make any errata to, and my understanding is he would like to make a couple of corrections that he has now realized need to be made.

6095. **THE CHAIRMAN:** Go ahead, sir.

6096. **MR. MATWICHUK:** Thank you, Mr. Chairman. It's just a couple typos, actually.

6097. The first one is in C15-9-6 -- C15-9-6 and it's in the part B, just so -- the first sentence before part C there. There are two words "*long term*" right near the end of the sentence that should be removed.

6098. And then there's a similar correction in C15-9-2, and that's in part B of that IR response. And again, right at the end there, in the last sentence, the words "*long term*" should be removed. That's the extent of the corrections.

6099. **THE CHAIRMAN:** Thank you.

6100. Mr. Nettleton.

6101. **MR. NETTLETON:** Good morning, Mr. Chairman. Good morning, Panel Members. Good morning, panel. Hope you enjoyed your Family Day weekend. Mine was deferred.

6102. Mr. Chairman, just as a matter of procedure, last week Mr. Roth was using an aid to cross with my panel and I don't think an exhibit number was issued. This is the one concerning a table of comparators and it was entitled

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“Reed Reply Evidence Table 1” and then there were a series of six columns.

6103. And I will be referring to it in -- or at least one of the pages in my cross, but I thought it would easiest if we could, at the outset, mark it as an exhibit. I have extra copies here, sir.

6104. **THE CHAIRMAN:** Sorry, was that the “Reed Reply Evidence Table 1”?

6105. **MR. NETTLETON:** Yes, sir.

--- (A short pause/Courte pause)

6106. **THE CHAIRMAN:** Madam Wong, could we have an exhibit number, please?

6107. **THE REGULATORY OFFICER:** That will be Exhibit C15-15.

--- **EXHIBIT NO./PIÈCE No. C15-5:**

Reed Reply Evidence Table 1

6108. **MR. NETTLETON:** Thank you, Madam Clerk.

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

6109. **MR. NETTLETON:** Gentlemen, I’d like to start with a few questions for you, Mr. Matwichuk. If I could have you turn to Exhibit C15-4-6, which is your curriculum vitae? I just have a few questions to start there.

6110. Do you have that, sir?

6111. **MR. MATWICHUK:** I have it.

6112. **MR. NETTLETON:** Thank you.

6113. Now, Mr. Matwichuk, you’ve been a consultant for 28 years on a variety of regulatory matters; correct?

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6114. **MR. MATWICHUK:** That number sounds reasonable.
6115. **MR. NETTLETON:** Your grey hair is telling, sir, as is my lack of grey hair -- lack of hair.
6116. **MR. MATWICHUK:** We won't be counting them.
6117. **MR. NETTLETON:** Your CV indicates, sir, that you've provided testimony or have been involved in 24 regulatory proceedings involving rate matters, subject to check.
6118. **MR. MATWICHUK:** Subject to check.
6119. **MR. NETTLETON:** All right. And of those, sir, you have provided testimony in two proceedings related to crude oil pipeline rate matters; correct?
6120. **MR. MATWICHUK:** Did you say two?
6121. **MR. NETTLETON:** Two.
6122. **MR. MATWICHUK:** No.
6123. **MR. NETTLETON:** How many, sir?
6124. **MR. MATWICHUK:** I think it's in the neighbourhood of six.
6125. **MR. NETTLETON:** Well, I counted -- maybe you could go through those with me because I counted the Pembina Plateau Pipeline case; correct?
6126. **MR. MATWICHUK:** Yes, I worked on that.
6127. **MR. NETTLETON:** And the Firm 50 case.
6128. **MR. MATWICHUK:** That's -- that's another one.
6129. **MR. NETTLETON:** All right. What are the other ones, sir?
6130. **MR. MATWICHUK:** Okay. Well, let's go through and count the six, then.

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6131. There was a Milk River Pipeline where I represented the pipeline entity sponsoring that. There was the original Plateau Pipeline hearing in 2000-2001 where I represented a shipper. And there was a subsequent Plateau Pipeline proceeding where I -- I provided advice that led to a toll settlement.
6132. Then there was a Plains Midstream Rainbow Pipeline where I also submitted written evidence and that one also led to a settlement. And as you mentioned, there was the Firm 50 Pipeline. And there was one other that I'm struggling to -- to find, but I think in terms of tolls, that's a start anyway.
6133. **MR. NETTLETON:** Let me try and see if I can help. It was the Trans-Northern Pipelines case involving Royal.
6134. **MR. MATWICHUK:** There was that one as well.
6135. **MR. NETTLETON:** But that wasn't tolls, was it?
6136. **MR. MATWICHUK:** I don't believe it was. That one, I'd have to check my memory.
6137. **MR. NETTLETON:** And you have not provided expert opinion evidence regarding return on equity levels for regulated entities; correct?
6138. **MR. MATWICHUK:** No, and I haven't purported any of my evidence to be -- to be providing evidence on cost of capital. However, what I have provided in a number of proceedings is comparative data that assisted parties and assisted regulators to determine what a cost of capital base should be.
6139. **MR. NETTLETON:** Mr. Matwichuk, you're a Chartered Accountant; correct?
6140. **MR. MATWICHUK:** Yes.
6141. **MR. NETTLETON:** You do not have any professional designation as an engineer?
6142. **MR. MATWICHUK:** That's correct.
6143. **MR. NETTLETON:** Do you have any expertise in matters concerning pipeline design or pipeline construction?

6144. **MR. MATWICHUK:** No, I do not.
6145. **MR. NETTLETON:** Have you been involved in the procurement of pipeline contracting services for major energy projects?
6146. **MR. MATWICHUK:** No, I have not.
6147. **MR. NETTLETON:** Have you any expertise in matters that concern federal regulatory approvals for the construction and operation of pipeline facilities?
6148. **MR. MATWICHUK:** No.
6149. **MR. NETTLETON:** And sir, from your CV can you confirm that you have not indicated any testimony on financial investment analysis used to assess major energy infrastructure projects?
6150. **MR. MATWICHUK:** Financing of major energy infrastructure?
6151. **MR. NETTLETON:** Financial investment analysis used to assess major energy infrastructure projects.
6152. **MR. MATWICHUK:** Financial investment analysis. Well, I have provided evidence in energy toll and rate hearings, but I have not provided evidence on financing of infrastructure.
6153. **MR. NETTLETON:** Or financial investment analysis used to assess major energy infrastructure projects. You haven't provided testimony on that area?
6154. **MR. MATWICHUK:** I haven't provided it in the context of infrastructure, but I have provided evidence with respect to financial investment as it pertains to tolls or rates.
6155. **MR. NETTLETON:** Could we turn to Exhibit C15-4-5, sir, which is your direct evidence? And if I could take you to page 2, and it's Question 3 -- sorry, Question 4. I just want to confirm that the purpose of your evidence:

"...is to provide analysis and commentary with respect to [...]"

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toll methodology, as proposed by Trans Mountain in this proceeding."

6156. **MR. MATWICHUK:** As it's indicated there in Question 4.
6157. **MR. NETTLETON:** And so just to confirm, the commentary and analysis is not intended to be treated as expert evidence in matters concerning the determination of cost of capital; correct?
6158. **MR. MATWICHUK:** It's not expert evidence in terms of cost of capital but what it does provide are comparators that can be helpful to the Board relative to cost of capital matters that -- and the Board has used similar information and other regulators have used similar information to determine tolls.
6159. **MR. NETTLETON:** Your observations though, sir, that you've made are not stated as expert opinions or expert views are they, sir?
6160. **MR. MATWICHUK:** They're not expert opinions on cost of capital, that's correct. And as you'll note from Trans Mountain's application and their evidence, no cost of capital evidence has been provided on that front.
6161. **MR. NETTLETON:** I understand that, sir, but I want to understand that the scope of your evidence in this proceeding is simply observations and commentaries. On any part of your evidence, there are no views or opinions expressed; correct?
6162. **MR. MATWICHUK:** I think I did express views, sir, in terms of -- based on those observations, the returns that arise out of the models are excessive to what other Canadian pipelines are -- that their tolls were set on.
6163. **MR. NETTLETON:** You've expressed conclusions, sir, but you haven't expressed opinions about whether or not, in your view, in your expert view, whether or not a rate of return is just and reasonable, for example.
6164. **MR. MATWICHUK:** I haven't expressed a view on what a particular ROE should be in a tolling methodology for Trans Mountain. However, I have provided ROEs that would be average ROE projected outcomes, and those can then be used by this Board to determine whether the toll methodology is appropriate.

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6165. **MR. NETTLETON:** And sir, just to be clear, those conclusions are based on the observations that you have included in your evidence; correct?
6166. **MR. MATWICHUK:** Yes. And those conclusions would have to be derived from the observations and, therefore, express an opinion.
6167. **MR. NETTLETON:** Mr. Matwichuk, do you agree that the returns of this project, namely the TMX project, will be driven by the risk allocation and the manifestation of those risks, as they actually develop?
6168. **MR. MATWICHUK:** Could you -- could you reword that question or ask it again?
6169. **MR. NETTLETON:** Do you agree that the returns earned on the TMX project will be driven by the risk allocation and the manifestation of those risks as they actually develop?
6170. **MR. MATWICHUK:** Okay. Well, what you've done is you're suggesting returns actually earned and tolls typically aren't set on based -- based on returns earned. They're set on an expectation of tolls. And, therefore, when they are set in advance on a prospective basis, there's an anticipation of what risks an entity may face and what residual risks after all risk mitigation has taken place.
6171. **MR. NETTLETON:** Let's turn, sir, to your -- the detail of your analysis, if we could. You've conducted a series of case scenarios; correct?
6172. **MR. MATWICHUK:** Correct.
6173. **MR. NETTLETON:** And the case scenario analysis was primarily focused on assumed levels of return on equity, capital structure and debt cost?
6174. **MR. MATWICHUK:** No, the scenarios were based on, first of all, all of the information that was provided by Trans Mountain. And the base for that was all the cost and assumption and estimation information provided in CAPP 1.3, and then the scenarios thereafter were based on assumptions with respect to debt cost, with respect to debt equity, with respect to volumes, both committed and uncommitted, and I'm probably missing some -- oh, well, also a 20-year assumption and inflation assumptions, as well as the 2.5 percent annual compounding escalator over each of the 20 years.

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6175. **MR. NETTLETON:** All right. Now, Mr. Matwichuk, I'm going to refer you to Exhibit C15-15, which is the document that just got marked this morning. Do you have a copy of that?
6176. **MR. MATWICHUK:** I have it.
6177. **MR. NETTLETON:** And sir, did you assist in the development of this exhibit?
6178. **MR. MATWICHUK:** I was just checking with my fellow panellists because we worked on a number of things together, but this was not one of them.
6179. **MR. NETTLETON:** This was not one of them?
6180. **MR. MATWICHUK:** Correct.
6181. **MR. NETTLETON:** Who prepared this, sir?
6182. **MR. BROWNIE:** I prepared that table.
6183. **MR. NETTLETON:** Mr. Matwichuk, have you reviewed this document?
6184. **MR. MATWICHUK:** I reviewed this document, yes, and also Mr. Reed's reply evidence, which had a similar table in it.
6185. **MR. NETTLETON:** Do you have any reason to doubt as to its accuracy? I thought it was something that you would have assisted in at least reviewing. It's based on your scenarios.
6186. **MR. MATWICHUK:** Are we -- are we talking about doubting the accuracy of C15-15 or ---
6187. **MR. NETTLETON:** Yes.
6188. **MR. MATWICHUK:** --- Mr. Reed's evidence?
6189. **MR. NETTLETON:** No, C15-15.
6190. **MR. MATWICHUK:** Okay.

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6191. **MR. NETTLETON:** And in particular page 2, sir, which is Indicative Toll Scenario A, Case 9.
6192. **MR. MATWICHUK:** So I think the first thing that arises when I look at this table is that the base from which it was taken -- which it was in Mr. Reed's reply evidence -- this is very much a hypothetical. It's not applied to any Trans Mountain data. So that's my first observation with respect to this table.
6193. And I think then what Suncor went on to do -- say, well, let's assume this table for the moment and how would it pan out under different scenarios that I used in my evidence.
6194. **MR. NETTLETON:** Well, Mr. Brownie, you took the pennant, then, on this document; correct?
6195. **MR. BROWNIE:** Yes, I did.
6196. **MR. NETTLETON:** And sir, how did you go about calculating the return showing in the fifth column?
6197. **MR. BROWNIE:** I replicated, to the best of my ability, Mr. Reed's table from his reply evidence and effectively took -- you know, I guess you could call it reverse engineer to a certain extent. I took the return profile from, in this particular case, Indicative Toll Scenario A, Case 9 and applied it to the returns.
6198. And really, what I was trying to illustrate here was -- Mr. Reed had taken an example which showed -- excuse me -- that a geometric average of 24.19 could result in an IRR of 7.99. I wanted to purely show in this example that, under a different return profile, the IRR could be very different.
6199. **MR. NETTLETON:** Didn't you take, Mr. Brownie, the investment shown in column B and multiplied it by the return values shown in column 6, the last column, and the product of that is the return shown in the fourth column?
6200. **MR. BROWNIE:** Yeah, I believe so, subject to check, but yes.
6201. **MR. NETTLETON:** And the returns shown there are levered amounts using the capital -- capital cost -- sorry, the capital -- the cost of capital structure assumption; correct?

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6202. **MR. BROWNIE:** Yes, that'd be accurate.

6203. **MR. NETTLETON:** Thank you.

6204. Now, Mr. Matwichuk, if we turn to Exhibit C15-11-3, which was, I believe, a revised -- one of the appendices to the revised evidence that you had filed.

6205. And it's page 43, Madam Clerk, that I'd like to take you to.

6206. **MR. MATWICHUK:** Can we establish which case this is, Mr. Nettleton?

6207. **MR. NETTLETON:** Yes, I think at the beginning of that chart, sir, it's your Case -- your Scenario A, Case 9.

6208. **MR. MATWICHUK:** And was that with the indicative tolls?

6209. **MR. NETTLETON:** Yes.

6210. **MR. MATWICHUK:** Okay. So that would be, as I understand it, in my supplementary evidence under Q15 on page 14, would be under Table 8, Scenario A, Case 9?

6211. **MR. NETTLETON:** We're just having a technical moment.

6212. Madam Clerk, I believe it's the next page that I'd like to go down to.
And ---

--- (A short pause/Courte pause)

6213. **MR. NETTLETON:** My page is 43 of 160. And I'm not sure, Madam Clerk, if that's -- yeah, that's the one.

6214. Now, Mr. Matwichuk, on line 15 of page 43, you'll see that it's entitled "ROE"?

6215. **MR. MATWICHUK:** Yes, I see that.

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6216. **MR. NETTLETON:** All right. And those are the numbers that you've prepared; correct?
6217. **MR. MATWICHUK:** Yes.
6218. **MR. NETTLETON:** Now, if we go back to Exhibit C15-15 ---
6219. **MR. MATWICHUK:** Yes.
6220. **MR. NETTLETON:** --- can you confirm with me -- and take a moment, but can you confirm with me that the ROE percentages that are listed in your evidence on line 15 reflect all of the return values showing in this exhibit on page 2, last column?
6221. **MR. MATWICHUK:** And given that that's a 20 -- list of 20 numbers, you don't mind if I check them?
6222. **MR. NETTLETON:** Take a moment.
- (A short pause/Courte pause)
6223. **MR. MATWICHUK:** Yes, I see Mr. Brownie has used the same ROE numbers, but I hasten to add that the ROE that arrived out of Scenario A, Case 9 with indicative tolls is using Trans Mountain's data. The data that's used in C15-15 is -- are just investment data, et cetera that came out of Mr. Reed's reply evidence.
6224. **MR. NETTLETON:** Quite so, but for purposes of the example, I thought it was to demonstrate the difference between IRR and geometric mean. Is that correct, Mr. Brownie?
6225. **MR. BROWNIE:** That's correct, that was the primary purpose of it. And I should add that I'm not purporting that these are the IRRs that Trans Mountain may earn. It might -- it might be higher; it might be lower.
6226. But I just didn't want to illustrate that given -- given varying toll -- sorry, ROE profiles, the delta between the IRR and the geometric average can vary quite significantly. And Mr. Reed's example, there's obviously a huge variance while in ours, again, just for illustrative purposes, shows given our ROE profile, the IRR is much higher.

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6227. **MR. MATWICHUK:** Mr. Nettleton, there a number of differences that -- I understand what Mr. Brownie was doing in terms of the comparison and using the ROE numbers, but do keep in mind that there are a number of differences in terms of cost assumptions.
6228. One that's glaring to me in this, while using Mr. Reed's base analysis, as I understand it, I look at the base analysis Mr. Reed has used a 20-year depreciation rate, i.e. 5 percent per year, so that the investment is fully depreciated by the end of the term whereas, in my model, the depreciation is based on the depreciation rates provided by Trans Mountain, which would extend the life of the asset well beyond the 20-year timeframe.
6229. **MR. NETTLETON:** Can I have you turn -- this may be difficult, Madam Chair, but if you keep that window open and if I could go to Exhibit 15-9-4 -- Exhibit C15-9-4, which I believe is your supplementary evidence, Mr. Matwichuk.
6230. **MR. MATWICHUK:** Yes. Sorry. Yes, I have that.
6231. **MR. NETTLETON:** And if you could go to page 14.
6232. **MR. MATWICHUK:** Yes.
6233. **MR. NETTLETON:** And can you agree with me, sir, that your ROE there is stated to be 22.3 percent?
6234. **MR. MATWICHUK:** For Scenario A, Case 9, it's stated in Table 8 as 22.3 percent, yes.
6235. **MR. NETTLETON:** And that's a geometric mean?
6236. **MR. MATWICHUK:** That is a geometric mean, correct.
6237. **MR. NETTLETON:** And if you go back to this table, sir, Mr. Brownie, you can confirm with me that the geometric average that you show is 23.11 percent; correct?
6238. **MR. BROWNIE:** That is correct. And the reason for that is -- and I noticed it when looking at Mr. Reed's table, there's, I guess you say, two different

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ways of calculating a geometric mean. There is the Excel formula called GEOMEAN, which is what we used, and then there is the more arithmetic formula, which is the sum product -- well, you add one to all the returns, if we want to get technical here.

6239. Add one to all the returns and then it's the sum of all those returns to the square root of the number of the returns in the calculation, if my memory serves me right.

6240. So I noticed that in it too, and I found that interesting that the geometric mean actually increases when you use the quote, unquote arithmetic formula versus the Excel formula. Slightly, but it does increase.

6241. **MR. NETTLETON:** Mr. Matwichuk, do you think that the geometric mean is the correct calculation to use when determining whether to make an investment in a project?

6242. **MR. MATWICHUK:** My analysis wasn't intended to assess whether to make an investment in a project. My analysis was comparing costs to the toll revenue that would come out of the Trans Mountain toll methodology.

6243. And Trans Mountain itself did a -- or at least indicated it did a comparison of its toll revenue to its costs and it -- it was -- so we essentially did -- both did comparisons. My comparison is documented in all of -- for 20 years in each of my scenarios, in both my original and my supplemental evidence.

6244. Trans Mountain's -- has not provided the calculations that it used to compare costs and toll revenues.

6245. **MR. NETTLETON:** Do you remember the question, sir?

6246. **MR. MATWICHUK:** Yes. And you asked me whether it was to be used for investment. And my evidence does not purport to provide an investment decision evidence. It is evidence ---

6247. **MR. NETTLETON:** So you have no view on that then?

6248. **MR. MATWICHUK:** My evidence is based on the issue that the Board outlined, and that was to determine whether the toll methodology is appropriate. I don't believe that we're in this proceeding to determine whether a

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- pipeline, a carrier should make an investment.
6249. So in following up on the Board's stated issue, that was the basis for my evidence, was to determine whether the toll methodology is appropriate.
6250. **MR. NETTLETON:** But Mr. Matwichuk, let's be clear, you've used in your evidence a geometric mean, right?
6251. **MR. MATWICHUK:** Yes.
6252. **MR. NETTLETON:** Can you point to any textbook or authoritative source that supports the view that geometric mean is an appropriate calculation to use for ratemaking purposes?
6253. **MR. MATWICHUK:** The -- typically, a regulator is not faced with a 20-year timeframe for determining what a likely outcome for ROE is. And so what this evidence and these scenarios do are provide both a mean of the -- what would take place over the 20 years and also provides the -- each individual years, whether we're looking at the exhibit that we just had up, and which starts with a projected ROE in year one of 15.5 percent and largely due to decreasing rate base and also the 2.5 percent annual increase in the toll, that ROE under these assumptions rises to 38.3 percent.
6254. So then it's just a matter of providing context for what that would be on an average basis.
6255. So Mr. Nettleton, when you ask about the geometric mean, I can also tell you that if we had used the arithmetic mean, that arithmetic mean would actually be higher than the geometric mean.
6256. **MR. NETTLETON:** In competitive markets, Mr. Matwichuk, do firms rely on IRR to make investment decisions?
6257. **MR. MATWICHUK:** Firms do rely on IRR to make investment decisions. But once again, sir, we're not here, as far as I understand -- or at least my evidence is certainly not geared to making an investment decision. It's all about determining what the likely outcomes would be should the toll methodology proffered by Trans Mountain be utilized.
6258. **MR. NETTLETON:** But sir, with respect to my original question

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- about any authoritative text or sources that you could refer us to with respect to ratemaking using a geometric average, the answer that should be qualified to the response you gave is "no, but". Is that correct?
6259. **MR. MATWICHUK:** Well, what I can tell you is that if you look at any averaging of returns, whether it's determining market risk premium or whether it's determining what likely ROE outcomes would be, I think a prudent regulator would look at it and say, "Have I got ROEs more than one year?" Then I would typically say what's the average.
6260. But if I had -- for example, Mr. Chairman, when you have -- your Board has examined ROE and cost of capital, all of the market risk premiums, all of the returns on comparable earnings, they have all been done on a nominal basis. There's been no discounting associated with that in terms of the evidence.
6261. **MR. NETTLETON:** Mr. Brownie, if I took you back to Exhibit C15-15 and if we, together, created a new scenario, and that new scenario was one where all of the return figures were inverted, in other words, the year 20 return happened in year 1 and the year 1 return happened in year 20 and so on for all of the years shown here -- do you follow?
6262. **MR. BROWNIE:** Yes, I follow you.
6263. **MR. NETTLETON:** From an investment perspective, sir, which scenario would you prefer; the one you've shown here or the one we just created?
6264. **MR. BROWNIE:** So if I'm clear on the assumption -- and you're referring to page number 2?
6265. **MR. NETTLETON:** I'm referring to the -- yes, page number 2 entitled "Indicative Toll Scenario A, Case 9".
6266. **MR. BROWNIE:** So the -- let me just be clear here. The first year's return would be 38.3 percent?
6267. **MR. NETTLETON:** Yes.
6268. **MR. BROWNIE:** And the last year's return would be 15.5 percent.
6269. **MR. NETTLETON:** No, 15.5 percent.

6270. **MR. BROWNIE:** Right.
6271. **MR. NETTLETON:** If you take year 20 and make it year 1 and year 1, which is shown as 15.5 percent, and made that year 20 and did that same change for all of the other years, my question, sir, is this.
6272. From an investment perspective, which investment would you prefer, the one having highest returns in the earliest years or this scenario, which shows the highest returns in the last years, in the later years?
6273. **MR. BROWNIE:** You'll have to give me a second just to think about that.
6274. **MR. NETTLETON:** Sure.
6275. **MR. BROWNIE:** Thanks.
- (A short pause/Courte pause)
6276. **MR. BROWNIE:** Yeah, I think simplistically. Of course, you'd want higher cash flow in the early years due to the discounting factor.
6277. However, I do want to stress that this was strictly an illustrative chart to, again, just contrast Mr. Reed's evidence, which had an extremely lower turn in the early years and an extremely high return in the later years which caused such a disparity in the ROE versus the IRR versus our ROE profiles which we have kicked out in our cases.
6278. **MR. NETTLETON:** I'm not sure if the mic system altered, but it seemed like when I turned my mic on, Mr. Brownie's mic went off.
6279. **THE CHAIRMAN:** Will you test your mic, sir?
6280. **MR. BROWNIE:** Hello.
6281. **MR. NETTLETON:** Yeah. There we go.
6282. Mr. Brownie, you can confirm, though, that that new scenario that we created would still produce the same geometric mean that you've shown here?

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6283. **MR. BROWNIE:** I haven't run that scenario, but subject to check, I can agree with that, I suppose.
6284. **MR. NETTLETON:** Subject to check.
6285. **MR. BROWNIE:** Yeah.
6286. **MR. NETTLETON:** And that would be because of the discounting factor that you've alluded to; correct? The time value of money factor; correct?
6287. **MR. BROWNIE:** That's correct.
6288. **MR. NETTLETON:** Thank you.
6289. And what about the levered IRR value that you've shown? Can we agree directionally that the 16.65 percent number would change, wouldn't it, in the new scenario that we created where higher returns happen in earlier years?
6290. **MR. BROWNIE:** So if I'm understanding your question correctly, the IRR would be higher if you were to invert -- the inverted scenario that you're discussing?
6291. **MR. NETTLETON:** Thank you. Correct.
6292. **MR. BROWNIE:** Sorry, I didn't confirm. I just wanted to confirm your question.
6293. **MR. NETTLETON:** No, that's correct.
6294. **MR. BROWNIE:** Okay. Yes.
6295. **MR. NETTLETON:** You have ---
6296. **MR. BROWNIE:** Yes, I think it would. And I'd argue that Mr. Reed's table would do the same thing.
6297. **MR. NETTLETON:** Do you agree, Mr. Brownie, that an IRR calculation is an average return on a series of cash flows that takes into account the time value of money and it's the discount rate that achieves a net present value

of zero?

6298. **MR. BROWNE:** Yes, I can agree with that, Mr. Nettleton.

6299. **MR. NETTLETON:** Thank you.

6300. And now Mr. ---

6301. **MR. MATWICHUK:** Mr. Nettleton, you've spent some time on these tables. And as I was looking at them while you were discussing them with Mr. Browne, I guess what it strikes me is that the emphasis of your question went to IRR.

6302. And what this table shows us is a conceptual example with some numbers that we're unsure of the origin. And I guess what would have been helpful to assess the IRR is if the details from the Trans Mountain IRR became available, but I don't think they have been.

6303. **MR. NETTLETON:** Well, Mr. Matwichuk, we can go back and reconfirm, though, that the return values that are expressed here on indicative toll Scenario A, Case 9 are the very same return values that are in your evidence -- in your supplementary evidence; correct?

6304. **MR. MATWICHUK:** Yes, I confirmed that.

6305. **MR. NETTLETON:** Thank you.

6306. **MR. MATWICHUK:** And as I also mentioned, Mr. Nettleton, is that this analysis was done with a depreciation that has the asset fully depreciated after 20 years.

6307. The scenarios that I looked at used the actual Trans Mountain indicated depreciation rates. And for the expansion, quite notably, the depreciation rate for the expansion is assumed to go to 35 years. So that's a significant difference, would have a major impact on the comparison.

6308. **MR. NETTLETON:** Mr. Matwichuk, when you developed the supplemental evidence, I think you mentioned that this was done based on the assumptions and information found in my client's response to CAPP 1.3; correct?

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6309. **MR. MATWICHUK:** That's correct.
6310. **MR. NETTLETON:** And that was revised response to CAPP 1.3; correct? The change being the volume and the capital costs.
6311. **MR. MATWICHUK:** Right.
6312. **MR. NETTLETON:** And sir, is it your understanding that the response provided to CAPP 1.3 was for the purpose of preparing an estimate of the initial year of operation using a -- using cost of service assumptions?
6313. **MR. MATWICHUK:** I'm just checking something, sir.
6314. That was the initial assumption, but when -- in reviewing the responses to the Suncor information request to Trans Mountain, Trans Mountain indicated that the estimates for all of the detailed costs could be found in CAPP 1.3. And if your point is for the initial year, yes, I'm agreeing with you.
6315. **MR. NETTLETON:** Okay. And I don't think you need to turn this up, but feel free if you want to. Those assumptions that you've used are found at Exhibit B16-7, page 6 which is a table showing various assumptions related to capital structure and debt cost; correct?
6316. Do you remember that little table? We can turn it up if you like.
6317. **MR. MATWICHUK:** Sure.
6318. **MR. NETTLETON:** Why don't we? Yes.
6319. **MR. MATWICHUK:** Just so that we're absolutely clear we're working off the same page.
6320. **MR. NETTLETON:** Yeah. It's Exhibit B16-7, page 6. And it's Adobe page 6.
6321. Under the heading "Assumptions", sir, do you see a series of stated numerics related to debt cost and capital structure?
6322. **MR. MATWICHUK:** Yes.

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6323. **MR. NETTLETON:** And is it those assumptions that you used for the purposes of your analysis?
6324. **MR. MATWICHUK:** Those were the Trans Mountain assumptions and estimations that were used as the base case for the scenarios.
6325. You'll note fourth line down "Debt Rate", Trans Mountain assumed a seven percent debt rate. I did some analysis that indicated that the debt rate would -- that that seven percent was excessive and the -- sorry, in the first two lines, the equity and debt structure, I had suggested that a better debt equity structure was a 55/45 based on my analysis.
6326. **MR. NETTLETON:** Right. So I -- the point is, Mr. Matwichuk, that these assumptions were given and, for the purposes of your scenarios, you adjusted some of the assumptions; fair?
- MR. MATWICHUK:** For the purpose of some of the scenarios, the assumptions were adjusted as I just described.
6327. **MR. NETTLETON:** Right. And sir -- Madam Clerk, if we could go to page 4 of 6?
6328. There you will see, Mr. Matwichuk, that there is, again, for the initial year of operation a value for capital additions of 71 million, approximately -- 71,119 million. Do you see that?
6329. **MR. MATWICHUK:** Yes.
6330. **MR. NETTLETON:** And you took that into account in your analysis; correct?
6331. **MR. MATWICHUK:** Yes, I did.
6332. **MR. NETTLETON:** All right. And Mr. Matwichuk, if we turn to Exhibit C15-9-4, which is your supplementary evidence, and it's footnote 26 that I'd like to take you to. And that's Exhibit C15-9-4, page 9, and it's the bottom of the page showing the footnote, and it's footnote 26. Almost -- just want to refer to a document that I was -- that I used that was from Trans Mountain.
6333. While you're digging that up, I just -- my question is this. In your

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analysis, in your assumptions, sir, can you confirm that you've used the \$71 million number as capital additions for each and every year of your 20-year analysis?

6334. **MR. MATWICHUK:** I used it under the assumption that it would be sustaining capital for each of the 20 years, yes, and that was the amount that was provided by Trans Mountain, and I had assumed that should there be any significant change in that amount that it could be potentially recovered through the variable toll which has a provision for both operating and capital that could be unanticipated.

6335. **MR. NETTLETON:** You took no steps to adjust the annual CapEx additions to account for location, system age, nature of the assets, anything like that, any of those factors; correct?

--- (A short pause/Courte pause)

6336. **MR. MATWICHUK:** Mr. Nettleton, I was just checking my memory and I recall when I made the assumptions around sustaining capital that I had consulted with Suncor on what sustaining capital might look like over time. And in the first few years -- in response to your question -- I would not expect any significant change in sustaining capital.

6337. Right now, as I understand it, on the existing line sustaining capital is approximately 27 million, if I have that number correct. It's in the mid-20s, as I recall. And so with the expansion line with -- you referred to age, I wouldn't expect there'd be much requirement for sustaining capital with respect to age in regards to the new system.

6338. **MR. NETTLETON:** This though, sir, is applicable to the entire system, correct, the \$71 million?

6339. **MR. MATWICHUK:** The 71 is for the entire, yes.

6340. **MR. NETTLETON:** And the fact is, sir, you didn't change that \$71 million number for any of the years over the 20-year ---

6341. **MR. MATWICHUK:** No.

6342. **MR. NETTLETON:** --- assessment?

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6343. **MR. MATWICHUK:** But what I did do, sir, is I did do a check on my numbers to see if by applying some inflation to the sustaining capital to see what that would do to the average ROE outcomes and the outcome of that analysis was that it was not very significant. I think it was in the order of 50 -- or sorry -- yeah, 50 to 80 basis points kind of change.
6344. **MR. NETTLETON:** Mr. Matwichuk, you haven't applied an inflation factor to sustaining capital, have you?
6345. **MR. MATWICHUK:** Not in the models I've provided. But what I just indicated to you, sir, is I've done that separate analysis just to do a double-check and as a result of that analysis the average ROE outcome there isn't a significant change.
6346. **MR. NETTLETON:** But I think what I heard you say, Mr. Matwichuk, that had you provided that analysis on the record of this proceeding what I heard you say, I think, is that an inflationary factor would have had an effect on the levered IRR; correct?
6347. **MR. MATWICHUK:** I would not have done that analysis because -- Mr. Nettleton, I'm unfamiliar with a regulator determining a toll methodology or basing just and reasonable tolls on an IRR, I'm much more familiar with regulators, including this one, using ROE as a guide.
6348. **MR. NETTLETON:** It would affect the stated ROE values expressed or shown in your table of analysis, right? If you had an inflation factor it would have caused the ROE numbers to go down; right?
6349. **MR. MATWICHUK:** Yes. And as I mentioned, the ROE on average did not decline by very much.
6350. **MR. NETTLETON:** And, Mr. Brownie, then over to you since Mr. Matwichuk wasn't part of the IRR discussion, apparently. Mr. Brownie, you can confirm that if the series of ROE numbers shown in your last column of Exhibit C15-15 had smaller ROEs, that would cause the stated IRR value of 16.65 percent to go down; right?
6351. **MR. BROWNIE:** I think as Mr. Matwichuk said the impact of that sensitivity he ran was in the order of 50 to 80 basis points on the average ROE, so

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- yes it would go down but slightly on both ---
6352. **MR. NETTLETON:** Right.
6353. **MR. BROWNIE:** --- would be my expectation.
6354. **MR. NETTLETON:** But that's on one factor; correct? That's on one factor related to one element of Mr. Matwichuk's analysis?
6355. **MR. BROWNIE:** That is one factor, yes.
6356. **MR. NETTLETON:** Thank you.
6357. **MR. VAN HEYST:** Mr. Nettleton, I'd like to add, I think your frustration is our frustration with respect to looking at costs on a go-forward basis and with respect to the other inclusions provision of the variable toll; on what basis are we to decide anything different than a 71 million is unanticipated or unknown at this time. So what's the benchmark go-forward as to what's going to be included on a capital perspective on the other inclusion provisions on the variable toll.
6358. **MR. NETTLETON:** Mr. Matwichuk, just to be clear, you did consult with Suncor with respect to the reasonableness of the \$71 million value?
6359. **MR. MATWICHUK:** Yes, I did.
6360. **MR. NETTLETON:** And is that because you did not have any qualifications or experience regarding pipeline construction and operations?
6361. **MR. MATWICHUK:** It's simply because I did not have information -- any further information to make a reasonable assessment. The information I did have was as a result of Suncor's question -- a number of questions on sustaining capital in the IRs, and the only information that Trans Mountain provided was that sustaining -- that it had provided capital additions of 71 million in CAPP 1.3. And when Suncor asked the question about what is -- would be the reasonable sustaining capital the IR response directed it to CAPP 1.3. So that was the extent of the information that was available to me.
6362. **MR. NETTLETON:** Mr. Matwichuk, can you confirm with me, sir, that you did not run any scenarios that included the assumptions that Trans

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Mountain made with respect to debt cost or with respect to its capital cost or capital structure assumptions?

6363. **MR. MATWICHUK:** Yes, I did.

6364. **MR. NETTLETON:** Can you show me -- let's first deal with debt costs. Can you show me a scenario where you ran it with a 7 percent figure?

6365. **MR. MATWICHUK:** Well, we can either go to Table 8 or Table 6, but let's go to Table 8 since that includes the Trans Mountain's indicative tolls. And that, Mr. Nettleton, is in C15-9-4, on page 14. And you'll see in Table 8 there, Scenario A, the description under Scenario A is CAPP 1.3 revised, but incremental toll.

6366. So CAPP 1.3 revised that -- for Scenario A is indicative that 7 percent ROE was used and 50/50 debt equity was used.

6367. **MR. NETTLETON:** Sorry, 7 percent ROE or 7 percent debt?

6368. **MR. MATWICHUK:** Sorry; 7 percent debt rate, yes.

--- (A short pause/Courte pause)

6369. **MR. MATWICHUK:** So you'll see, Mr. Nettleton, in using those assumptions, i.e. all of CAPP 1.3, the average ROE starts out at 18.7 percent. And then just by adding on uncommitted volumes and working through the sharing scenario that exists at the higher level of uncommitted volumes, the ROE -- average ROE outcome would rise from 20 -- to 22.3 percent with 50,000 barrels per day of uncommitted and to 25.5 percent with 150,000 barrels per day of uncommitted.

6370. And then the last scenario with the uncommitted fully subscribed at 182,500 barrels per day would rise to 26.6 percent average ROE.

6371. **MR. NETTLETON:** Mr. Matwichuk, back to your Footnote 26, sir.

6372. **MR. MATWICHUK:** It's in such small print I had to lift my glasses.

6373. **MR. NETTLETON:** This is Exhibit 15-9-4 and it's Adobe page 9.

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6374. In that note, it indicates that you applied a 4 percent escalator factor -- or escalation factor for O&M costs; correct?
6375. **MR. MATWICHUK:** Yes, to the total op costs that were included in the fixed toll, yes.
6376. **MR. NETTLETON:** Why, sir, is it appropriate to increase the O&M costs by 4 percent annually but not increase capital costs for all 20 years?
6377. **MR. MATWICHUK:** And I guess, sir, if one were to use the inflation of 4 percent on sustaining capital, as I mentioned earlier, that I reran the model with that 4 percent assumption on the sustaining capital and the difference in the ROE outcome was not very significant on a 20 plus percent ROE.
6378. **MR. NETTLETON:** With respect to the tax rate assumption, Mr. Matwichuk, the story begins with Trans Mountain's assumption of 25 percent used for the initial year; right?
6379. **MR. MATWICHUK:** That's where the story begins, yes.
6380. **MR. NETTLETON:** And Mr. Matwichuk, you can confirm with me that you've applied a 25 percent tax rate in all of the scenarios that you've ran; correct?
6381. **MR. MATWICHUK:** I did not change the income tax rate from that provided by Trans Mountain. And the reason for my assumption on that was that, in looking at the wording around the variable toll, it appeared that legislative and regulatory-type changes could be passed through the variable toll.
6382. So my assumption was that changes such as tax -- income tax rates would be open to Trans Mountain to flow through that entire cost change on -- through the variable toll and, therefore, did not make any changes in the fixed toll.
6383. **MR. NETTLETON:** What steps did you take, Mr. Matwichuk, to inquire about whether tax rate changes were assumed to be the ones that would affect the uncapped costs or the capped costs for purposes of this toll methodology?
6384. **MR. ROTH:** Maybe just for clarity of the record, I think capped costs and uncapped costs are just with respect to capital ---

6385. **MR. NETTLETON:** Sorry.
6386. **MR. ROTH:** --- and income tax, so ---
6387. **MR. NETTLETON:** Sorry, it's the fixed and variable toll.
6388. **MR. ROTH:** Yeah, okay.
6389. **MR. MATWICHUK:** Sir, with the change of wording, could you ask your question again, please?
6390. **MR. NETTLETON:** What steps did you take, Mr. Matwichuk, or did Suncor take to inquire as to how tax rate changes were considered in the toll methodology that is before this Board?
6391. **MR. MATWICHUK:** I believe there was an IR response on that. So if you just don't mind, I'll check.
- (A short pause/Courte pause)
6392. **MR. MATWICHUK:** If you'd like, Mr. Nettleton, I could find that at the break. But if you want to pursue it, I'll keep looking.
6393. **MR. NETTLETON:** Sure. I think if I can direct your attention to -- I didn't find -- I didn't -- I haven't seen that type of response. What I did find was in 1.61 -- IR response 1.61, which is Exhibit B ---
6394. **MR. ROTH:** Mr. Chairman, I think this is -- and also where we got into an issue of law discussion when I was cross-examining Mr. Stoness. And there, I was using property taxes and corporate income taxes and changes in legislation and I eventually got the answer that "Mr. Roth, the interpretation of Section 3.3 of the toll principles and what's a variable toll is an issue of law and it's too tough a question for me to answer" is where we ended up on the record on this.
6395. Before we got there, however, it was fairly definitively said that any change to taxes made as a result of a change in legislation or by order was a flow-through, so that's on the transcript.

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6396. But Mr. Nettleton is now examining an area where his witness, when I was examining, suggested that there was an issue of law involved. So I thought we would be leaving this to argument.

6397. I'm content to have Mr. Nettleton go on with it and we will undertake to look what else we can find in the IR responses or in the transcript. But if he thinks it's an issue of law, I think it's a matter of argument at the end of the day rather than what Mr. Matwichuk thinks the interpretation is.

6398. **MR. NETTLETON:** Well, Mr. Chairman, I -- my friend's point about whether he thinks it's an issue of law or not is not relevant.

6399. I'm not planning to debate with these witnesses points of law, but I take great issue with Mr. Roth's characterization of what I don't believe to be on the record, and that is any evidence suggesting that tax -- changes in the income tax rate is treated as flow-through.

6400. That just is not something that I believe is on the record and I take great -- I challenge that view and take great exception to that characterization. That can certainly be a matter of debate.

6401. What I was trying to do, Mr. Chairman, was be helpful to the witnesses and point them to a reference where Suncor had asked about tax rates because it didn't seem that the witnesses were able to find that in a hurry, and the only response that I could see was in IR 1.61 where the question asked -- where the question that was asked was about the 25 percent assumption, and the response back was that there was great uncertainty about that rate. That's all I could find on the record ---

6402. **MR. VAN HEYST:** So Mr. Nettleton, maybe -- I'm trying to be helpful here. If you want to turn it up, it's the other inclusions provision on the variable toll. It's in 15-24, on page 6, and it's -- we've tried through IRs and I think the Board as well, trying to get more definition on what's these -- what may flow through on this provision, and it talks about costs, both capital and operating, that are not currently anticipated by the carrier or reasonably -- cannot be reasonably included in calculating the toll.

6403. So my question to you is -- is does Trans Mountain anticipate an income tax change, and if so what is it, so that we know going forward, again, what is the benchmark, what's anticipated, what's not, so we have an

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- understanding of what may flow through on this other provision's clause of the toll.
6404. **MR. NETTLETON:** Let's do it -- let's do it this way, Mr. Matwichuk, can you agree, sir, that if you altered your 25 percent assumption of tax rate -- of income tax rate, so it increased over time, would you agree that the 16.65 levered return that is shown in Mr. Brownie's exhibit would decline?
6405. **MR. MATWICHUK:** No, I wouldn't, sir, and that -- that's on the basis as Mr. Van Heyst was just discussing is my simple reading of the other inclusions under the variable toll indicate that increases in costs resulting from changes in legislation, regulations, orders or directions from any government which result in changes in safety, integrity, environmental practices, land use and rezoning.
6406. So that suggests to me, sir, that there could be legislative changes that take place that could be flowed through on the variable toll. And that's my simple reading of it, sir.
6407. **MR. NETTLETON:** Can I take you to information request response 1.62, and I'm trying to find an exhibit -- it's B9-8, PDF 122.
6408. **MR. MATWICHUK:** Oh, it's 1.61 now you're saying; is that right?
6409. **MR. NETTLETON:** No, I said 1.62. Sorry, 1.61, you're right, Part A, page -- PDF 122, page 122.
6410. And in that request, you were asked to clarify -- to have Trans Mountain clarify whether the fixed toll component will cover the costs with the exception of power and future uncontrollable costs will include covering the costs associated with federal and provincial income taxes. Do you see that?
6411. **MR. MATWICHUK:** Yes, I see it.
6412. **MR. NETTLETON:** And if you go to the response, sir, you'll see that it says "confirmed".
6413. **MR. MATWICHUK:** It says more than that, sir.
6414. **MR. NETTLETON:** The start of it says:

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“Confirmed, except for any Category 2 costs as defined in the response [to] 1.2a.”

6415. So is it your view -- you took that response to mean that provincial and federal income tax changes were covered as Category 2 costs?

6416. **MR. MATWICHUK:** I -- one moment.

6417. There was -- Mr. Nettleton, there was just some confusion on the description of Category 1 and Category 2 costs. I'm just going to check that.

--- (A short pause/Courte pause)

6418. **MR. BROWNIE:** So where -- where Suncor gets a little nervous and -- and Mr. Van Heyst alluded to it to a certain extent is -- is that the question asked was confirm that taxes are covered and you confirmed that. But perhaps we didn't ask the entire question of any unanticipated changes to the taxes would occur, where those would fall.

6419. And then -- then when we looked at Trans Mountain's response to the NEB 1.2, there's this description of Category 1 and Category 2 costs. And the Category 1 costs if -- are included and I'll read this -- sorry -- costs for Trans Mountain is at risk for the cost change is Category 1 cost. Category 2 are costs which are passed through to the shippers if they meet the criteria described in section 3.3 of -- of the FSA and TSA appendix which Mr. Matwichuk had referred to.

6420. And -- and once we had read Trans Mountain's response to the NEB in its entirety, it -- it became very apparent that it was circular, that -- well, if it's unanticipated refer to section 3.3 -- well, Category 2 refer to section 3.3.

6421. So we, much like Mr. Roth, took Mr. Stoness' answer to believe that this -- this was a legal question, but we -- we certainly got the sense from his -- his response that ---

6422. **MR. NETTLETON:** During the negotiations that occurred in Round 3 or Round 2 or Round 1, Mr. Brownie, did you have the opportunity to clarify questions like this with my client?

6423. **MR. ROTH:** Mr. Chairman, objection. I'm really ---

6424. **MR. NETTLETON:** Sorry, are you ---

6425. **MR. ROTH:** I'm objecting to the line of questioning, Mr. Nettleton. I tried to clarify what we could in negotiations but I tried to clarify it in cross-examination, sir, and I'm asking Mr. Stoness about the interpretation of 3.3 and whether a change in property taxes or income taxes would be a flow through to the shippers or not.

6426. So this is Mr. Stoness' answer at the transcript, Volume 2, paragraph 2214:

"I think you're asking me to interpret a contract provision.

The contract provision suggests that, if it's caused by [a] change in legislation or order, it's a flow-through. If it's not, [...] it's not."

6427. Then I follow up:

"So if the mill rate or the rate [of] [...] property taxes is affected through a change in legislation, it's a shipper [...] [cost]?"

6428. And then I get Mr. Nettleton's objection:

"Mr. Chairman, I think the witness has answered the question saying: 'You've asked me to interpret a provision of a contract, I'm doing the best I can but I can't speak to legal matters.'

And he also -- you heard from the witnesses to say that all these matters are future events. It's going to depend on what the future event looks like.

So by having Mr. Roth ask this type of question now and expect a definitive answer today, I think is what the witnesses have already answered, to say they can't make that type of definitive answer."

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6429. So we ask them in IRs. We get the runaround, confirmed, subject to be in Category 2 clause. If you read that information response to the Board, it's totally circular. What's 3.3 mean? Well, it's Category 1 and Category 2 costs. Well, what's the difference between a Category 1 and 2 cost? Well, read 3.3.
6430. Then you ask him in cross-examination, they say it's a legal issue and they say we'll have to determine it at the time, and now he's going at my witnesses saying, well, why didn't you ask in negotiations. I asked them on the witness stand, we asked them in IRs and we're being told it's a legal issue that has to be determined when the costs arise.
6431. So I really don't see how it's fair for Mr. Nettleton to be asking these questions to my witnesses when I asked them to his witnesses and they were legal issues which didn't have to be determined until the time the change had occurred.
6432. **THE CHAIRMAN:** Mr. Nettleton ---
6433. **MR. ROTH:** So I object to the line of questioning, sir, based on what's fair.
6434. **MR. NETTLETON:** Mr. Chairman, I will move on from the line of questioning, but I do want to explore one area unrelated to the negotiations, unrelated to the -- whether property taxes are legally a matter or not. I want to get back to the evidence of Mr. Matwichuk.
6435. Mr. Matwichuk, would you agree with me, sir, that had you adjusted the tax rate and had you assumed that tax rates were treated as a fixed toll, a component of the fixed toll, that that would have an impact upon -- and I'm making the assumption that tax rates increase.
6436. Would you agree, sir, that that would have an impact, an adverse impact on the return on equity? It would be an increased cost.
6437. **MR. ROTH:** I object, sir. He's asking for the same titration. That's going to be -- as Category 1 or Category 2 class ---
6438. **MR. NETTLETON:** I'm asking ---
6439. **MR. ROTH:** The IR response is confirmed. So I'm telling you it's a

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- legal question and the answer to the legal question is if the income tax change is affected by way of change of legislation, which it has to be by law in this country. It's the Constitution. You cannot affect a tax change without a change in legislation. It's got to be a flow-through. It's a legal question.
6440. If the tax goes down, the return goes up, but it doesn't work the other way. So he's asking Mr. Matwichuk to form a legal conclusion as to what 3.3 means. And by everything we've been told, to the extent we've got a legal conclusion, it's a tax change changed by legislation. It's a flow-through.
6441. **MR. NETTLETON:** Mr. Chairman, I'm not asking him for a legal opinion, I'm asking him to make an assumption. The assumption that I'm asking him to make ---
6442. **THE CHAIRMAN:** Sir, just one moment.
6443. Mr. Matwichuk, can you answer this question as a mathematical question instead of making a legal opinion as to whether or not this is flow-through or not?
6444. **MR. MATWICHUK:** Yes, I ---
6445. **THE CHAIRMAN:** He is asking -- yes?
6446. **MR. MATWICHUK:** Yes, I believe I can, Mr. Chairman.
6447. **THE CHAIRMAN:** Okay. Thank you. If you could answer that.
6448. **MR. MATWICHUK:** Okay.
6449. So Mr. Nettleton, if a factor in the fixed toll, if a cost factor in the fixed toll were to rise or -- then that would have a decreasing -- propensity to have a decreasing impact on the ROE. If it were to decrease, it would have an increasing propensity on the ROE. But I would also note that there are additional mitigation measures in the Trans Mountain toll methodology as proposed, one of which includes 2.5 percent annual escalation to the entire toll.
6450. So when you have a 2.5 percent increase to the entire toll and the entire toll starts about \$1 billion in the initial year. So that would lead to about \$25 million of additional revenue.

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6451. The only matter that is currently affected by -- and I'll start with inflation, are the up costs. They are currently set in the initial year at 229 million. So 2.5 percent on that, we're talking only about 5 million of the additional 25 million.
6452. So that mitigation measure allows for things like inflation or if it ends up being that the tax has to be determined through the fixed toll, there is that additional mitigation. There's plenty -- significant cushion there in the annual toll increase that's over and above costs that might regularly change, that could be a cushion for intermittent or unanticipated changes that would not otherwise flow through the variable costs -- or sorry, the variable toll; pardon me.
6453. **MR. NETTLETON:** Mr. Matwichuk, you've, in your response, described the effect of the escalator. The escalator applies to the toll revenue; correct?
6454. **MR. MATWICHUK:** The escalator applies to the toll revenue, yes.
6455. **MR. NETTLETON:** And you haven't applied that same variable to costs such as income tax or sustaining capital; correct?
6456. **MR. MATWICHUK:** There was no reason to apply an escalator to the costs. The escalator, according to the toll methodology, applies to the toll revenue.
6457. **MR. NETTLETON:** And just for apples to apples comparison when you suggest that there is a cushion, and you present evidence that shows returns on equity, if you're agreeing with a 2.5 percent escalator in revenue, but you don't show those same sorts of escalators on things like income tax or sustaining capital, how can we appreciate the numbers that you are calculating with respect to the return on equity?
6458. **MR. MATWICHUK:** Well, if there was a good reason to apply it to the costs, sir, that would be done. But for -- you used the example of income tax, there is no indication that I'm aware of that there's pending legislation of a change of income tax rates.
6459. **MR. NETTLETON:** Over a 25-year period -- or a 20-year period?

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6460. **MR. MATWICHUK:** That's correct, because they could go down or they could go up. We don't know. It's uncertain.
6461. **MR. NETTLETON:** And in your 28 years of experience, Mr. Matwichuk, have you seen a lower corporate tax rate than 25 percent?
6462. **MR. MATWICHUK:** Sorry, could you say that again please?
6463. **MR. NETTLETON:** In your 28 years of experience, sir, have you seen a lower corporate tax rate than 25 percent?
6464. **MR. MATWICHUK:** I'm not sure how that has a bearing on how tax rates may change in the future. I don't follow any logic there.
6465. **MR. NETTLETON:** The past is not a good predictor of the future?
6466. **MR. MATWICHUK:** There is no information about the past with respect to income tax rates that would assist us or this Board in terms of how they may manifest in the future.
6467. **MR. NETTLETON:** That's not something that's within your area of expertise or understanding of tax rates and how they've been applied historically over your 28 years of experience?
6468. **MR. MATWICHUK:** Sorry, I missed your question there. I understand the history of tax rates, if that's your question.
6469. **MR. NETTLETON:** And my question was, given that knowledge, you didn't think it was appropriate to take the historical experience that has been seen with tax rates and used that for purposes of developing futuristic scenarios over the next 20 years?
6470. **MR. MATWICHUK:** The consideration for tax rates, as we've discussed earlier, both on this Panel and amongst counsel, is that I had used the simple reading of the provisions in the variable toll that any change in income tax rates could be passed through the variable toll.

--- (A short pause/Courte pause)

6471. **MR. NETTLETON:** Now, Mr. Matwichuk, with respect to the

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- scenarios that you ran, did you run any scenarios in which the capital costs incurred for the construction of the project were greater than the CPCN estimate?
6472. **MR. MATWICHUK:** I had not run such a scenario contained in my evidence, but as a result of concerns raised in the reply evidence of Trans Mountain and of Mr. Reed, I did do two further scenarios on capital just to check my results.
6473. And I ran one where there was an increase in the capital up to the cap of 1.4 billion, and that -- the increase of that capital, as I understand the provisions under the proposed methodology, would cause an increase in the toll at 7 cents per 100 million.
6474. When I ran that scenario, I discovered that the 7 cents actually recovers more than the associated costs. And therefore, up to that \$1.4 billion increase, the ROE would actually be further enhanced.
6475. I also ran another scenario, and this goes more to your question, Mr. Nettleton, is that what would happen if there was an additional construction cost overrun over and above the 1.4 billion ex post the CPCN estimate. And that run indicated, as expected, that the ROE -- the average ROE outcomes would decrease somewhat.
6476. And so I had used a \$2 billion cost over-run such that it would get me over the 1.4 billion and so -- which implies that 600 million would be to the account of the carrier, that it would have to absorb that.
6477. So what I discovered when I did that run was that in Scenario A, using all of Trans Mountain assumptions, there would be a decrease of 20 basis points. And that is on returns of the order of magnitude between 18 and 26 percent.
6478. In Scenario B where I had adjusted the cap 1.3 for the debt equity and the debt cost, there was a reduction of 70 basis points. So again, relative to the order of magnitude of 18 percent, 20 percent and higher.
6479. **MR. NETTLETON:** Mr. ---
6480. **MR. MATWICHUK:** Sorry. And I was just asked a question by the panellist as to whether I had included any increases for uncapped capital. So far, I had just talked about the capped capital.

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6481. And the uncapped capital, as I'm sure you're aware, passes through to shippers. And so there was no assumption with respect to the uncapped capital.

6482. **MR. NETTLETON:** You understand, sir, that the \$1.4 billion that you spoke of relates to the CPCN estimate; correct?

6483. **MR. MATWICHUK:** Yes.

6484. **MR. NETTLETON:** And the only scenario that you ran after was an increase of 600 million post CPCN; correct?

6485. **MR. MATWICHUK:** That's correct.

6486. **MR. NETTLETON:** And that's not on the record in your supplementary evidence?

6487. **MR. MATWICHUK:** No, it was in response, as I mentioned, to what I had read in Trans Mountain reply evidence and the reply evidence of Mr. Reed.

6488. **MR. NETTLETON:** Mr. Matwichuk, if I could turn you to your direct evidence, Exhibit C15-4-5. And it's page 32 of 34.

6489. Do you have that, sir?

6490. **MR. MATWICHUK:** Yes, I do.

6491. **MR. NETTLETON:** And I want to direct your attention to lines 5 and -- 5 through 9. Your evidence, sir, if I've understood it, is that you've observed a 12 percent ROE with the Northern Gateway Project to be an upper limit for an expansion project.

6492. Is that a fair characterization?

6493. **MR. MATWICHUK:** So in -- if you flip back to ---

6494. **MR. NETTLETON:** Can you answer the question yes or no and then ---

6495. **MR. MATWICHUK:** Yes, I will.

6496. **MR. NETTLETON:** --- and then you can provide context.
6497. **MR. MATWICHUK:** I'm going to provide you context for it.
6498. **MR. NETTLETON:** If you could answer the question and then provide the context, that would be helpful.
6499. **MR. MATWICHUK:** My mind thinks the other way around. Because you directed me to lines 5 through 9, and I think what we need to do is start at Question 34, which is on the previous page, which provides Table 3 and the comparators that I used starting with the NEB formula, the two most recent Trans Mountain negotiated settlements, Gateway and Southern Lights.
6500. And then I -- because I listened to your words, Mr. Nettleton, is that I said in those lines that if one were to accept that greenfield projects have more uncertainty than an expansion on existing facilities, i.e. like a looping, then it would appear that 12 percent ROE would be an upper limit for an expansion project.
6501. And in my evidence, I had -- I had used Gateway as a reference point for a greenfield project.
6502. The other one that I mentioned to you last week was the Mackenzie Valley pipeline, and because you were questioning Dr. Waverman on whether there were other pipeline projects that used the NEB formula as a base to determine ROE and I think I mentioned the Mackenzie Valley.
6503. And the reason it might be relevant in this case is that the Mackenzie Valley, prior to receiving its certificate, would appear to have been, at the time -- before it received its certificate, one of the most or the most risky greenfield pipeline projects in recent past.
6504. And the ROE formula for that project was using the NEB multi-pipeline formula which is currently 7.23 percent for 2013. And it was going to be bumped up by 221 basis points.
6505. **MR. NETTLETON:** Mr. Matwichuk, who are the owners of the Mackenzie Gas Pipeline?

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6506. **MR. MATWICHUK:** I believe that there are a number of owners.
6507. **MR. NETTLETON:** And the owners, Mr. Matwichuk -- aren't the owners the producers of the resource? Wasn't Mackenzie described in the Board's Joint Review Panel decision as a project that was a -- the Proponents of the project were the owners of the resource?
6508. **MR. MATWICHUK:** That's my understanding.
6509. **MR. NETTLETON:** That's not the case here, is it, sir?
6510. **MR. MATWICHUK:** No, not as far as I'm aware of.
6511. **MR. NETTLETON:** Can I have you turn to Exhibit C15-7-3, at page 53, which is your response to information request to Trans Mountain Pipelines 1.19? And it's Part A, sir.
6512. And what I want to refer you to is the statement that you state or that's found that says:
- "Gateway, as a greenfield project, would generally entail more risk than an expansion [...] as that proposed by Trans Mountain."*
6513. **MR. MATWICHUK:** Sorry. I'm -- I'd just like to get to the right page before we -- if you don't mind.
6514. **MR. NETTLETON:** It's Adobe page 53.
6515. **MR. MATWICHUK:** Okay.
6516. **MR. NETTLETON:** And it's in the middle of the page, where it says:
- "Gateway, as a greenfield project, would generally entail more risk than an expansion such as that proposed by Trans Mountain."*
6517. **MR. MATWICHUK:** Yes, I see that, sir.

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6518. **MR. NETTLETON:** How did you reach that conclusion, sir?
6519. **MR. MATWICHUK:** In reading the Gateway decision and in discussing Gateway with Suncor, I had come to the understanding that it is a greenfield project.
6520. **MR. NETTLETON:** What Gateway decisions are you referring to, sir?
6521. **MR. MATWICHUK:** Sorry, my apologies. Having read other decisions from the Board that have addressed -- what am I looking for -- greenfield in terms of its use of new land, you know, and I -- I've put it in an IR response. I don't have it with me, but I can find it if you like.
6522. And so when I looked at the Trans Mountain proposed project, it didn't appear to me that it was on the same basis of a greenfield project given that it had existing pipeline, existing right-of-way, existing infrastructure which, as I understood it from Trans Mountain's representations to investors through KP -- KMP Investor Conference was that that was, in particular, a strength that investors could rely on and they could lever off the existing infrastructure and right-of-way.
6523. And for me, if I were an independent investor looking at that statement, I would derive some expectation that that is indeed an asset or a strength that could be used that other pipelines such as Northern Gateway could not.
6524. I also -- since you asked me what I relied on, I relied on the FERC's interpretation of greenfield that indicated that they approve higher rates of return on equity for greenfield projects to reflect higher risks associated with such a project.
6525. **MR. NETTLETON:** The FERC hasn't made any qualitative or quantitative assessment of risk between greenfield -- between a Gateway project and the Trans Mountain project; correct?
6526. **MR. MATWICHUK:** No, that's right, and ---
6527. **MR. NETTLETON:** But you have?

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6528. **MR. MATWICHUK:** Yes, based on the information that was provided to me both in the Trans Mountain documentation and in consulting with Suncor. And I believe in the proceeding to date we have an understanding that Trans Mountain is indeed a brownfield project.
6529. **MR. NETTLETON:** So that assessment though, sir, is based upon no engineering qualifications or understanding about the potential implications of construction associated with the Trans Mountain project versus the Gateway project?
6530. **MR. MATWICHUK:** No. But in my discussions with people who are engineers I got that understanding. And I don't know, maybe Mr. Van Heyst wished to speak a little more to that issue.
6531. **MR. NETTLETON:** Mr. Van Heyst, did you join Mr. Roth on his walk along the streets of Burnaby?
6532. **MR. VAN HEYST:** No, I did not, Mr. Nettleton, but I have visited Trans Mountain's facilities in Burnaby.
6533. **MR. NETTLETON:** Well, Mr. Matwichuk, are you aware of any regulatory approvals that may be required from this Board following CPCN approval?
6534. **MR. MATWICHUK:** Are you speaking about prescribed regulatory approvals?
6535. **MR. NETTLETON:** Well, they may not be prescribed but they are based upon -- I just want to understand if you are aware of any approvals that may be required for this project following CPCN.
6536. **MR. VAN HEYST:** So I think, Mr. Nettleton, a leave to open would be required, if that's helpful.
6537. **MR. NETTLETON:** Are you aware of the National Energy Board's detailed route hearing requirements, Mr. Van Heyst?
6538. **MR. VAN HEYST:** Not specifically, no.
6539. **MR. NETTLETON:** Mr. Matwichuk, have you been involved in any

detailed route hearing proceedings?

6540. **MR. MATWICHUK:** Any detailed?
6541. **MR. NETTLETON:** Route hearing proceedings?
6542. **MR. MATWICHUK:** No.
6543. **MR. NETTLETON:** So it's fair to say that your evidence has not taken into account any delays or cost overruns associated with those proceedings; correct?
6544. **MR. VAN HEYST:** You're speaking in ---
6545. **MR. NETTLETON:** So ---
6546. **MR. VAN HEYST:** --- context of the facilities application, Mr. Nettleton?
6547. **MR. NETTLETON:** No, sir. I'm speaking in the context of following the approval given -- if any approval is given pursuant to section 52 of the Act, which is the CPCN, the Certificate of Public Convenience and Necessity, following that process, sir.
6548. **MR. MATWICHUK:** So, Mr. Nettleton, I have not factored in any specific delay for any other proceedings. It's -- recognize that there may be a delay for one reason or another, but if a pipeline that is hoping to progress to construction finalization and operation, if it's not operating then it seems to me that a prudent operator, such as Trans Mountain, with its 60 years of experience, would reduce its operating costs and capitalize any of those operating costs until such time it was either a cancelled project or a project that went into service. So I'm doubtful there'd be any impact on ROE as a result of that delay.
6549. **MR. NETTLETON:** Okay. Mr. ---
6550. **MR. BROWNIE:** Mr. Nettleton, if I could just -- sorry -- quickly add that if -- I believe Mr. Anderson was quite confident that Trans Mountain could construct this pipeline in five years, and in talking about that timeframe he certainly didn't mention any delay due to route hearings. So I would certainly rely on Mr. Anderson's experience as an operator of Trans Mountain.

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6551. **MR. NETTLETON:** You would expect Mr. Anderson, Mr. Brownie, to know in detail about specific routing concerns or issues related to this pipeline prior to the application for a Certificate of Public Convenience and Necessity to be even made?

6552. **MR. BROWNIE:** I certainly can't speak for what Mr. Anderson knows with regards to the details of the pipeline but he certainly -- certainly seems to have a good relationship with a lot of the stakeholders, from what I understand.

6553. However, I do just want to -- just wanted to highlight that he felt that five years this pipeline could be built, and in mentioning that he did not mention any sorts of delays with regards to this. That's simply what I'd like to add.

6554. **MR. NETTLETON:** Can I take you to transcript reference 1493, sir?

--- (A short pause/Courte pause)

6555. **MR. BROWNIE:** Okay, I have it here.

6556. **MR. NETTLETON:** Mr. Anderson has stated that:

“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.”

6557. Do you see that?

6558. **MR. BROWNIE:** I do.

6559. **MR. NETTLETON:** So isn't it fair, Mr. Brownie, that what Mr. Anderson has indicated is that there's a different suite of risks?

6560. **MR. BROWNIE:** I don't think we're disputing the fact that there are risks to this pipeline, and I think Mr. Van Heyst can probably speak to it more, but -- and I'll let him, but I do recall Mr. Anderson also saying when Mr. Roth

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was referring to his walk along that corridor that there was an existing utility corridor, I believe, or he may have implied that, that would allow them to change their route.

6561. So with that I might let Mr. Van Heyst if he has something to add to that.

6562. **MR. VAN HEYST:** Yes, Mr. Nettleton, I don't think -- we obviously didn't have benefit of the transcript record at the time we were making some of our assessments. But in terms of some of the reply evidence, I think it echoes much of the same concern that the project is different from most, if not all of the other pipelines at Suncor and its experts rely upon for comparative purposes.

6563. If it proceeds, the project will be constructed between two of Canada's largest urban centres in areas known to have unprecedented levels, environmental, social, political concerns regarding new crude transportation development systems.

6564. So on that, what we -- what I'd like you to have a look at then is in terms of the capped and the uncapped the allocation of the right-of-way -- the right-of-way risks associated with the project. So the last 34 kilometres of the pipeline through this dense neighbourhood are in the uncapped portion of the capital costs.

6565. **MR. NETTLETON:** And do you think that's where the urban build up ends or starts is the last 34 kilometres?

6566. **MR. VAN HEYST:** I'm not saying that's where it starts but I put it to you that's where the most significant risk will lie.

6567. **MR. NETTLETON:** I'm just asking, sir, about whether you have any knowledge about the right-of-way that leads up to the 34-kilometre marker?

6568. **MR. VAN HEYST:** Not specifically no. I don't know whether there's multi-line rights that Trans Mountain may have through any and all of that right-of-way.

6569. **MR. NETTLETON:** And, sir, do you -- you don't have any knowledge of detailed route hearings, do you?

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6570. **MR. VAN HEYST:** Not specifically, no.
6571. **MR. NETTLETON:** If I could have you turn up, Mr. Matwichuk, the aids to cross that I've provided to your counsel on Sunday evening. And they are -- the two that I want to discuss first are the ones marked Aid to Cross 1 and Aid to Cross 5.
6572. And Mr. Matwichuk, maybe just to frame this, you're generally aware, sir, that other major pipeline infrastructure developments are being proposed to extend across parts of Alberta and British Columbia for the development of LNG Export?
6573. **MR. MATWICHUK:** I have a general awareness, but it's not something I came here to testify on.
6574. **MR. NETTLETON:** You've had a chance to read these clippings that I've provided to your counsel, Aids 1 -- Aids to Cross 1 and 5?
6575. **MR. MATWICHUK:** Yes, we received them on Sunday evening.
- (A short pause/Courte pause)
6576. **MR. NETTLETON:** Well, let's go first to the press release from TransCanada Pipelines that's entitled "TransCanada Selected to Develop \$6 Billion Natural Gas Infrastructure to Prince Rupert, British Columbia". And that's dated January 9th, 2013.
6577. Have you got that, sir?
6578. **MR. MATWICHUK:** Yes, I have it.
6579. **MR. NETTLETON:** And that press release, you can confirm, indicates that TransCanada has intentions to build a large diameter pipeline system from the NOVA system to Prince Rupert; correct?
6580. **MR. MATWICHUK:** That's what it looks like, sir.
6581. **MR. NETTLETON:** And if I take you to the second page of the press release where there's a listing of the bullet points describing the project, the last one indicates that the estimated in-service date is the end of 2018 subject to

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- regulatory and corporate approvals. Do you see that?
6582. **MR. MATWICHUK:** Yes, we see it.
6583. **MR. NETTLETON:** And if I take you to the next aid to cross, sir, which is the one entitled “Coastal GasLink Pipeline Project, Project Description dated October 30th, 2012”, in the first paragraph of the second page of the aid, it indicates that Coastal GasLink Pipeline Ltd. is proposing to extend -- construct and operate a pipeline project 650 miles from Dawson Creek to Kitimat, British Columbia. Correct?
6584. **MR. MATWICHUK:** Given that we're in Canada, it's 650 kilometres, sir.
6585. **MR. NETTLETON:** My mistake. Thank you.
6586. And that's a 48-inch diameter pipe; correct? NPS 48 or 48 inch.
6587. **MR. MATWICHUK:** That's what it appears to be, yes. Mixing our metric and imperial.
6588. **MR. NETTLETON:** We're a bilingual country, sir.
6589. **MR. MATWICHUK:** We are.
6590. **MR. NETTLETON:** In Table 4.2 on page 13 of 52 of the aid where the table is entitled “Project Schedule”, I turn your attention to the second-last line.
6591. And sir, you can confirm with me that the in-service date -- well, the commissioning is intended to be late 2017 to 2018 and the in-service date is contemplated to be 2018; correct?
6592. **MR. MATWICHUK:** That's what it reads, sir.
6593. **MR. NETTLETON:** Mr. Matwichuk, do you have any familiarity with the Pacific Trails Pipeline?
6594. **MR. MATWICHUK:** Not really, sir.

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6595. **MR. NETTLETON:** Well, let's test that.
6596. Do you know whether it extends from the Spectra system to Kitimat?
6597. **MR. MATWICHUK:** I don't have that level of knowledge, sir.
6598. **MR. NETTLETON:** You don't know whether it's the feed pipeline for the Kitimat LNG Project?
6599. **MR. MATWICHUK:** I would defer to my fellow panelists for that level of knowledge.
6600. **MR. NETTLETON:** Mr. Brownie and Mr. Van Heyst, do you have any general knowledge of that pipeline?
6601. **MR. VAN HEYST:** Generally, yes, Mr. Nettleton, but specifics I'm -- I'd struggle with.
6602. **MR. NETTLETON:** Fair enough.
6603. Have I misstated any characterization of the project?
6604. **MR. VAN HEYST:** Not that I can tell, no.
6605. **MR. NETTLETON:** Mr. Van Heyst, do you have an understanding that the Kitimat LNG Project has not yet received FID approval yet from its owners?
6606. **MR. VAN HEYST:** I'm not aware.
6607. **MR. NETTLETON:** Do you have any reason to agree or disagree about whether this project could be constructed also in the same time window as Gateway or as TMX?
6608. **MR. VAN HEYST:** What in-service date are you contemplating or are they contemplating, Mr. Nettleton?
6609. **MR. NETTLETON:** I'm simply saying that is it possible that that pipeline project could also be developed in the same timeframe as TMX and Gateway?

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6610. **MR. VAN HEYST:** It's possible, I suppose.
6611. **MR. NETTLETON:** Thank you.
6612. Mr. Matwichuk, you can confirm with me, sir, that your scenario analysis has not made any reference to risk impacts associated with the timing and implementation of these projects?
6613. **MR. MATWICHUK:** That's correct.
6614. **MR. NETTLETON:** In your 28 years of experience, Mr. Matwichuk, have you -- do you recall any previous time where at least four large-diameter pipeline projects were constructed in the same province and generally in the same timing window?
6615. **MR. MATWICHUK:** Not to my recollection, but you might want to check with my fellow panelists from their experience. And ---
6616. **MR. NETTLETON:** Sure.
6617. **MR. MATWICHUK:** --- I'm just thinking that ---
6618. **MR. NETTLETON:** The question was asked to you, sir. Just simply

6619. **MR. MATWICHUK:** Yeah, no, no ---
6620. **MR. NETTLETON:** --- recognizing ---
6621. **MR. MATWICHUK:** --- I recognize that.
6622. **MR. NETTLETON:** --- that they're relying on your evidence.
6623. **MR. MATWICHUK:** I understand your question, sir. And I -- I was trying to answer it.
6624. Is that you asked me one question ago whether I had considered the sensitivity associated with other pipelines. And you and I had a conversation earlier where I had -- as a result of Mr. Reed's reply evidence and the reply

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evidence of Trans Mountain, I had posited a scenario of additional capital construction costs and that scenario could contemplate the scenario of additional work being conducted on other pipelines.

6625. **MR. NETTLETON:** Mr. Chairman, it's a logical place to take the break for me, if that would be okay and satisfactory to you.

6626. **THE CHAIRMAN:** That's perfect.

6627. We'll be back here at 11:00 a.m.

6628. **MR. NETTLETON:** Thank you.

--- Upon recessing at 10:25 a.m./L'audience est suspendue à 10h25

--- Upon resuming at 10:59 p.m./L'audience est reprise à 10h59

JOHN VAN HEYST: Resumed

GILLON BROWNIE: Resumed

GREG MATWICHUK: Resumed

6629. **THE CHAIRMAN:** Mr. Nettleton.

6630. **MR. NETTLETON:** Thank you, Mr. Chairman.

6631. **MR. VAN HEYST:** Sorry, Mr. Nettleton?

6632. **MR. NETTLETON:** Yes.

6633. **MR. VAN HEYST:** If I could -- we broke before I could add something to the last line, if you don't mind.

6634. **MR. NETTLETON:** Sure.

6635. **MR. VAN HEYST:** In speaking to the -- in terms of the risks that other pipelines might bear on your project is, you know, when we look forward to the CPCN estimate, it's not only a Class 2 --3 estimate; it's a P95 estimate. So to the extent, at that time, as these projects become more defined and may or may not have an impact on your costs, I presume that that would get reflected in the risking exercise that is part of that P95 determination.

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6636. So at that point in time with that estimate, by definition, there is a 5 percent chance or less that costs could exceed from that CPCN P95. And furthermore, we have the capped and uncapped that provide some further delineation. And I'll note that the 100 percent of the bare pipe at the mill is in the uncapped category and at shippers' risk.

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

6637. **MR. NETTLETON:** Mr. Van Heyst, you wouldn't be surprised that I was anticipating that answer, would you?

6638. **MR. VAN HEYST:** I can't say, sir.

6639. **MR. NETTLETON:** Maybe I can have you turn to Exhibit B18-6, which is the evidence of Dr. Lessard. It's page 8 to 9. And it's in Question and Answer 13, where he's talking about P90 and P95 cost estimates.

6640. Dr. Lessard has given evidence in this proceeding that, in this response, that people tend to underestimate risk.

6641. Does Suncor, in its experience, have a basis to disagree with that opinion or statement?

6642. **MR. VAN HEYST:** I think in general we would agree.

6643. **MR. NETTLETON:** I'm sorry?

6644. **MR. VAN HEYST:** Sorry. Please, can you repeat the question?

6645. **MR. NETTLETON:** Sure. Dr. Lessard, in his response regarding -- discusses P90 and P95 estimates. Do you see that?

6646. **MR. VAN HEYST:** I see that, yes.

6647. **MR. NETTLETON:** And Dr. Lessard gives several reasons for explaining why P90 and P95 estimates virtually assume all risk is factored in. Do you see that?

6648. **MR. VAN HEYST:** I see it, yes.

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6649. **MR. NETTLETON:** And then he goes on to describe in his enumerated list several reasons. And one of them is that, in his expert experience, looking at major energy infrastructure projects, that his conclusion has been that people tend to underestimate risks.
6650. And my question to Suncor, given its experience, do you have a basis to disagree with that opinion?
6651. **MR. VAN HEYST:** I would say, Mr. Nettleton, I wouldn't disagree generally. I think it's been Suncor's experience, certainly with our major projects group, is that we learn from the past and going forward, we try to improve.
6652. So in terms of -- you know, I would turn to, in particular -- this particular expansion we're talking about here is Trans Mountain has benefit of having completed the Anchor loop, the pump station expansions. So it has done this type of work and has those experiences to inform it on the new project.
6653. **MR. NETTLETON:** Were you here, Mr. Van Heyst, when Dr. Lessard was providing evidence regarding his views about the Anchor loop and its potential relevance or not to the TMX project?
6654. **MR. VAN HEYST:** I was in the room. I can't recall the specifics, Mr. Nettleton.
6655. **MR. NETTLETON:** Mr. Van Heyst, can we agree that the existing Trans Mountain pipeline was constructed over 50 years ago?
6656. **MR. VAN HEYST:** Yes.
6657. **MR. NETTLETON:** And the TMX project that's proposed is not one that is intending to do construction in Jasper National Park; correct?
6658. **MR. VAN HEYST:** That has been completed, yes.
6659. **MR. NETTLETON:** Why, sir, do you believe that construction experience some 50 years ago would have relevance or intellectual property, if you will, to the proposed construction of this pipeline project?
6660. **MR. VAN HEYST:** I was not referring to the experience from 50, 60

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- years ago, Mr. Nettleton. I was referring to the experience in building the Anchor loop.
6661. **MR. NETTLETON:** But that's in a completely separate area, sir.
6662. I mean. if it was in the same area -- Suncor's projects, sir, are all built in the same -- within the same geographic boundary. Isn't that the case?
6663. **MR. VAN HEYST:** Generally, yes.
6664. **MR. NETTLETON:** And this project is going to be built across a much greater geographic span; correct?
6665. **MR. VAN HEYST:** Correct.
6666. **MR. NETTLETON:** And the experience that Trans Mountain would have with regard to constructing outside of Jasper National Park would be the experience it had with developing and constructing the existing pipeline; correct?
6667. **MR. VAN HEYST:** Putting in a 36-inch loop with the existing pipeline, yes.
6668. **MR. NETTLETON:** But the 36-inch loop is only located in Jasper, Mr. Van Heyst.
6669. What about the areas outside of Jasper? What about the other watercourse crossings that are site-specific outside of Jasper that this project is going to potentially affect? What experience would they have there?
6670. **MR. VAN HEYST:** I believe they would be quite informative as to what to expect on other parts in terms of construction, project execution.
6671. **MR. NETTLETON:** But that wouldn't be based on the Anchor loop, would it?
6672. **MR. VAN HEYST:** I would think so.
6673. **MR. NETTLETON:** How? How would, sir, the construction experience on Anchor loop have bearing upon how the pipe gets constructed in an area 45, 55 kilometres outside of Burnaby?

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6674. **MR. VAN HEYST:** I would say some of the specific challenges, yes, are different but, in general, I think some of them are similar, Mr. Nettleton.

6675. I don't know all of the topography that the pipeline is going to go through, but I suspect some of the topography through the park is some of the most challenging you have to deal with.

6676. **MR. NETTLETON:** Dr. Lessard, on page 9, goes on to describe that:

"The remaining P10/P5 can be a very long tail. The end of that tail..."

6677. And he's describing risk, and he's saying that:

"The end of that tail may have a very low probability, but it also carries a variety of 'black swans' that drive extreme capital cost [risk or] capital cost increases."

6678. Do you see that?

6679. **MR. VAN HEYST:** I see that, yes.

6680. **MR. NETTLETON:** Do you have any basis to disagree with that conclusion?

6681. **MR. VAN HEYST:** No, I do not. In fact, from our perspective, if I can carry his analogy a little further, I would think that it looks like the "black swans" have been flocked into the uncapped category, Mr. Nettleton.

6682. **MR. NETTLETON:** Sorry. You think all of the "black swans" are caught in the uncapped category.

6683. **MR. VAN HEYST:** I wouldn't say all, but I think there's -- the most likely location or existence of the "black swans" have been placed in the uncapped category.

6684. **MR. NETTLETON:** Mr. Matwichuk, back to you, sir.

6685. If I could have you turn up Exhibit C15-4-7 which is Appendix 2 to

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- your direct evidence.
6686. **MR. MATWICHUK:** I have it.
6687. **MR. NETTLETON:** And -- excuse me -- I'd like to focus your attention on the first two columns, sir, that is the column entitled "Trans Mountain" and the column entitled "Northern Gateway (Oil Line)". Do you see that?
6688. **MR. MATWICHUK:** Yes.
6689. **MR. NETTLETON:** And I want to focus your attention on the last -- sorry, the second--last row entitled "Construction Cost Risk". Do you see that?
6690. **MR. MATWICHUK:** Yes, yes.
6691. **MR. NETTLETON:** All right. Now there you have indicated some metrics regarding construction cost risks associated with the Gateway and the Trans Mountain projects; correct?
6692. **MR. MATWICHUK:** Yes.
6693. **MR. NETTLETON:** I'm glad you're squinting, sir, because I was too. It's awfully small print.
6694. What I want to just understand with you, Mr. Matwichuk, is with respect to Gateway, is it fair, sir, that the way in which cost overruns are handled or shared is that on overruns following CPCN approval, costs are shared on the first -- 25 percent on the first 25 percent of the overrun and 50 percent on the remaining costs?
6695. Mr. Brownie, do you have an understanding of that? I believe you're part -- you're involved in Gateway; correct?
6696. **MR. BROWNIE:** That's correct and if you just give me a second to refer ---
6697. **MR. NETTLETON:** Sure.
6698. **MR. BROWNIE:** --- to some notes, that'd be great. Thank you.

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--- (A short pause/Courte pause)

6699. **MR. BROWNIE:** So my understanding -- and we had it in response to Trans Mountain IR 1.19(b) -- is that if shippers elect for the cost risk sharing mechanism, the methodology causes shippers to pay for the initial 25 percent of the capital cost overrun above which Gateway will be responsible for 75 percent of the cost in excess of that initial 25 percent cost overrun.

6700. **MR. NETTLETON:** So you're suggesting that it's 75 percent of the first 25 percent that is Gateway's responsibility or is that shipper's responsibility?

6701. **MR. BROWNIE:** If I didn't say shippers, it is shipper's responsibility.

6702. **MR. NETTLETON:** It is shipper's responsibility?

6703. **MR. BROWNIE:** Yes.

6704. **MR. NETTLETON:** Okay. So Gateway is -- becomes responsible for 25 percent of the first -- on the first 25 percent of the overrun, is that right? And then I've got 50 percent on the remaining -- any remaining cost overruns -- it's shared 50/50?

6705. **MR. BROWNIE:** That sounds accurate, yes.

6706. **MR. NETTLETON:** Okay. Thank you. And that's all subject to check, you can tell me if I'm ---

6707. **MR. BROWNIE:** That's correct.

6708. **MR. NETTLETON:** Okay. And then similarly on the underrun side, subject to check, Mr. Brownie, 25 percent of the first 15 percent of any underrun is to the benefit of Gateway and 50 percent of any remaining underrun amounts are shared 50/50; is that right?

6709. **MR. BROWNIE:** That sounds accurate ---

6710. **MR. NETTLETON:** Okay.

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6711. **MR. BROWNIE:** --- subject to check, yes.
6712. **MR. NETTLETON:** And Mr. Matwichuk, is that what's intended to be reflected in the cells related to construction cost risk for thus self -- for construction cost risk of Northern Gateway?
6713. **MR. MATWICHUK:** Yes, Mr. Nettleton, that is what was intended. It was -- given the nature of the table, it was difficult to fit all the words in ---
6714. **MR. NETTLETON:** I understand. I'm not quarrelling over the ---
6715. **MR. MATWICHUK:** Yeah.
6716. **MR. NETTLETON:** --- size of font that you used or the lack of space, so I just wanted to make sure that we're all on the same page.
6717. **MR. MATWICHUK:** Correct.
6718. **MR. NETTLETON:** Okay. Now, Mr. Matwichuk, you're aware from the revised evidence that Trans Mountain has sponsored in this proceeding that the new cost estimate for the revised project is 5.37 billion, subject to check?
6719. **MR. MATWICHUK:** Yes, subject to check. Thank you.
6720. **MR. NETTLETON:** And again, subject to check, Mr. Matwichuk, the breakdown of that 5.37 amount is 80 percent capped and 20 percent uncapped?
6721. **MR. MATWICHUK:** As soon as you say breakdown, all of a sudden I have to open a binder.
6722. **MR. NETTLETON:** Okay. It's Exhibit B15-24.
6723. **MR. MATWICHUK:** Thank you.
6724. **MR. NETTLETON:** And it's Adobe page 4 of 7, and it's Appendix B to the FSA.
6725. **MR. MATWICHUK:** Yeah. It's under the heading "Initial Cost Estimate"?

6726. **MR. NETTLETON:** Yes.

6727. **MR. MATWICHUK:** Yes. And so if you wouldn't mind restating your question.

6728. **MR. NETTLETON:** Yeah. It's just the breakdown of the 5.37 billion shown there is broken down to be 80 percent capped and 20 percent uncapped and you can take that subject to check.

6729. **MR. MATWICHUK:** Yeah. And those are the estimates under the initial cost estimate.

6730. **MR. NETTLETON:** Yeah. Okay.

6731. Now, gentlemen, and in particular Mr. Matwichuk, I provided to your counsel aid 6 -- aid number. 6. And I'd like to have a discussion with you about that if I could.

--- (A short pause/Courte pause)

6732. **MR. NETTLETON:** Mr. Matwichuk, you were provided this Sunday evening, correct?

6733. **MR. MATWICHUK:** Yes, we have it, sir.

6734. **MR. NETTLETON:** And you've had a chance to review it?

6735. **MR. MATWICHUK:** Yes.

6736. **MR. NETTLETON:** All right. And what this scenario is intended to show, based on a series of assumptions, is the differential between cost risk sharing on Gateway versus Trans Mountain.

6737. And what I'd just like you to confirm if the initial cost estimate is \$6 million -- \$6 billion -- just for ease of number we've assumed \$6 billion at the time of CPCN and cost risk sharing commences that under an assumption of a 35 percent cost increase which is 2.1 billion when the line finally goes into service, there is a differential shown in the chart of how that risk gets shared.

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6738. Do you see that?
6739. **MR. MATWICHUK:** I see some numbers.
6740. **MR. NETTLETON:** Right. Well, let's take a look at the Gateway column if we could.
6741. Mr. Brownie, have you had a chance to look at this?
6742. **MR. BROWNIE:** Yes, we have.
6743. **MR. NETTLETON:** And sir, can you confirm with me that when there's a \$2.1 billion assumed cost overrun with Gateway that the formula that we just went through and described would result in the sharing -- the sharing numbers shown that namely that the share -- the carrier would assume 675 million and the shipper would share 1.4 to 5 billion of that cost overrun?
6744. **MR. VAN HEYST:** So Mr. Nettleton, I think I'll take this one on.
6745. I think your numbers are correct, presuming the shippers elect to take on the 12 percent option with -- and the capital cost risk and not the 11 percent.
6746. **MR. NETTLETON:** Okay, yeah. No, fair point.
6747. And then if we turn to the TMX column, sir. And the assumption here is that the proportionality of overrun remains the same of 80/20, that the carrier risk that would be assumed by that type of overrun would be 1.68 billion to the carrier's account and the shipper risk would -- shippers would have 420 million of that cost overrun to their account. Do you have any reason to dispute those numbers?
6748. **MR. VAN HEYST:** I don't disagree with the math, Mr. Nettleton. What I do agree is with the premise that they would actually fall into that same relation as the capital in the initial capital.
6749. Again, with the use of the capped and the uncapped, I don't think the risk profile in terms of the overage is the same. In fact, we can look -- I took a quick look back at the anchor loop. And in the parlance of that particular project, the controllable versus uncontrollable was 73 versus 26, but the overage was 29 versus 71.

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6750. So even in the anchor loop, you had the -- the costs did not accrue -- any overages did not accrue in the same order of magnitude as initial cost estimate.
6751. **MR. NETTLETON:** Mr. Van Heyst, was the anchor loop constructed in a period of time where four major large-diameter pipelines were all being constructed within the same province?
6752. **MR. VAN HEYST:** I believe there was -- yes, there was a number of other pipeline projects on the go when the anchor loop was being constructed.
6753. **MR. NETTLETON:** Were they large-diameter pipeline projects from the Alberta-B.C. border to the coast of British Columbia?
6754. **MR. VAN HEYST:** I was thinking more oil pipelines, sir, from Alberta to other locations, but -- so I can't confirm that particular piece.
6755. **MR. NETTLETON:** In your experience, Mr. Van Heyst, are steel costs manageable through the reservation of mill space?
6756. **MR. VAN HEYST:** Yes, I have seen that done.
6757. **MR. NETTLETON:** So there are ways to hedge that risk.
6758. **MR. VAN HEYST:** Yes, there are. And in this particular event, those would appear to be at the shipper's risk for this particular project.
6759. **MR. NETTLETON:** So it would be up to the shippers to make a decision about whether to hedge that risk or not. They're at risk.
6760. **MR. VAN HEYST:** I can't say that's a shipper's decision. The consequence of that would fall to the shippers in terms of the cost.
6761. I think Mr. Rinne made some -- in his testimony indicated that potentially Trans Mountain would work with its shippers to do that, but no guarantees, I suppose.
6762. **MR. NETTLETON:** Well, Mr. Van Heyst, you have been involved in several other pipeline projects, have you not?

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6763. **MR. VAN HEYST:** I have.
6764. **MR. NETTLETON:** And that includes the Wild Rose pipeline or the Enbridge Athabasca pipeline project?
6765. **MR. VAN HEYST:** I know it by its latter name, yes.
6766. **MR. NETTLETON:** Do you know whether, in that project, there was a collaborative effort to work together to have that type of risk managed through collaboration with shippers and the pipeline company?
6767. **MR. VAN HEYST:** That just pre-dates my time with Suncor, Mr. Nettleton. I can't ---
6768. **MR. NETTLETON:** Why ---
6769. **MR. VAN HEYST:** --- confirm that.
6770. **MR. NETTLETON:** Why would you think it's in Trans Mountain's best interests to not work together with shippers to give a course of alternatives or options to manage a risk like steel cost?
6771. **MR. VAN HEYST:** I didn't indicate it was -- Trans Mountain wouldn't be interested in doing that. I said Mr. Rinne's put that offer out there and I'm not sure what the outcome is going to be.
6772. **MR. NETTLETON:** It seems like a reasonable proposition that Mr. Rinne has made. Is that fair?
6773. **MR. VAN HEYST:** I suppose so, yes.
6774. **MR. NETTLETON:** Your suggestion that there would be a differential between the 80/20 proportionality, sir, is one that is not limited to uncapped costs, though, and the risks associated that this project experiences. Those risks can affect capped costs, too; correct?
6775. **MR. VAN HEYST:** That's correct, Mr. Nettleton, but I think the use of the P95 type level estimate largely mitigates that concern.

6776. **MR. NETTLETON:** Thank you.
6777. Could I have that marked as an exhibit?
6778. Sorry, there's one other element that I'd like to talk with the witnesses, and that's the 25 percent decrease.
6779. Now, Mr. Van Heyst or Mr. Brownie, with respect to the formula that we discussed earlier, can we agree that in the event of a 25 percent cost decrease the allocation of that benefit would be as described in this chart, namely 525 million to the account of the carrier and 975 million to the account of shippers?
6780. **MR. VAN HEYST:** Yes, Mr. Nettleton, making the assumption previously noted.
6781. **MR. NETTLETON:** And can we agree, Mr. Van Heyst, that in the same circumstance there is no benefit in a 25 percent cost reduction flowing to the carrier with the Trans Mountain expansion project?
6782. **MR. VAN HEYST:** Yes.
6783. **MR. NETTLETON:** Thank you.
6784. Mr. Chairman, could I now have that marked as an exhibit?
6785. **THE CHAIRMAN:** Madam Wong?
6786. **THE REGULATORY OFFICER:** That will be Exhibit B25.

--- EXHIBIT NO./PIÈCE No. B25:

Capital cost risk exposure: TMX vs. Gateway

6787. **MR. NETTLETON:** Mr. Matwichuk, I'd like to turn to a new area, if I could, and that's with respect to the correction that you made this morning.
6788. If I could have you turn up Exhibit C15-9-2, which is the revised response to Trans Mountain Pipeline IR 1.22.

--- (A short pause/Courte pause)

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6789. **MR. NETTLETON:** Do you have that, sir?
6790. **MR. MATWICHUK:** Yes, thank you.
6791. **MR. NETTLETON:** All right. And I do want to speak with you about the revision just so that I understand the nature of the change that you've made this morning not having the benefit of the transcript.
6792. As I understand it, at least in this language, before the change you were supporting your five percent debt cost assumption based on KMP's analyst conference where a reference was made to its current cost of debt being 3.8 percent. Is that fair?
6793. **MR. MATWICHUK:** No, it's not quite correct. It is one of the factors that I considered in my determination of a reasonable debt rate of 5.25 percent.
6794. So pertaining to this correction directly, it was in reference to Trans Mountain's suggestion that its debt rate would be seven percent. And I noted that KMP had indicated that its debt cost was lower and its overall debt rate was 3.8 percent, which was derived from its long-term debt rate of five percent.
6795. **MR. NETTLETON:** I'm just wondering why you made the change at all, then, sir.
6796. The only thing new that I see out of this revision is a reference to KMP's analyst conference statement.
6797. **MR. MATWICHUK:** Because it came after the timing of issuing this

6798. **MR. NETTLETON:** Sorry; what came after?
6799. **MR. MATWICHUK:** The timing of the conference came after I had drafted the rest of the response.
6800. **MR. NETTLETON:** So am I to take from this addition that you are placing some reliance on the statistic that was given at KMP's analyst conference?

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6801. **MR. MATWICHUK:** I'm providing it as a comparator similar to what I did, sir, as a comparator that debt rates do not appear to be going near the 7 percent that's suggested in CAPP 1.3.

6802. And the examples that I gave with respect to that were that a large utility -- three utilities in Alberta have recently issued under the ATCO banner debt tranches of 30 years, 40 years and 50 years. And in that they were able to achieve debt rates of around 3.8 percent for each of these tranches, give or take a few basis point, depending on the -- on those tranches.

6803. So that was an area of reliance. The other area of reliance was that -- and when I look at that, it suggests to me that in terms of time value of money, that's incorporated into that 3.8 percent. In terms of an expectation of having to be compensated for inflation, that's taken into consideration in that -- in those tranches. And also in terms of a long-term lock-in period, to be compensated for that.

6804. So that suggested to me a number of things. One is given the length of those debt terms, it didn't look like the market -- because this is where the market has spoken, this isn't analysts, this is actually people putting their money on the line and getting the return that they get, and in this case 3.8 percent. And I was comparing that to the rate that I looked at in my evidence of approximately 4.2 or 4.3 percent out of Enbridge Energy Partners which is also a U.S. pipeline infrastructure company that has a lot of similarities to KMP.

6805. So in looking at those numbers it suggested to me that 7 percent wasn't within the realm of likelihood given where investors are placing their money and the return they expect for their money on a debt basis.

6806. **MR. NETTLETON:** Well, let's review what the analyst conference statistic said. It was included as one of the aids to cross provided by your counsel, but I don't think referred to in this proceeding. I've made copies of that and I can provide them to you.

6807. **MR. MATWICHUK:** Oh sure.

--- (A short pause/Courte pause)

6808. **MR. NETTLETON:** Under the heading "Debt", Mr. Matwichuk, there's a line ---

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6809. **MR. MATWICHUK:** Just for the record, Mr. Nettleton, is this out of an exhibit?

6810. **MR. NETTLETON:** Sir, this is the aid to cross that your counsel provided to our witnesses ---

6811. **MR. MATWICHUK:** Right, so it doesn't have an exhibit number?

6812. **MR. NETTLETON:** It does not have an exhibit number.

6813. **MR. MATWICHUK:** Okay.

6814. **MR. NETTLETON:** In fact, it hasn't been even referred to in this proceeding. It was provided to us but your counsel did not see the need to put it to our witnesses.

6815. So I'm just bringing it up and I'm assuming you've seen it because it was something that your counsel had given to us.

6816. **MR. MATWICHUK:** Yes. And so this is Slide 4 of one of the 6 or so documents that came out of that investor conference.

6817. **MR. NETTLETON:** And I want to refer you to the line item that says "Cost of Debt"; do you see that?

6818. **MR. MATWICHUK:** I do.

6819. **MR. NETTLETON:** And -- sorry, you said that this presentation was given in January of 2013? I think that was what Mr. Anderson had said.

6820. **MR. MATWICHUK:** That's my understanding, yes.

6821. **MR. NETTLETON:** And so we can agree, sir, that under the 3.8 percent metric, 50 percent of that is made up of short term debt?

6822. **MR. MATWICHUK:** That's correct.

6823. **MR. NETTLETON:** Can I have you turn, Mr. Matwichuk, to Exhibit C15-7-3, at Adobe page 35?

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6824. And what I want to refer you to is the statement found in the second-last enumerated point -- hash mark points that says:

“It is expected that Trans Mountain would finance long term assets with long term debt of 20 years or more.”

6825. Do you see that?

6826. **MR. MATWICHUK:** Yes.

6827. **MR. NETTLETON:** All right. So back to the aid and the correction that you made. Your view, sir, as I understand it is for the effect of not -- no longer referring to the 3.8 percent number because it takes into account short term debt?

6828. **MR. MATWICHUK:** No, sir. This -- what you just read from the IR response is an expectation. What's not clear on the record is how KMP would finance. I mean many organizations mix -- have a portfolio of debt with respect to their infrastructure that they invest in.

6829. So what we don't know is whether or what percentage of short term debt may be mixed in there or there could be some floating -- floating debt rates, there could be some swaps that effectively achieve those lower debt rates akin to short term debt.

6830. However, worse case scenario, it's all at long-term fixed rate. And as I mentioned earlier, that's at 5 percent on this investor scenario, but it's not necessarily an indication of what could be achievable in the marketplace by KMP given some of the comparators that I've provided.

6831. **MR. NETTLETON:** Well, let me just see if I understand. Your assumption that you've stated in this IR response is that long-term assets will be financed with long-term debt; fair?

6832. **MR. MATWICHUK:** I think what the response says is it expected that Trans Mountain would finance.

6833. **MR. NETTLETON:** I'm just wondering if that changes -- if you're changing that part of your answer now given the testimony that you're providing?

6834. **MR. MATWICHUK:** No, there's no change at all. It's -- as an investor one would expect that Trans Mountain would do that. Whether Trans Mountain does that or not is -- sorry, whether KMP does that through long-term debt exclusively is unknown to me at this time.
6835. Because one of the concerns that arose to me when I saw the 7 percent -- and I've seen, you know, the possibility of this happening in other regulated entities where the parent provides long-term debt or short term debt but at a premium to what it paid in the market when it provides it to its subsidiary.
6836. And so that raised a concern for me. I don't know that that's happening here, but there could be a bonus or a premium paid to the parent. Conversely, I'm familiar with other utilities that passed through the exact debt rate that they achieve in the marketplace and that's what I would normally expect in terms of a regulated entity.
6837. So, Mr. Nettleton, to summarize, it's what I expected when I answered the response. But as to what KMP will actually do, I am uncertain.
6838. **MR. NETTLETON:** I just want to be clear, Mr. Matwichuk, given the statement that you've made in your IR and given the change that you've now made to your response to your supplementary IR where you struck parts of that answer as I understand it this morning, are you saying, sir, that the 5 percent assumption of long-term debt is validated, at least in part, on the basis that KMP's analyst -- at the analyst conference that KMP has said that its long-term debt rate is 5 percent?
6839. **MR. MATWICHUK:** So the answer is that I changed the response to accurately reflect what the 3.8 percent was, that it was not necessarily long-term debt. So -- and what the KMP analyst conference document on page 4 -- Slide 4 shows, long-term fixed rate and it shows 5 percent.
6840. What's not clear from this document, sir, is -- is that current debt -- current long-term debt, is that embedded cost of debt, and if it's embedded cost of debt, could have some older rates in there that could change it or make it higher than it could achieve in the marketplace today.
6841. **MR. NETTLETON:** Is it your view, Mr. Matwichuk, that it's reasonable for new assets having an economic life of 35 years to be funded using

50 percent short term debt?

6842. **MR. MATWICHUK:** I wouldn't expect to see that in the marketplace.
6843. **MR. NETTLETON:** Thank you.
6844. Now, Mr. Matwichuk, you understand that this presentation provides KMP's existing or current cost of debt; correct? That's what it's presenting to its analysts or do you know that?
6845. **MR. MATWICHUK:** Yes, but what I -- what I don't -- when they say current cost of debt, is that -- you know, they haven't defined what current means. I mean, is that currently what they have on the books or currently if they went to the market?
6846. **MR. NETTLETON:** So you don't know what the statistic says or means?
6847. **MR. MATWICHUK:** It -- it's not adequately informative to determine, but I presented it as a -- another piece of information in what KMP is currently indicating to its investors and how that might compare to what's been currently obtainable in the marketplace.
6848. **MR. NETTLETON:** But you don't know what that means in respect of this proceeding?
6849. **MR. MATWICHUK:** I don't understand that question.
6850. **MR. NETTLETON:** You don't know what the investor analysts' statistic that was given -- you don't know what that means for purposes of this proceeding. You don't know whether the investor analyst conference came out and said, and this is the long-term debt rate that we're planning to use for the financing of a project that's going to be five years from now for a period of 20 years. They didn't come out and say that, did they?
6851. **MR. MATWICHUK:** They -- that's my understanding, they didn't come out and say that, but they do have -- what's striking I guess, Mr. Nettleton, is that whatever rate that they currently do have and given that KMP has a beta of, I believe, .36 and they're BBB rated credit rating -- it seemed to me that 7 percent

was excessive.

6852. **MR. NETTLETON:** How do you view, Mr. Matwichuk, KMPs' current cost of debt to have bearing on what KMP's cost of debt will be five years from now and for the next 20 years thereafter?
6853. **MR. MATWICHUK:** So the other benchmarks that I looked at and I think I ---
6854. **MR. NETTLETON:** No, I'm not asking about other benchmarks. I'm asking about KMP's current cost of debt and why you believe it has bearing on what KMP's cost of debt will be five years from now and for the next 20 years thereafter.
6855. **MR. MATWICHUK:** Well, Mr. Nettleton, I guess the issue is is that when investors go to the marketplace, they look for benchmarks, and -- and benchmarks that exist in the marketplace, for example, are Canada bonds and, in the case of KMP, U.S. Treasury's and I think I indicated in an IR response that 10-year Government of Canada bonds are currently yielding at around 1.8 percent and 2.2 percent, and U.S. Treasury's 10-year yield is about 1.9 percent to 2.3 percent.
6856. Mr. Nettleton, those are the starting points, generally speaking, of benchmarks for what organizations who wish to finance and issue debt will be basing their decisions on.
6857. **MR. NETTLETON:** Assuming that they were wanting to issue debt today; correct?
6858. **MR. MATWICHUK:** Yes. And -- and that's why I provided for a -- a cushion in -- in the estimate that I used in my evidence.
6859. **MR. NETTLETON:** Do you believe, Mr. Matwichuk, that debt costs today are at an all-time low?
6860. **MR. MATWICHUK:** It's hard to say, Mr. Nettleton, whether they are at an all-time low, and I -- and I reflect on again the Government of Canada yields of 2.58 percent for 30 years and U.S. Treasury 30 years at 3.16 percent and I put that together with the recent issue that I -- I mentioned with respect to the three ATCO companies and it suggests to me quite strongly that whether that

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interest rates aren't necessarily going to be increasing because people have bet; they have put their money on the line. They've invested and they're expecting to get those returns to be able to compensate them for -- for their financing for long periods of time.

6861. **MR. NETTLETON:** Are any of the three provincial utilities that you're referring to intending to make \$5.6 billion investments five years from now, sir?
6862. **MR. MATWICHUK:** I can't recall the size of their investments, but one of them being ATCO Electric is making investments of the billion dollar order of magnitude with respect to transmission lines.
6863. **MR. NETTLETON:** Are you aware, Mr. Matwichuk, that Gateway's assumed cost of debt is 6.8 percent?
- (A short pause/Courte pause)
6864. **MR. MATWICHUK:** It appears we don't have that information with us.
6865. **MR. NETTLETON:** You've referenced in C15-47 -- this is the small font Appendix 2 of your direct evidence, sir.
6866. **MR. MATWICHUK:** Yes.
6867. **MR. NETTLETON:** Under the row "Cost of Debt" that Gateway's cost of debt is based on project financing debt without parental guarantee. See that?
6868. **MR. MATWICHUK:** Yes, we see that.
6869. **MR. NETTLETON:** Are you aware, sir, of the regulatory principle known as the standalone principle?
6870. **MR. MATWICHUK:** Yes.
6871. **MR. NETTLETON:** And would the standalone principle be consistent from a cost of debt perspective of using a debt cost such as the one that Enbridge is proposing with Northern Gateway, that is project financing without a

non-parental guarantee?

6872. **MR. MATWICHUK:** Yes. And I guess that was the issue that I was dealing with earlier in terms of standalone principle and I believe there was some discussion in the first couple of days with respect to whether Trans Mountain could get alternative financing without relying on KMP. And it seems that -- my understanding of the transcript and of the record so far is that KMP would have a monopoly on the financing provided to Trans Mountain for this project.

6873. And so when I see that, it suggests to me that there isn't a competitive access to financing that would establish whether it's on a standalone basis.

6874. **MR. NETTLETON:** Thank you, Mr. Matwichuk.

6875. I believe the remainder of my cross is for Mr. Brownie and Mr. Van Heyst.

6876. Gentlemen, let me ask you a few questions, if I could, about Gateway.

6877. Mr. Van Heyst, I believe on September 24th of 2012, you along with other shippers who support the Gateway project testified before the Joint Review Panel; is that correct?

6878. **MR. VAN HEYST:** I believe that to be correct, sir, yes.

6879. **MR. NETTLETON:** And Mr. Van Heyst, can you confirm that -- from my read of that transcript at least, that Suncor Energy and its affiliate Fort Hills Energy Limited Partnership have executed precedent agreements with Northern Gateway Limited Partnership which reflect commercial support for the Northern Gateway project?

6880. **MR. VAN HEYST:** That's correct.

6881. **MR. NETTLETON:** And do these precedent agreements provide Suncor with the option to execute transportation service agreements with Gateway?

6882. **MR. VAN HEYST:** They do.

6883. **MR. NETTLETON:** And Mr. Van Heyst, is Total E&P Canada or

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any of its affiliates or subsidiaries partners in the Fort Hills Energy Limited Partnership?

6884. **MR. VAN HEYST:** They are.

6885. **MR. NETTLETON:** And Fort Hills is one of the properties that forms part of this strategic alliance that you have created with Total; correct?

6886. **MR. VAN HEYST:** It's a number of JVs that Suncor, Total and others have on the various projects.

6887. **MR. NETTLETON:** All right. And can we agree, Mr. Van Heyst, that Northern Gateway will be providing transportation services for access to new offshore markets; that's the intent, correct?

6888. **MR. VAN HEYST:** Yes.

6889. **MR. NETTLETON:** And Trans Mountain, through this expansion project, intends to also compete to serve those markets too; correct?

6890. **MR. VAN HEYST:** In addition to some refineries on the west coast as well as moving refined products for various refiners in Edmonton, yes.

6891. **MR. NETTLETON:** All right. Now, I provided to your counsel -- Mr. Chairman, I'm wondering if I could now have this -- I realized that I haven't marked this as an exhibit. This is the KMP current cost of capital calculation.

6892. **THE REGULATORY OFFICER:** That will be Exhibit B26.

--- EXHIBIT NO./PIÈCE No. B26:

KMP Current Cost of Capital Calculation

6893. **THE CHAIRMAN:** While we're at it, Mr. Nettleton, you had two other aids to cross. I'm assuming that since you haven't asked for ---

6894. **MR. NETTLETON:** Yeah.

6895. **THE CHAIRMAN:** --- exhibit numbers that you're not intending to?

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6896. **MR. NETTLETON:** I don't think so, sir. I mean, it's information that's in the public domain.

--- (A short pause/Courte pause)

6897. **MR. NETTLETON:** Gentlemen, the two documents that I've circulated, one is a cover letter dated August 30th, 2011, which is a cover letter to a response that Enbridge Northern Gateway Pipelines filed in its Joint Review Panel proceeding providing responses to a third set -- or third round of IRs. And the second document is one of the IRs which is entitled "3.2 Hydraulic Design"; do you have copies of that, sir?

6898. **MR. VAN HEYST:** Yes, we do.

6899. **MR. NETTLETON:** Have you had a chance to review that, Mr. Van Heyst?

6900. **MR. VAN HEYST:** I have.

6901. **MR. NETTLETON:** Okay. And if I could take you to, sir, the information response on page 9 of 68.

6902. Do you have that?

6903. **MR. VAN HEYST:** I do, yes.

6904. **MR. NETTLETON:** All right. And again, this is in response to one of the IRs that the Joint Review Panel had requested or asked regarding potential expansion scenarios. Do you see that? That's -- sorry, I should have taken you there first. It's request D, a detailed description of the potential expansion scenarios which would be possible by adding additional pump and pumping facilities including corresponding capacities.

6905. **MR. VAN HEYST:** Yes, I see that.

6906. **MR. NETTLETON:** Right. And then over to 3.2(a) Northern Gateway has indicated on a preliminary basis those expansion scenarios going from the current 525 proposal out to 850,000 barrels a day; correct?

6907. **MR. VAN HEYST:** I see that, yes.

6908. **MR. NETTLETON:** And in the description underneath that Table 3.2a and indeed in the table itself, the contemplated expansion plan, albeit preliminary, relates only to new pumps and stations; correct?
6909. **MR. VAN HEYST:** Yes, that's my understanding.
6910. **MR. NETTLETON:** Mr. Van Heyst, in your experience, when new tranches of capacity are added to a pipeline through pump and new station, do you believe that would result in a cheaper tranche of capacity as compared to the installation of new pipe?
6911. **MR. VAN HEYST:** It would depend on the circumstances, generally, yes. I have seen instances where that is not the case though, in terms of the capital cost plus the operating cost of the increased horse power on the pipeline.
6912. **MR. NETTLETON:** Do you have a view, Mr. Van Heyst, on whether the National Energy Board's regulatory approval process for new pumps situated within existing station property or new pump stations are more streamlined as compared to applications involving new pipeline facilities in excess of 40 kilometres?
6913. **MR. VAN HEYST:** They have been so in the past, I can't say about the future.
6914. **MR. NETTLETON:** The response to this information request was provided on August 30th, 2011, subject to check -- that's what the cover letter says -- was dated?
6915. **MR. VAN HEYST:** I believe so, yes.
6916. **MR. NETTLETON:** And that was a date that preceded the commencement of the TMX open season; correct?
6917. **MR. VAN HEYST:** Yes.
6918. **MR. NETTLETON:** Mr. Van Heyst, would you expect a competitor such as Trans Mountain to take this information into account when planning its project and offering commercial arrangements for similar access to similar market points?

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6919. **MR. VAN HEYST:** I would think that would be the case.
6920. **MR. NETTLETON:** Thank you.
6921. Approval of the Gateway transportation service agreement and its tolling principles are matters currently before the Joint Review Panel; correct?
6922. **MR. VAN HEYST:** Yes, as part of the overall application.
6923. **MR. NETTLETON:** They're seeking approval of the tolling principles; correct?
6924. **MR. VAN HEYST:** That's correct.
6925. **MR. NETTLETON:** If the Joint Review Panel approves the transportation service agreement and its tolling principles, Gateway would be in a position to offer requests for expansion capacity; correct?
6926. **MR. VAN HEYST:** I'm going to presume with that that the Board has also approved the facilities themselves?
6927. **MR. NETTLETON:** Yes.
6928. **MR. VAN HEYST:** I -- I mean that's a decision for Enbridge to make at the time. I can't speak for Enbridge and what their plans are post initial phase of Gateway.
6929. **MR. NETTLETON:** If that happens, sir, would you think it is probable, or at least possible, that expansion capacity could come on stream at the same time as the Trans Mountain expansion, assuming that Trans Mountain received its facility's approval and proceeded forward?
6930. **MR. VAN HEYST:** No, I do not.
6931. **MR. NETTLETON:** Why not?
6932. **MR. VAN HEYST:** I believe, as we've included in IR responses, is that my understanding and expectation would be that Enbridge would not seek any potential expansion until after the initial Northern Gateway project was

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- proceeding. So I mean, that's a number of years hence from now.
6933. They do have to seek the regulatory approvals, although perhaps it's more streamlined. I'm not sure. I don't think they would be -- a potential expansion would be in service in the same timeframe as the Trans Mountain expansion.
6934. **MR. NETTLETON:** They would forfeit that competitive opportunity, Mr. Van Heyst, to attract barrels from the market to the opportunity of providing expansion capacity to its system?
6935. **MR. VAN HEYST:** I didn't say that, Mr. Nettleton.
6936. I -- my understanding was given the regulatory requirements that it's doubtful that any potential expansion on Gateway would be available on the same timeframe as the Trans Mountain expansion.
6937. **MR. NETTLETON:** Let's back up. If Gateway gets approved and it commences construction, in other words, it has the necessary support to move forward, do you see any reason that would prevent Gateway from proceeding with a competitive opportunity to offer expansion capacity entitlements on its system?
6938. **MR. VAN HEYST:** I suppose that's possible, yes.
6939. **MR. NETTLETON:** Thank you.
6940. And if that proceeded ahead, sir, do you think it's probable or at least possible that expansion capacity could come on stream at the same time as the time that Trans Mountain came into service?
6941. **MR. ROTH:** Sir, he's already answered that question. He said it was, in his opinion, doubtful. So it's, I guess ---
6942. **MR. NETTLETON:** I just wanted to make sure the witness understood the question.
6943. **MR. ROTH:** Okay. And Mr. Nettleton, usually only interceded after my second or third attempt, so -- but he did get an answer.
6944. **MR. NETTLETON:** If the witness is going to respond to my

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question saying “I think I answered that already”, that’s fine, I’ll move on. I just wanted to make sure that we were on the same wavelength, sir.

6945. **THE CHAIRMAN:** Mr. Van Heyst, have you already answered that question?

6946. **MR. VAN HEYST:** I suppose, Mr. Nettleton, there is some potential. I can’t speak for the -- how Enbridge would proceed with that expansion and in the timeframe you laid out.

6947. **MR. NETTLETON:** All right. Mr. Chairman, might that be marked as an exhibit in this proceeding? And I would suggest it could be marked as one single exhibit.

6948. **THE CHAIRMAN:** Madam Wong?

6949. **THE REGULATORY OFFICER:** That will be Exhibit B27.

--- EXHIBIT NO./PIÈCE No. B27:

Enbridge Northern Gateway Pipelines - Memo of August 30, 2011 to Ms. Anne-Marie Erickson from Ken MacDonald - Attachment “Hydraulic Design”

6950. **MR. NETTLETON:** Gentlemen, I’d like to refer you to the next aid to cross, and I believe it was aid number 4. And it is an excerpt from the Gateway Transportation Services Agreement.

6951. Gentlemen, have you had an opportunity to review this aid to cross?

6952. **MR. VAN HEYST:** We have.

6953. **MR. NETTLETON:** And I believe, by way of correspondence in separate email to your counsel, I provided the cover letter in which this excerpt is filed in the Joint Review Panel proceeding.

6954. But subject to check, Mr. Van Heyst, can you agree with me, sir, that the transportation service agreement, the pro forma transportation service agreement, was filed with the Joint Review Panel on August 12th, 2011?

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6955. You can take that subject to check.
6956. **MR. VAN HEYST:** I believe so. The date on the cover letter is August 11, 2011, so yes.
6957. **MR. NETTLETON:** Thank you.
6958. If I can take you to Clause 11, sir -- or Article 11, which is on the third page. Do you have that, sir?
6959. **MR. VAN HEYST:** Yes.
6960. **MR. NETTLETON:** So we can -- you can confirm with me, sir, that expansion on the Gateway system has been commercially contemplated by the parties that would be executing the transportation services agreement; correct?
6961. **MR. VAN HEYST:** Correct.
6962. **MR. NETTLETON:** And sir, were you involved in the discussions that led up to the final version of the transportation service agreement being prepared?
6963. **MR. VAN HEYST:** No, I was not. That was someone else in our organization.
6964. **MR. NETTLETON:** But that pre-dated August 12th, 2011, then; correct?
6965. **MR. VAN HEYST:** Yes.
6966. **MR. NETTLETON:** And from clause -- or Article 11.1, maybe you can confirm with me, sir, that what's contemplated is that any person can request the carrier to make an expansion to the system; correct?
6967. **MR. VAN HEYST:** That's generally my understanding, yes.
6968. **MR. NETTLETON:** Can I take you to Clause 11.5, sir?
6969. Now, in this clause what's contemplated is the way in which expansion capacity would be allocated and tolls for that type of service. Is that a

- fair characterization?
6970. **MR. VAN HEYST:** I believe it's indicating how it would proceed and it should not have the impact of increasing tolls.
6971. **MR. NETTLETON:** Right. That's the point that I wanted to raise with you.
6972. It's stated that the expansion and expansion volumes requested by an expansion requesting shippers will not have the effect of increasing the oil pipeline toll and then, parenthetically, it says "applicable to a founding shipper under a transportation services agreement after any expansion". Do you see that?
6973. **MR. VAN HEYST:** I do.
6974. **MR. NETTLETON:** If Suncor exercises its rights to a transportation service agreement, would it be considered a founding shipper?
6975. **MR. VAN HEYST:** Yes.
6976. **MR. NETTLETON:** Thank you.
6977. Mr. Van Heyst, you have not referred to the information that I've just distributed to you in your evidence, correct, in this proceeding?
6978. **MR. VAN HEYST:** I believe that we were asked in IRs with respect to potential Northern Gateway expansions.
6979. **MR. NETTLETON:** Did Suncor inform Dr. Waverman of Suncor's entitlements to expansion capacity on Gateway?
6980. **MR. BROWNIE:** No, I don't believe we did the specific rights given to a funding participant, no.
6981. **MR. NETTLETON:** Mr. Chairman, might that be marked as the next exhibit, sir?
6982. **THE CHAIRMAN:** Madam Wong?
6983. **THE REGULATORY OFFICER:** That will be Exhibit B28.

--- EXHIBIT NO./PIÈCE No. B28:

Excerpt from the Gateway Transportation Services Agreement

6984. **MR. NETTLETON:** You'll be happy to know I have two pages of cross. My estimate was 12:30, so I believe I'm going to get there, I hope, with good answers with your help, panel.
6985. **MR. MATWICHUK:** With good questions, too, sir.
6986. **MR. NETTLETON:** Fair enough. Absolutely.
6987. Mr. Van Heyst, prior to the commencement of this proceeding, counsel on behalf of Suncor Energy Pipeline Products wrote a letter dated January 31st to the National Energy Board requesting that the open season process that Trans Mountain Pipelines have embarked on should be postponed until the Board had first considered and approved the tolling principles that were being considered in the open season.
6988. Do you remember that?
6989. **MR. VAN HEYST:** I do, yes.
6990. **MR. NETTLETON:** And I don't believe that has been -- that is an exhibit in this proceeding. I did distribute copies of that. It is on the Board's website.
6991. Mr. Chairman, I'm in your hands in terms of how you'd like to deal with that letter. If you'd like it marked as an exhibit in this proceeding or if you'd like to just simply take judicial notice of or Board's notice that it's on your website but not located on the RH-1-2012 proceeding.
6992. **THE CHAIRMAN:** Let's just see where it goes to see if it's -- how we'll deal with it.
6993. **MR. NETTLETON:** Mr. Van Heyst, that request was rejected by the Board; correct?
6994. **MR. BROWNIE:** That's accurate and that is when the Board had also

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- alluded to the fact that provisions such like 2.2 were contrary to the tenants -- fundamental tenants of open access.
6995. **MR. NETTLETON:** Right. And that resulted in both SEPP and SEMI participating in the open season processes, the Rounds 1, 2, and 3 that then ensued; right?
6996. **MR. BROWNIE:** That's correct.
6997. **MR. NETTLETON:** And in those processes, Mr. Brownie, without revealing any confidential information, can you agree that requests were made for variations to the FSA and TSA by Suncor?
6998. **MR. BROWNIE:** Yes. And I think it was throughout the filing that SEPP (Suncor Energy Products Partnership) specifically, had stricken Article 2.2 of the FSA when it had provided its bid for capacity.
6999. **MR. NETTLETON:** I'm thinking more about the gives and takes table, in Table 4, that was part of the evidence in this proceeding where Suncor -- or where Trans Mountain had indicated the types of gives and takes that had happened during the open season process.
7000. And all I'm asking, sir, is whether or not you can confirm or not whether Suncor, whether it'd be SEPP or SEMI, and without revealing any bargaining positions or the like, whether you engaged with Mr. Rinne in discussions regarding the terms and conditions of the FSA and TSA, other than 2.2.
7001. **MR. BROWNIE:** Yes. Yes, I can confirm that.
7002. **MR. NETTLETON:** And if I could now take you to the response that Suncor provided to Trans Mountain Pipelines Information Response 1.6(a), which is Exhibit C15-7-3, and it's at page 10. Do you have that before you, sir?
7003. **MR. BROWNIE:** I do.
7004. **MR. NETTLETON:** And I just want to confirm that from this response Suncor views the open season process to have been remedied by the conduct of Round 3; correct?

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7005. **MR. BROWNIE:** Yeah, if you read the response in the context of allocating capacity in a non-discriminatory manner, yes, we see -- we feel the open season achieved that objective.
7006. **MR. NETTLETON:** Right. Round 3 achieved the purpose of allocating capacity in a non-discriminatory manner; correct?
7007. **MR. BROWNIE:** Yes.
7008. **MR. NETTLETON:** Now, Mr. Matwichuk, I lied. I do have some more for you, sir.
7009. If I could have you turn to your revised supplementary evidence, Exhibit C15-9-4, and it's Q&A 19. I believe it's Adobe page 15.
7010. And in that response, Mr. Matwichuk, you've described a potential solution in your words; correct?
7011. **MR. MATWICHUK:** Yes.
7012. **MR. NETTLETON:** And is it fair to characterize that solution to be one where Suncor could seek from this Board to impose a change in the initial toll or a change in the escalator that would be used in Trans Mountain Pipelines tolling methodology but to keep all other aspects of the tolling methodology constant?
7013. **MR. MATWICHUK:** Yes, Mr. Nettleton. The tolling methodology proposed by Trans Mountain is an indexed approach that's very similar to those that I've seen in performance based ratemaking or price cap either before the CRTC or other Boards. And the two key aspects of it -- there are many aspects, but two key aspects are the going in toll, how that's determined, and then the index off that toll for the subsequent years.
7014. So the solution that I mentioned was you could either change the going in toll or you could change the escalator or you could do a combination of the both.
7015. **MR. NETTLETON:** Mr. Van Heyst, you're the policy witness for Suncor Energy Market Inc.?

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7016. **MR. VAN HEYST:** Correct.
7017. **MR. NETTLETON:** Is what Mr. Matwichuk just described the relief that you were seeking from this Board?
7018. **MR. VAN HEYST:** Yes.
7019. **MR. NETTLETON:** Mr. Matwichuk, would you agree with me that if the Board ordered this type of relief, it would have to do so in a fair and just and non-discriminatory manner?
7020. **MR. MATWICHUK:** Sorry, are you looking at me, sir?
7021. **MR. NETTLETON:** I'm looking at Mr. Van Heyst.
7022. **MR. MATWICHUK:** Oh, okay, you used my name.
7023. **MR. NETTLETON:** Sorry. Mr. Van Heyst; sorry. It's getting late.
- (Laughter/Rires)
7024. **MR. VAN HEYST:** Hence, a deer in the headlights look, Mr. Nettleton.
7025. Could you repeat the question please? Sorry.
7026. **MR. NETTLETON:** Mr. Van Heyst, if the Board made this type of order that you're seeking, would you believe that they would have to do so in a fair and just manner, such that there would be no discriminatory allocation of capacity?
7027. **MR. VAN HEYST:** In general, I would agree, Mr. Nettleton, that in terms of whatever relief the Board may offer would need to be just and reasonable.
7028. **MR. NETTLETON:** Mr. Van Heyst, if the Board made such an order, you would expect, would you, that Suncor would get the benefit of that change?
7029. **MR. VAN HEYST:** As well as any other potential shippers, yes, if ---

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7030. **MR. NETTLETON:** All right. So that was my next question; how about all other shippers that have executed FSAs and TSAs; would they get the benefit of that change?
7031. **MR. VAN HEYST:** I would suspect if we're going to invoke the just and reasonableness principle that that would be applied to any and all shippers, yes.
7032. **MR. NETTLETON:** How about other shippers that participated in the open season but were not aware of the NEB's decision, would they get -- how would they get the benefit of that?
7033. **MR. ROTH:** Sorry, sir, just by way of clarity, decision which -- do you mean the decision to delete 2.2 or the decision to change the toll, Mr. Nettleton? I'm just unclear on your question.
7034. **MR. NETTLETON:** I'll rephrase it.
7035. If the Board granted you the relief that you're seeking and said this is the toll that Trans Mountain can only charge or this is the escalator that Trans Mountain must include, my understanding, sir, is that you're expecting to get the benefit of that change. Other parties that have executed FSAs and TSAs in the open season would get that change.
7036. And my third question now is how about other shippers that participated in the open season but would not have been made aware of the NEB's decision at that time, would they -- how would they get that benefit?
7037. **MR. VAN HEYST:** The benefit in terms of the toll methodology, the uncommitted rate is set from the committed rate, so there would be a reduction in the uncommitted rate as well. So that's -- to the extent that they want to participate as an uncommitted shipper, that's a benefit for them.
7038. **MR. NETTLETON:** So you would exclude them from participating in firm -- the allocation of firm committed capacity.
7039. **MR. VAN HEYST:** I'm sorry, I don't understand what -- your question. Can you rephrase it for me, please?

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7040. **MR. NETTLETON:** Well, you've signed an FSA and TSA in this proceeding; correct?
7041. **MR. VAN HEYST:** Correct.
7042. **MR. NETTLETON:** That gives you firm capacity entitlement; correct?
7043. **MR. VAN HEYST:** Correct.
7044. **MR. NETTLETON:** If a shipper that participated in the open season but chose not to execute a transportation service agreement or firm service agreement because of the escalator or the toll and the Board now comes out and issues a decision saying you're going to reduce the toll or you're going to change the escalator, how would you see it being fair, just and reasonable to allocate no firm capacity to them?
7045. **MR. VAN HEYST:** Mr. Nettleton, one observation I would make is that I think, in part, we sought that determination before the need to sign FSAs was completed. We've -- that request was turned down by the Board. I'd be in the Board's hands in terms of what, if anything, needs to be done for those parties.
7046. **MR. NETTLETON:** Would you agree that if the Board issued this type of relief, then in order for capacity to be allocated in a non-discriminatory manner that the Board would require all existing volume commitments made through the existing open season to be taken off the table and a new open season process to be carried out?
7047. **MR. VAN HEYST:** I'm not sure what the Board may or may not do. It's not the relief we're seeking. We're not seeking a do-over of the open season, if that's what you're getting at.
7048. **MR. NETTLETON:** How else would you see it being possible for the Board to make a decision that would allow capacity to be allocated in a non-discriminatory manner if only the people that would take the benefit of that change in the toll methodology are the ones that have executed FSAs in the open season process?

--- (A short pause/Courte pause)

**Suncor Panel
Examination by Mr. Nettleton**

7049. **MR. VAN HEYST:** So let me see if I can try this. So we've had three rounds of open season, the last of which was the "but for" the 2.2 round, if I may refer to it as that.
7050. So I think shippers -- any potential shippers who've wanted space had the opportunity to participate in the last round. If it had been for 2.2, they could have participated with the risk, if I call it that, that the Board may or may not grant some relief on tolls.
7051. **MR. NETTLETON:** Thank you, gentlemen.
7052. With one just quick question -- thank you, panel. I appreciate your candour and answers.
7053. Mr. Chairman, that concludes my cross-examination.
7054. **THE CHAIRMAN:** Thank you, sir.
7055. **MR. NETTLETON:** I guess the one question, sir, is just the marking of the letter that Suncor filed in -- before this proceeding commenced. And that indicated an intention to have the Board proceed first with a decision of the tolling principles before the open season was carried out.
7056. And I'm in your hands. If you would like that marked as an exhibit we have copies here. It is also publicly available. But I think for purposes of just keeping the record straight, it may be helpful to have this marked as an exhibit.
7057. **THE CHAIRMAN:** It's not strictly necessary, but if you believe that it would help the record, we would accept giving it an exhibit number.
7058. Madam Wong?
7059. **THE REGULATORY OFFICER:** That will be Exhibit B29.

--- EXHIBIT NO./PIÈCE No. B29:

FMC Law - Letter dated January 31, 2012 from Fraser Milner Casgrain LLP to NEB

Suncor Panel
Re-examination by Mr. Roth

7060. **MR. NETTLETON:** Thank you, Mr. Chairman.

7061. That concludes my cross-examination.

7062. **THE CHAIRMAN:** Thank you.

--- (A short pause/Courte pause)

7063. **THE CHAIRMAN:** Mr. Roth, do you have any re-direct?

7064. **MR. ROTH:** A couple of questions just regarding knowledge of Gateway.

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

7065. **MR. ROTH:** Mr. Brownie, Gateway spot volumes and how the revenue associated with those volumes are split, do you know anything about that and how it compares to the proposed Trans Mountain expansion methodology?

7066. **MR. BROWNIE:** If you can just give me one second to pull up a document.

--- (A short pause/Courte pause)

7067. **MR. NETTLETON:** Mr. Chairman, I'm raising as a point of objection.

7068. We did not -- in my cross-examination, we did not ask these witnesses anything, any questions about toll methodology on uncommitted spot on Gateway.

7069. **MR. ROTH:** Sorry, sir. It goes to Exhibit B25 and the allocation of risks and benefits. So if we go to the -- we've got one side of the equation here as far as the risk calculation, and I think it's relevant.

7070. If Mr. Nettleton in any way proposes to argue that Trans Mountain bears any disproportionate capital cost risk, for example, or operating cost risk -- he may do that in argument. I'll, of course, take issue with the materiality of that, but in the event that he chooses to do so, I think it's highly relevant as to whether there's any offsetting revenue associated with that.

Suncor Panel
Re-examination by Mr. Roth

7071. So if he doesn't plan to argue that, then my question's not relevant and we can carry on. But if he does, I think it's an entirely appropriate question given his discussion around Exhibit B25.
7072. **MR. NETTLETON:** Well, let's be clear, Mr. Chairman. My discussion of the exhibit arose out of Mr. Matwichuk's evidence and, in particular, Appendix A-2 where Mr. Matwichuk had provided calculations with respect to construction cost risk.
7073. I engaged in a discussion with Mr. Matwichuk and Mr. Brownie, as it turned out, based on the evidence that Mr. Matwichuk had sponsored. Mr. Matwichuk's evidence has not referred anywhere to the -- I certainly didn't engage Mr. Matwichuk in any discussion about risk sharing on Gateway. I -- particularly on the uncommitted tolls.
7074. I will be arguing, Mr. Chairman, forcefully in argument that there is a disproportionate and unreasonable assessment of the risks in the presentation of the scenarios that Mr. Matwichuk has presented and one of those elements will very much be construction cost risk.
7075. If Mr. Roth is now attempting to have his witnesses speak to new evidence that relates to how Gateway is proposing to share risk and share costs and share toll revenue. I object to that.
7076. They had the opportunity to do that both in supplementary evidence and in the evidence that Mr. Matwichuk sponsored directly in A2. We did not touch that area.
7077. It's highly inappropriate for Mr. Roth to cherry pick, again, one particular element of the record that hasn't yet existed relating to the comparisons of Gateway versus TMX. So I do object to the reply that Mr. Roth is about to engage in.
7078. **THE CHAIRMAN:** Mr. Roth.
7079. **MR. ROTH:** Maybe just for efficiency I'll ask the next question, which is related, and we'll see if an objection's there and you can make all your rulings at one time as to whether I can pursue this.

Suncor Panel
Re-examination by Mr. Roth

7080. The next question would relate to the knowledge of the witnesses regarding Gateway's debt costs and the impact of the carriage of Aboriginal equity on Gateway debt costs given Mr. Nettleton's discussion of Gateway debt costs.
7081. So we'll see if he distinguishes between the two as to whether I'm entitled to ask those questions in re-direct given his reference to the 6.8 percent equity or debt component on Gateway. And you just can make a decision on both of them at the same time, sir.
7082. **MR. NETTLETON:** Well, Mr. Chairman, the second line of questioning that my friend wants to engage in does pertain to questions that I asked, namely Gateway's cost of debt. But what I had heard from the witnesses was that they weren't aware of the debt level -- or the debt rate for Gateway.
7083. I then proceeded to go back to Mr. Matwichuk's evidence, Appendix A2, and discussed with him his evidence about the basis upon which that debt rate was being established.
7084. What I'm now finding out is that what Mr. Roth wants to do is explore further that area and other factors that are being potentially considered in the cost of debt for Gateway. I refer back to the witnesses' response. They are not familiar with the debt rate.
7085. So I struggle to see how that line of questioning is relevant, too, as proper reply.
7086. **MR. ROTH:** Sir, I am not leading -- the response could very well be to that question they don't know. I have no idea. And that it could be, you know, we don't know. And that could easily be the response.
7087. **THE CHAIRMAN:** We'll just take a moment here.
- (A short pause/Courte pause)
7088. **THE CHAIRMAN:** Mr. Roth, we agree with Mr. Nettleton on both counts.

**Closing remarks
Chairman**

7089. Do you have any other re-direct?

7090. **MR. ROTH:** No, I tried to bundle it all up into one decision, sir.
Thanks.

7091. **THE CHAIRMAN:** Thank you, sir.

7092. Thank you, panel, for your contribution. We quite appreciate it, and you're excused.

--- (Witnesses are excused/Les témoins sont libérés)

7093. **THE CHAIRMAN:** Ladies and gentlemen, messieurs et mesdames, this brings us to the end of the evidentiary portion of the RH-1-2012 oral hearing.

7094. Madam Beauchemin, my records indicate that we don't have any outstanding undertaking. Is that correct?

7095. **MS. BEAUCHEMIN:** That is correct. I believe the extent of it was Undertaking 1, which has been filed.

7096. **THE CHAIRMAN:** Thank you. So the evidentiary record is now closed.

7097. As I explained last Friday, we will begin oral argument at 1:00 p.m. tomorrow. We will sit until 4:30 p.m.

7098. Written arguments are to be electronically filed with the Board by 9:00 a.m. tomorrow. Parties arguing and intending to refer to exhibits should provide the Regulatory Officer with a list of the documents you refer to before you present your argument.

7099. Unless there are any questions, we are now adjourned until 1:00 p.m. tomorrow. And I don't see anybody rising for questions, so see you tomorrow.

--- Upon adjourning at 12:35 p.m./L'audience est ajournée a 12h35